

**ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
APRIL 4, 2024, 9:00 AM**

FULL COMMITTEE MEETING MINUTES

9:09:05 AM

1. CALL THE MEETING TO ORDER:

Chair Deb Fancher called to order the meeting of the Select Committee on Legislative Ethics at 9:09 AM. She announced a change to the agenda: the committee would go into executive session before starting the public session of the meeting.

Chair Fancher directed Tamara Maddox to conduct roll call.

Roll Call

Senator Löki Tobin
Senator David Wilson
Representative Sara Hannan
Representative Mike Prax
Jerry McBeath
Deb Fancher
Joyce Anderson
Skip Cook
Conner Thomas - telephonic

There was a quorum.

Others

Tamara Maddox
Jacqui Yeagle

2. UPDATE ON COMMITTEE MEMBER NOMINEES/WELCOME MEMBERS

Chair Fancher provided a brief update on the public member appointment process. She said she had hoped the committee would be welcoming recently appointed members, but the process is still underway. Public members are appointed by the Chief Justice, and on January 17, 2024, the Chief Justice reappointed Skip Cook and Joyce Anderson, and Rachel Kelly as an alternate. The Senate approved all three of those nominees on January 26, 2024. On January 24, 2024, the house moved the nominees to the Judiciary Committee,

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and on March 8, 2024, the Judiciary Committee moved the nominees forward for a vote on the floor. On behalf of the committee, she thanked all three for their willingness to serve.

[9:11:22 AM](#)

3. APPROVAL OF AGENDA

Chair Fancher asked for a motion to approve moving the executive session up to the next agenda item in order to better meet the time constraints on members.

Chair Fancher entertained discussion or objections.

Representative Sara Hannan moved to approve the agenda as modified.

There was no discussion or objections.

Motion to go into EXECUTIVE SESSION

Representative Sara Hannan moved to go into *executive session to discuss matters which by law must remain confidential under AS 24.60.160, Uniform Rule 22(b) regarding executive sessions, and Rules of Procedure Section 5: Executive Sessions and discussion of matters, the immediate knowledge of would adversely affect the finances of a governmental unit, and discussion of subjects that tend to prejudice the reputation and character of a person.*

Chair Fancher entertained objections. There was no discussion or objections.

[9:13:22 AM](#)

EXECUTIVE SESSION

[10:07:22 AM](#)

PUBLIC SESSION

Chair Fancher called the meeting of the Select Committee on Legislative Ethics back to order at 10:08 AM.

Chair Fancher directed Tamara Maddox to conduct roll call.

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Roll Call

Senator David Wilson
Representative Sara Hannan
Representative Mike Prax
Senator Löki Tobin
Deb Fancher
Skip Cook
Jerry McBeath
Joyce Anderson
Conner Thomas - telephonic

There was a quorum.

Others

Tamara Maddox
Jacqui Yeagle

Chair Fancher reminded committee members about political activity limitations under AS 24.60.134(a)(2) [for public members of the committee.] [Public] members may not participate in a political campaign for a candidate for election to federal, state, or local office, or for the passage or defeat of a ballot measure of any type. [Public] members may not participate in a campaign, attend campaign fundraising events, or make financial contributions to any candidate for the legislature, incumbent legislature, legislative employee, who is a candidate for another public office, or a person running for another office against an incumbent legislator or legislative employee or a fundraising event held on behalf of a political party or attend a political party fundraising event. [Public] members may not participate in any lobbying activities.

Jerry McBeath asked the chair to use the words, "public members" instead of "committee members."

Chair Fancher noted this reminder pertains to the committee public members and the alternate member, not to the legislative members.

[10:10:22 AM](#)

4. APPROVAL OF MINUTES

Chair Fancher entertained a motion to approve the November 29, 2023, House Subcommittee meeting minutes.

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Representative Sara Hannan so moved.

Joyce Anderson offered corrections.

