

**ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
MARCH 28, 2019**

FULL COMMITTEE

10:32:34 AM

1. CALL THE MEETING TO ORDER

Joyce Anderson called the meeting to order, welcomed committee members and guests, and directed Jerry Anderson to conduct roll call.

Roll call

Senator John Coghill
Senator Tom Begich
Representative Sara Hannan
Representative DeLena Johnson
Skip Cook
Conner Thomas
Joyce Anderson
Deb Fancher
Lee Holmes

Quorum present.

Others

Alternate Member Senator Elvi Gray-Jackson
Alternate Member Senator David Wilson
Dan Wayne, Legislative Legal
Jacqui Yeagle, Administrative Assistant
Jerry Anderson, Administrator

2. WELCOME NEW HOUSE LEGISLATORS

Joyce Anderson welcomed new House members Representative DeLena Johnson and Representative Sara Hannan, alternate member for Representative Louise Stutes.

Senator John Coghill added that Representative Chris Tuck was also in the audience.

3. APPROVAL OF AGENDA

Senator Tom Begich moved to approve the agenda.

No objection.

The agenda was approved.

4. APPROVAL OF MINUTES

a. January 31, 2019 Full Committee Minutes

Skip Cook moved to approve the minutes.

Dan Wayne offered two amendments:

- Page six: Replace the sentence, “Dan Wayne replied he did not think the rule would necessarily interpret it that way” with “Dan Wayne replied he did not think the rule would necessarily be interpreted that way.”
- Page eight: Replace the phrase, “If a legislator looks at a bill ...” with the phrase, “If a legislator looks at requesting a draft of a bill”

Joyce Anderson offered an amendment to page five: Replace the phrase, “advocate for a bill a during meeting...” with the phrase, “advocate for a bill during a meeting... .”

Joyce Anderson reviewed the amendments.

Joyce Anderson asked Skip Cook if he wanted to amend his motion. Skip Cook responded that as the maker of the motion, he had no objection to the amendments.

Joyce Anderson asked if there were objections to approving the minutes as amended.

No objection.

5. PUBLIC COMMENT

No public comment.

6. ELECTION OF HOUSE COMMITTEE CHAIR AND VICE-CHAIR FOR 2019-2020

Joyce Anderson said that the chair and vice chair positions are limited to the public members of the committee.

Joyce Anderson explained that at the January 31, 2019 meeting, the committee elected a Senate Subcommittee chair and vice chair. Joyce Anderson was elected chair of the Senate Subcommittee, and by statute, chair of the Full Committee in 2019. Joyce Anderson added that Deb Fancher was elected Senate Subcommittee vice chair.

Joyce Anderson explained that at the January 31, 2019 meeting, the committee had not been able to elect a chair of the House Subcommittee.

Joyce Anderson opened nominations for chair of the House Subcommittee, adding that the person elected will serve as chair of the Full Committee next year. Skip Cook nominated Lee Holmes chair of the House Subcommittee and Conner Thomas vice chair of the House Subcommittee.

There were no other nominations.

Joyce Anderson directed Jerry Anderson to conduct a roll call vote.

Jerry Anderson conducted a roll call vote for Lee Holmes as chair of the House Subcommittee and Conner Thomas as vice chair of the House Subcommittee.

Roll Call

Deb Fancher	Y
Lee Holmes	Y
Representative DeLena Johnson	Y
Representative Sara Hannan	Y
Skip Cook	Y
Conner Thomas	Y
Joyce Anderson	Y

By a vote of 7-0, Lee Holmes was elected chair of the House Subcommittee and Conner Thomas was elected vice chair of the House Subcommittee.

Joyce Anderson announced that Lee Holmes would chair the House Subcommittee at the House Subcommittee meeting scheduled for 1:00 p.m. that day. Joyce Anderson offered Lee Holmes her congratulations.

Joyce Anderson asked that the public members introduce themselves to the new legislators in attendance at the meeting.

Deb Fancher said that she is a retired educator, a chemistry teacher, who grew up in rural Alaska and has lived in Anchorage for the last 30 years.

Conner Thomas said that he has lived and worked as an attorney in Nome for the last 40 years. He has served on the Ethics Committee for 20 years.

Skip Cook said he was born and raised in Fairbanks. He practiced law for 43 years and is now retired. He has been on the Ethics Committee for 21 years.

Lee Holmes said he is a mechanical engineer based in Anchorage. He has lived in Alaska for 36 years, currently residing mostly in Fairbanks. He has been on the Ethics Committee for a couple of years. Lee Holmes added that the Ethics Committee has a vacancy for an alternate public member and commented that it would be great to have somebody from southeast Alaska on the committee.

Joyce Anderson was the former administrator of the Ethics Committee – from 2001 until 2015 – and therefore has substantial institutional knowledge. She has been on the committee for a couple of years; this is her first time as chair.

Joyce Anderson asked if any of the legislators wished to introduce themselves.

Representative Sara Hannan said that like Deb Fancher, she is a retired educator. She grew up in Anchorage and moved to Juneau where she spent 20 years in the classroom teaching social studies. She said that she brings the mind of an educator to the legislature, where there is endless homework and opportunities to learn every day.

7. ADVISORY OPINIONS

- a. AO 19-02

Joyce Anderson introduced Advisory Opinion 19-02 and asked Dan Wayne to summarize the 18 answers contained within.

Dan Wayne summarized the questions addressed in the Advisory Opinion.

Senator Tom Begich left the meeting at 10:58 a.m.

Skip Cook recommended changing the beginning of the sentence that answers question two on page eight from, "No. If the bill will ..." be amended to read, "No, not if the bill will ..." so that the answer begins with a full sentence.

Joyce Anderson recommended for consistency that the answer to question three begin with the word "Yes."

Senator Tom Begich returned to the meeting.

Senator John Coghill left the meeting.

Skip Cook noted a singular/plural conflict in question 7b, "... which requires legislators who have a conflict of interest to declare it" and suggested changing it to "... which requires a legislator who has a conflict of interest to declare it."

Dan Wayne addressed question 17 and drew the committee's attention to the example in the draft Advisory Opinion that refers to a commercial guide.

There was discussion among the committee members and Dan Wayne about whether draft Advisory Opinion 19-02 conflicts with Advisory Opinion 19-01 or Advisory Opinion 18-05. Joyce Anderson directed Dan Wayne to review the advisory opinions and report his findings to the committee.

Extensive discussion about whether the legislator and commercial guide referenced in question 17 were the same person and whether or not the commercial guide was self-employed.

Senator Tom Begich exited the meeting.

Jerry Anderson informed the committee that Chad Hutchison, the person who drafted the questions, was in the audience and would likely be able to shed some light on the committee questions.

Joyce Anderson invited Chad Hutchison to speak to the committee about the questions in the Advisory Opinion request.

Senate Majority Counsel Chad Hutchison clarified that the legislator who brought forward the question was asking the specific questions because he himself is a self-employed commercial fisherman. The focus of the question was meant to be on the \$10,000 threshold rather than the occupation of a particular legislator.

Joyce Anderson stated that she had no issue with moving forward with the questions using "commercial guide" and asked Dan Wayne if he had an issue with it. Dan Wayne replied he did not if self-employment of the legislator was established.

Joyce Anderson recommended amending the question to say that the legislator is a self-employed guide. Dan Wayne agreed. Joyce Anderson recommended also adding to the beginning of the answer that the committee had received clarification during the committee meeting that the legislator is a self-employed commercial guide.

Dan Wayne referred to the committee's attention to the earlier discussion about possible conflicts among draft Advisory Opinion 19-02, Advisory Opinion 19-01, and Advisory Opinion 18-05. Wayne stated that he did not think there was a conflict but if there is, the remedy would be to correct and re-issue those advisory opinions.

Conner Thomas moved to adopt AO 19-02 as amended.

Joyce Anderson asked if there were further discussion. There was no further discussion.

Joyce Anderson directed Jerry Anderson to read the synopsis of Advisory Opinion 19-02 and to conduct a roll call vote.

Jerry Anderson read the synopsis:

Formal Advisory Opinion AO 19-02 advises whether specific actions including to take or withhold official action or exert official influence and declaring a conflict and voting are proper under AS 24.60.030(e) and (g) in specified situations and the definition of "substantial harm" and whether a legislative committee or the office of a conflicted chair of a committee may sponsor legislation in a situation where the chair of the committee is conflicted and other specific details of situations where a conflict is present under AS 24.60.030(e).

Roll Call Vote [is] to concur or not concur with the draft opinion. A vote of yes will be a vote to concur with the draft opinion as amended in committee discussion. A vote of no will be to not concur with the draft opinion as amended in committee discussion.