- Page 4, first paragraph, last sentence, should say, "repeated that we have not confirmed or denied or provided any information about individuals who have not waived confidentiality."
- Page 7, under timestamp 9:59, [second sentence] needs to say, "wants to be anonymous."
- Page 13, the last sentence before timestamp 10:26, should read, "she finds it unethical and corrupt and she asks the committee."
- Page 16, third paragraph, should read, "Joe Miller thinks the legislator likes the remoteness because it allows them to not have the public eye on them."
- Page 23, in the paragraph that starts with Representative David Eastman, second sentence, should say, "is there to review community groups."
- Page 10, capitalize the letters in RINO

Chair Fancher noted on page 8, the first sentence should say, "... if this means it will make it harder..."

Jerry McBeath added on page 16, middle of the third paragraph, should read, "When a person who comes to Juneau to have impact on the public process; that may cause..."

Representative Sara Hannan moved to approve, with amendments, the minutes of the November 29, 2023, House Subcommittee meeting.

Chair Fancher entertained discussion or objections. There was no discussion or objections. The minutes of the November 29, 2023, House Subcommittee meeting were approved with amendments.

[10:20:22 AM](#)

5. PUBLIC COMMENT

Chair Fancher opened the meeting to public comment. There was no public comment.

6. CHAIR/STAFF REPORT

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a. Revised Staff report - February 16, 2024

Chair Fancher directed Tamara Maddox to address the staff reports.

Tamara Maddox said the first item was a revision of the staff report from the meeting on February 16, 2024. Member Joyce Anderson made corrections and they were sent to committee members via e-mail for review. She asked for committee approval of the staff report.

Joyce Anderson stated she had received comments from Jerry McBeath that she wanted to share with the committee. She directed attention to informal advice #4. The question is: May the legislator gift frequent flyer miles to an expert that would be traveling to provide testimony on a bill...? Jerry McBeath wondered what if the individual was flying from Japan to Alaska. Ms. Anderson suggested limiting it to travel from Anchorage to Juneau.

Representative Sara Hannan suggested stylistically and to be broader in application, the question be limited to: A legislator is the sponsor of a bill. May the legislator gift frequent flyer miles to an expert that would be traveling to Juneau to provide testimony on the bill?

Chair Fancher entertained further discussion of informal advice #4. There was none. She asked Jerry McBeath to speak to his other comments.

Jerry McBeath pointed out a footnote indicated in the first paragraph on page two of the advice. However, there is no associated footnote.

Jerry McBeath directed attention to the sentence at the end of informal advice #4: The legislator should be notified of the change in advice. He asked what was the change in the advice that needed to be addressed.

Joyce Anderson replied at the top of the page, it says: If the legislator votes on the matter, he/she is again encouraged to disclose that he provided a gift of travel to the expert. See AS 24.60.030(g). She recommended removing that sentence from the advice because AS 24.60.030(g) only requires a legislator to disclose if they have a substantial financial interest, which the inquirer did not. She also wanted to add to the advice the sentence: Further,

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it was determined the legislator did not have a substantial financial interest in the bill he was sponsoring per the requirements of AS 24.60.030(g). That is why follow up with the legislator is necessary.

Senator Löki Tobin addressed informal advice #1, asking for clarification that the gift limit to a legislative employee from a legislator is \$249.99. She remarked that language throughout the advice was inconsistent.

Tamara Maddox noted both a legislator and legislative employee are under the jurisdiction of the Ethics Act. She also noted the question was whether a legislator could gift a legislative employee hospitality with a value of \$250 or more.

Jerry McBeath said he was trying to imagine how a busy legislator or staffer can figure out the right thing to do. He mused that the committee might ask legislators to address problems in the Ethics Act.

Representative Sara Hannan suggesting taking comments sequentially. Chair Fancher agreed, directed the committee to the first question, and asked if there were other comments. There were no other comments on the first question.

Chair Fancher moved to the second question. Representative Sara Hannan recommended broadening the question to include all committees, not only joint committees.

Chair Fancher suggested saying, "A legislator called to ask if a public member on a legislative committee could accept an invitation to comment on a bill."

Representative Sara Hannan noted there were only two joint committees with public members.

Joyce Anderson replied while she understood Representative Sara Hannan's concern, it's important to respond to a specific question with a specific answer.

Representative Sara Hannan assented and asked if the advice in the answer applied to the public members of the Ethics Committee.

Joyce Anderson replied that the Ethics Committee is not a

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joint committee. In statute, it is a permanent interim committee of the legislature.

Chair Fancher replied to Representative Sara Hannan that she would not want the look of impropriety [by testifying]. She thinks for the integrity of the committee, it is imperative to stay completely neutral.

Chair Fancher moved to page three.

Jerry McBeath noted the first sentence of the first full paragraph should be: The above recap of informal advice does not address the *question* posed

Chair Fancher asked for other comments on informal advice #4. There were none.

[10:37:22 AM](#)

b. Staff Report - Informal Advice

Chair Fancher asked Tamara Maddox to address the discrimination section in agenda item 6b.

Tamara Maddox introduced the staff report for February 2 through March 15, 2024, of this year by explaining the first few pages go into more detail than usual because they deal with issues that were not raised previously. The first issue is that of discrimination. She requested committee comments on the discrimination advice.

Representative Sara Hannan asked Tamara Maddox to clarify the question was whether discrimination is a violation of the Ethics Act.

Tamara Maddox replied it was. There is a section of the Ethics Act that discusses discrimination, so it would be a violation of the Ethics Act if there were discrimination.

Representative Sara Hannan replied that is not what the answer says.

Jerry McBeath wondered whether the answer needed to be in the staff report at all.

Tamara Maddox responded the topic was sensitive and it was not a typical request for informal advice. Including it in

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the staff report was a joint decision between the chair and her.

Senator Löki Tobin noted the answer referenced a number of categories of discrimination, including gender expression, which to her knowledge is no longer a protected class within the Alaska Human Rights Commission.

Joyce Anderson noted informal advice generally includes whether the inquirer was a legislator, a legislative employee, or someone else.

Tamara Maddox replied because of the nature of the call, the inquirer should remain confidential.

Skip Cook said the answer could include the category into which the inquirer falls and still be confidential.

Chair Fancher asked Representative Sara Hannan if she had further comment.

Representative Sara Hannan wondered why the answer could not be shortened to the first paragraph. Under the Ethics Act, a legislator [or legislative employee] may not engage in discriminatory behavior.

Chair Fancher agreed and asked the committee to comment.

Representative Sara Hannan said she didn't believe the staff report should include reference to the state commission on human rights because that is not within the purview of the committee.

Chair Fancher entertained further comment. There was none.

Tamara Maddox addressed the question about legislative citations. Legislative citations honor someone or an activity or service that has been accomplished. The question was whether or not the legislative citations can be posted on social media. However, the way the citations were to be posted on social media could have been seen as promoting a business. The recommendation was to post the actual legislative citation itself, the official record, rather than give a shout-out to a particular business.

Joyce Anderson asked again in which category the inquirer falls.

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Tamara Maddox replied to Joyce Anderson that the third paragraph references a legislator.

Joyce Anderson recommended that information be included in the question.

Representative Sara Hannan said the first part of the answer makes sense to her, but the reference to AO 11-03 is confusing. A legislative citation might say we are honoring Bob Smith's repair shop for fifty years of business in good service as a Yamaha dealer in North Pole. That is not an endorsement. The inclusion of the information about endorsing a business is distracting from the answer: Yes, citations are public documents and you may post them.

Tamara Maddox said the citation was not originally posted on social media, originally it was a shout out to the business with a mention of the legislative citation. AO 11-03 said it was acceptable to include material published by a government department in a legislative newsletter. That was the closest analogous situation she had at her disposal, and that is why she recommended posting the actual legislative citation.

Senator Löki Tobin noted that not all social media platforms have unlimited character limits and would not allow posting a citation. A social media platform may only allow for posting a link, so she thinks there is nuance missing in the answer.

Joyce Anderson said the answers in the staff report are meant to be brief. She agreed with Representative Sara Hannan that perhaps the answer could only reference AO 11-03 and AO 18-04 and not go into detail. Include the first sentence, reference the two advisory opinions, and include the recommendation.