Roll Call

Representative Sara Hannan	Y
Representative DeLena Johnson	Y
Skip Cook	Y
Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Lee Holmes	Y
Senator John Coghill	Absent from vote
Senator Tom Begich	Absent from vote

The Ethics Committee voted to concur with the Advisory Opinion 19-02 by a vote of 7-0.

Joyce Anderson reviewed the recommended amendments to Advisory Opinion 19-02.

b. AO 19-03

The Advisory Opinion was not available at the time of the meeting

c. AO 19-04

Joyce Anderson said that confidentiality had been waived on Advisory Opinion 19-04 and directed Dan Wayne to begin addressing it. Dan Wayne acknowledged that a statement to that effect was not included in the draft and said that he would add it.

Dan Wayne read Advisory Opinion 19-04.

Dan Wayne suggested adding a “(B)” after the third reference to AS 24.60.030(e)(3) in the first full paragraph on page five so that the sentence reads: “In this instance the legislator *does* have a conflict of interest under (e)(3)(B), and therefore organizing and promoting the meeting would be prohibited official action under (e)(3), and create a strong appearance of impropriety under AS 24.60.010.

Joyce Anderson agreed with Dan Wayne’s recommendation.

Skip Cook recommended changing the last sentence on page four to say: Although this might constitute a public meeting, the legislator's conduct leading up to the meeting would constitute the taking of official action prohibited by (e)(3).

Joyce Anderson reported that Lee Holmes had pointed out to her that the first line of page five says: the legislator would be taking official action to organize and promote a public discussion or debate. Changing page four would make it consistent with page five.

Joyce Anderson reviewed the recommended changes.

Dan Wayne added that he would also add a reference to waiving of confidentiality.

Joyce Anderson agreed there should be a reference at the beginning to waiving confidentiality.

Conner Thomas pointed out that in Advisory Opinion 19-02 the reference to waiving confidentiality was in a footnote.

Joyce Anderson agreed and said that adding a footnote would also be acceptable.

Representative Sara Hannan asked if all of the references to (e)(3) in the first full paragraph on page five would be changed to (e)(3)(B). After some discussion, it was decided to change only the third and fourth references.

Skip Cook recommended making it clearer to whom the “you” in the “Facts” on page one refers.

Dan Wayne suggested adding a phrase to the first sentence that identifies to whom the statement refers.

Joyce Anderson agreed.

Joyce Anderson recommended that the advisory opinion should say “Statement of Facts” to be consistent with Advisory Opinion 19-02.

Joyce Anderson again reviewed the recommended changes to the advisory opinion and entertained a motion to approve Advisory Opinion 19-04 as amended.

Deb Fancher moved to approve Advisory Opinion 19-04 as amended.

Joyce Anderson inquired whether there was further discussion. There was no further discussion.

Joyce Anderson directed Jerry Anderson to conduct a roll call vote.

Jerry Anderson read a synopsis of Advisory Opinion 19-04, then conducted a roll call vote.

Formal Advisory Opinion AO 19-04 advises whether specific actions including meeting in private in a legislator's office or in a conference room with a public notice is taking or withholding official action or exerting official influence under AS 24.60.030(e) when a legislator has a conflict of interest.

Roll Call Vote to concur or not concur with the draft opinion. A vote of yes will be a vote to concur with the draft opinion as amended in the committee discussion. A vote of no will be to not concur with the draft opinion as amended in committee discussion.

Roll Call

Lee Holmes	Y
Representative Sara Hannan	Y
Representative DeLena Johnson	Y
Skip Cook	Y
Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Senator John Coghill	Absent from vote
Senator Tom Begich	Absent from vote

The Ethics Committee voted to concur with the draft Advisory Opinion AO 19-04 by a vote of 7-0.

d. AO 19-05

Joyce Anderson instructed Dan Wayne to introduce draft Advisory Opinion 19-05.

Dan Wayne confirmed with Jerry Anderson that confidentiality had been waived. Upon confirmation, Dan Wayne began to read the draft advisory opinion.

Dan Wayne recommended citing Advisory Opinion 19-02 in the full paragraph on page four because it refers to the circumstances that constitute "official action." Dan Wayne explained he had not included the citation in the draft because Advisory Opinion 19-02 had not yet been approved.

Joyce Anderson agreed to the suggestion and asked if Dan Wayne was referring to a footnote after the words, "would not apply."

Dan Wayne responded to Joyce Anderson that was the correct paragraph and suggested putting the footnote after the words, "any kind of meeting."

Joyce Anderson agreed.