Senator David Wilson asked if there was a gift or exchange value for the post. Legislators post about community things and how to help families in need. For example, he posts about the Thanksgiving blessing. He does not get a financial benefit nor has he been endorsed by any of the entities. The question for the committee is whether there was financial value in doing so, and if there was a violation of the Ethics Act.

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Chair Fancher thanked Senator David Wilson for his comments. She moved to a discussion of social media accounts, noting that she supposed most of the committee had read the recent Supreme Court decision about social media accounts.

Representative Sara Hannan asked if the advice was in response to an inquiry about a change in the social media policy.

Chair Fancher responded there was a complaint against a former member of the legislature regarding use of an official Facebook page. It is still in court, which is why the advice has been anticipated.

Tamara Maddox said while the legislature's social media policy doesn't fall under the ethics committee, Legislative Legal is watching the court case and will update the policy if changes are needed.

Representative Sara Hannan said that is why the Supreme Court narrative in the answer was confusing. Legislative Legal has not changed its policy. The fact the legislature's social media policy has not changed should be forefront.

Senator Löki Tobin emphasized the importance of understanding that the Supreme Court decision was based on a state employee and a school board, not elected officials. She noted that Supreme Court decisions are often narrowly interpreted, which could create confusion, especially since there has been no change to the current social media policy, which is a policy, not a law or regulation. She stresses the need to provide accurate information to legislators so they don't mistakenly think they are violating a state statute or regulation.

Joyce Anderson asked if the narrative was intended to be strictly informational or in response to a question. If it was a response, the question should be included.

Tamara Maddox replied the question asked was whether the social media policy had changed. She reported she explained on page four that Legislative Legal was reviewing the court ruling and will update the social media policy if necessary.

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Joyce Anderson recommended adding a question introducing the narrative would make it clearer.

Jerry McBeath said the narrative was overly long and not directly relevant to the work of the Ethics Committee. For the sake of legislators and their aides, he indicated he would prefer informal advice consist of a question, an answer, and a reference for the answer.

Representative Sara Hannan said Legislative Council gives guidance but they do not set policy. It behooves the council to take the advice of their lawyers, clients do not always do that.

Representative Mike Prax said unlike Senator Löki Tobin, he is not a social media user because he would need a team of about fifteen lawyers to figure out what he can say on Facebook. He recommends also a simple question and answer.

Deb Fancher directed Tamara Maddox to address the informal advice regarding the Assembly Apartment Building.

Tamara Maddox explained the informal advice answers were long, but because they were in response to new questions, she wanted to make sure the committee had the full background analysis that went into the decisions so they have the opportunity to make corrections.

Tamara Maddox addressed the Assembly Apartment Building. The question came from Legislative Affairs. They asked whether it was okay for individuals who do not rent an apartment to charge their EVs with the EV station at the building free of charge. The recommendation was they impose a charge for those who are not renting from the apartment building because those who are renting are paying for the EV chargers through their rent. In addition, they should develop a policy and post it.

Senator Löki Tobin said she is worried that the answer might be overstepping the committee's purview. The advice to impose a fee is not the purview of legislative ethics. The committee is not here to establish fees or recommend fees. The committee is to simply interpret the Ethics Act.

Representative Mike Prax asked if the issue is allowing a nonresident to use the chargers could be considered a gift.

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Chair Fancher replied yes, because it is something that has value.

Representative Mike Prax indicated focus should be on the gift aspect of the question.

Tamara Maddox said the question posed by Legislative Affairs was whether nonresidents could use the chargers free of charge. At least three people using the chargers fell into the nonresident category. It was a government benefit. The recommendation to make it equitable was to impose a fee.

Representative Sara Hannan suggested limiting the answer to a recommendation that Legislative Affairs have an established policy and include a fee [in that policy]. She was informed by email that Legislative Affairs would charge \$25 a month to use the chargers. Everyone knows that no one is getting the use of the chargers for free. There is no need to go into the gift discussion in the advice.

Chair Fancher directed the discussion to page eight of the advice.

Tamara Maddox explained the next section is a typical report of informal advice. She solicited committee comments.