Dan Wayne recommended adding the same footnote to the end of the sentence in the next paragraph that ends on page five and to include a reference to Advisory Opinion 19-02. He also recommended including

a reference to Advisory Opinion 19-02 along with Advisory Opinion 18-05 and Advisory Opinion 19-01 in the first sentence of the “Sponsoring legislation” section.

Joyce Anderson agreed with both recommendations.

Dan Wayne recommended changing the last sentence of the third paragraph on page seven to say: If additional facts become known that indicate you or your spouse could substantially benefit from or be harmed by the passage or failure of HB 76 or a similar bill, a conflict of interest may arise.

Joyce Anderson asked for the committee’s thoughts.

Lee Holmes said he thought it would be confusing to add conjecture to the response by referring to something that could happen in the future.

Joyce Anderson asked Lee Holmes if removing the last sentence entirely would meet his concern.

Lee Holmes responded that he thinks the entire paragraph could be deleted because the paragraph preceding it is the conclusion that answers the specific question.

Representative Sara Hannan agreed with Lee Holmes, noting that the proposal to add the words, “or failure,” to the last sentence of the third paragraph on page seven was speculative and did not seem to answer the question asked in the advisory opinion request.

Conner Thomas pointed out that the statement of facts on the first page says, “The committee relies on facts that you have described in answering your questions” and said that language lays out the foundation of the answer.

Joyce Anderson said that based on discussion it sounds as if the committee wants to eliminate the entire last paragraph.

Skip Cook moved to approve the decision eliminating the last paragraph and other changes.

Joyce Anderson said there was a motion to approve Advisory Opinion 19-05 with recommended changes.

Joyce Anderson asked if there was further discussion.

Joyce Anderson directed Jerry Anderson to conduct a roll call vote.

Jerry Anderson read the summary of draft Advisory Opinion 19-05.

Formal Advisory Opinion AO 19-05 advises whether a legislator who is a residential appraiser and who has a spouse who is a mortgage originator may take or withhold official action or exert official influence under AS 24.60.030(e) and (g) on legislation replacing the state residential code specifically referencing HB 76.

Roll Call Vote to concur or not concur with the draft opinion. A vote of yes will be a vote to concur with the draft opinion. A vote of no will be to not concur with the draft opinion, both as amended in committee discussion.

Roll Call

Lee Holmes	Y
Representative Sara Hannan	Y
Representative DeLena Johnson	Y
Skip Cook	Y
Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Senator John Coghill	Absent from vote
Senator Tom Begich	Absent from vote

Joyce Anderson announced a short break.

Joyce Anderson called the meeting back to order, directed the committee to item number eight on the agenda, and referred discussion of that item to Jerry Anderson.

8. CHAIR/STAFF REPORT

a. H 17-03 COMPLAINT UPDATE

Jerry Anderson summarized the complaint proceedings to date. Representative David Eastman contested Complaint Decision H 17-03 by filing an appeal with the Superior Court. The order dismissing the appeal was included in the packet. Jerry Anderson said that the Ethics Committee used outside counsel, Brent Cole, for purposes of the appeal. The Ethics Committee is seeking attorney fees and that motion is still pending.

Joyce Anderson explained that the reason this item is on the Full Committee agenda rather than the House Subcommittee agenda is that the Ethics Committee complaint process is confidential only until a decision is issued. After a decision, details related to the complaint become a public matter.

Jerry Anderson added that this complaint had gone through the complaint process, including a public hearing.

Representative Sarah Hannan asked clarifying questions regarding the routineness of the process of seeking attorney fees. Jerry Anderson confirmed Representative Hannan's understanding that the process for seeking attorney fees was routine.

Conner Thomas said that the time for an appeal had not yet expired. Jerry Anderson confirmed the accuracy of Conner Thomas's statement.

Conner Thomas said it was routine in litigation to ask for attorney fees.

Joyce Anderson stated that appealing an Ethics Committee decision is unusual, adding that during her tenure as administrator there had never been an appeal to the court system.

Representative Sarah Hannan asked how long the process of recovering attorney fees takes.

Conner Thomas said the court has up to six months to make a decision after all the documents are submitted. He added that it is usually much quicker than that.

Skip Cook asked whether Representative David Eastman was personally responsible for the attorney fees or if he would be able to use legislative funds. Cook added that the Ethics Committee can recommend penalties to the legislature but in this case, it is a court order, so it is a different situation.

Representative DeLena Johnson asked what the amount of attorney fees may be recovered.

Jerry Anderson answered the amount is expected to be less than one-third of the amount the Ethics Committee approved for the outside counsel.

Skip Cook commented that the Ethics Committee would not expect to see reimbursement for the public hearing and related costs.

Jerry Anderson said that Joyce Anderson had approved an increase from \$5,000 to \$8,000 for the outside counsel contract for a period beginning January 1, 2019. It is anticipated that would leave about \$2,000 to meet a need that may arise before the end of the fiscal year. The contract is being drafted now.

Joyce Anderson questioned if – even with chair approval – the increase in the contract needs to be brought up in a committee meeting.

Skip Cook said he thinks that is something that has been considered in the past by the committee. Joyce Anderson expressed her desire to do so.

Jerry Anderson pointed out that the contract was not on the agenda and the contract was not ready.

Joyce Anderson directed Jerry Anderson to add that item to the agenda under Other Business.

b. 2019 ETHICS TRAINING

Jerry Anderson said that all of the employees who needed to finish training – with the exception of new employees – have completed their training. New employees are required to view six hours and ten minutes of video training. Forty minutes of that training would not apply to non-legislative staff.

Joyce Anderson added that the Ethics Committee requires two types of training: ethics training and preventing sexual and other harassment training, which is why training requires over six hours.

9. 2019 LEGISLATION UPDATE

Joyce Anderson directed the meeting to the legislation update.

Jerry Anderson said the Senate Judiciary Committee had passed the CS for SB 89, which Ethics Committee members had received in their packets. Jerry Anderson deferred to Senator John Coghill for more information.

Senator John Coghill said that SB 89 had been heard in the Rules Committee and in the Senate Judiciary Committee. He explained that the bill re-sets some of the provisions of HB 44 [from 2018]. The bill had been debated on the Senate floor where it passed by 15-4.

The bill will move to the House for consideration. Senator John Coghill said the bill had been noticed in the House Judiciary Committee, pending referral, and would probably be read across the House floor the next morning, where it would be considered right away.

Representative Sarah Hannan commented that prior to the governor's budget proposal, amending HB 44 was one of the top concerns so the House has an interest in expediting the bill.

Senator John Coghill said that he has been working on this issue steadily and that the ambiguities in the provisions make it difficult to understand and follow.

Joyce Anderson commented that the Ethics Committee does not pass legislation; the committee only enforces the legislation.

10. OTHER BUSINESS

a. CONTRACT FOR LEGAL SERVICES

Joyce Anderson deferred to Jerry Anderson about whether the committee should vote on the increase without having the contract.

Jerry Anderson said he thought it was fine to go ahead with a vote on the contract.

Joyce Anderson entertained a motion to increase the amount of the outside counsel contract.

Deb Fancher moved the question.

Joyce Anderson entertained discussion of the motion.

Representative DeLena Johnson asked if this action confirms the action of the chair.

Joyce Anderson answered yes and read the applicable section of the Rules of Procedure.

Skip Cook said there already exists a contract, the question is whether to increase the amount. He inquired if action could be taken if it was not noticed for the meeting; it was not in the agenda.

Joyce Anderson said it had been added to Other Business.

Representative DeLena Johnson voiced concern that it was not on the agenda and asked if counsel were available to answer the question.

Joyce Anderson answered that counsel does not attend the meetings.

Deb Fancher offered to withdraw the motion.

Joyce Anderson agreed.

Deb Fancher withdrew the motion.

Representative DeLena Johnson said she thought it was smart to follow procedure.

Joyce Anderson agreed.

Joyce Anderson said there is no date scheduled for a future meeting, leading to discussion about possible future meeting times.

Jerry Anderson said there is still one outstanding advisory opinion but that is the only other thing he knows of at this time to discuss in committee.

Joyce Anderson responded the advisory opinion issue addressed in the request is most pertinent during the legislative interim so she advised the advisory opinion could be held back. Jerry Anderson should check with Senator Begich, the requester of the opinion and member of the Ethics Committee, to determine if waiting to issue an answer to his request is OK with him.

Dan Wayne expressed appreciation for that sentiment.

Joyce Anderson said that by statute there is a timeframe under which the advisory opinion request is addressed.

Joyce Anderson said she does not anticipate another meeting until after session.

Joyce Anderson invited the new committee members to let Jerry Anderson know if they have agenda items for future meetings.

11. ADJOURN

Joyce Anderson adjourned the meeting.

1:53:00 PM