Skip Cook offered corrections:

- He noted the word "by" in the first sentence needs to be stricken.
- He recommended the last sentence in the first answer under the campaign related section needed the word, "that" added to the phrase, "... the committee provided, that AS 24.60.031
- He suggested adding to the first paragraph on page nine the word, "may" - "Whether a legislator and the legislator's business partner/legislative employee *may* enter into a contract

Joyce Anderson asked Tamara Maddox to add the category of person asking the question in the second question under conflict of interest on page nine. Also, the answer refers to the use of government resources for nonlegislative purpose; however, the question does not say whether the intended use of the photograph was for a legislative or nonlegislative purpose. That information should also be

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included in the question.

Tamara Maddox replied the question says the intended use of the photograph was to assist with accurate reporting of news related to the legislature. She asked if that is a legislative matter.

Representative Sara Hannan replied it was because it was a picture of a legislator at work.

Skip Cook suggested amending the advice to clarify that the legislator would be using a photograph of him or herself.

Joyce Anderson asked to go back to the third question on page eight. She recommended using the full statute citation, AS 24.60.030(a)(2)(A), rather than referring to the section of statute in abbreviated or general terms.

Chair Fancher moved the discussion to page ten of the report of informal advice.

Joyce Anderson recommended adding the words, "in committee" to the sentence that begins with, "It is recommended that, pursuant to AS 24. 60.030(g), the legislator should declare a conflict of interest before voting on the bill in committee, ..." and add the words, "on the house floor," to the end of the sentence, "... and request to be excused from voting on the house floor."

[11:09:43 AM](#)

Jerry McBeath was puzzled by the first sentence in the second to last paragraph on page eleven, "On the other hand, advocating for the constituent's private interest is defined as pleading the cause of the constituent." He said, legislators plead the interest of their constituents every day.

Representative Sara Hannan said she understands the distinction is a legislator can advocate by making sure a constituent understands the process and for a fair process, but not for a specific outcome. She reads the question to be exclusively about constituent case work.

Skip Cook shared background information that led to the decision in AO 08-03, [the related advisory opinion mentioned in an earlier paragraph]. The question arose when

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someone was actually representing a constituent in a workers compensation matter. Representing a constituent as a client goes beyond informing the constituent about the process.

Referring to the last paragraph on page eleven, Joyce Anderson stated she did not think it was the committee's purview to instruct [staff or legislators] to contact an appropriate authority if safety is an issue.

Tamara Maddox explained harassment prompted the question. There is other informal advice that recommends contacting appropriate authorities in issues related to harassment and safety.

Senator Löki Tobin replied that not every community in Alaska has a police department. The committee should make sure its advice addresses the state holistically.

Skip Cook asked what was the question. If the question was what to do if a constituent becomes hostile, that is a different question [than presented in the informal advice].

Tamara Maddox said there were two parts to the question. One was a general question about constituent services - what is allowed and what is not. The other, that became evident later, was about a constituent becoming hostile because the legislator would not go beyond the limits of constituent services as outlined in AO 08-03. She had shared with the inquirer that the Ethics Act does not address how to handle hostile constituents but acknowledged earlier informal advice had included the recommendation to contact authorities.

About page twelve, Joyce Anderson wondered if referencing an advisory opinion from 1988 was appropriate given statute changes over the years. She asked Tamara Maddox what the advisory opinion said.

Tamara Maddox replied in AO 88-02 the committee determined service in the legislature is not designed for professional politicians, but for Alaskans with careers outside the legislative arena.

Joyce Anderson noted at the top of page twelve it says, "lobbyists fall within this exception since the wedding will take place in the interim." She said she did not know

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of any exceptions for gifts from lobbyists in the interim. The only exception would be from an immediate family member. From where did Tamara Maddox get that information?

Tamara Maddox said she would go back and look at her research for the answer to Joyce Anderson's question.

Senator David Wilson said he believed there was an exception for lobbyists for bereavement for the death of an immediate family member.

Joyce Anderson replied that the statute Senator David Wilson referred to was AS 24.60.075, and it referred to a compassionate gift.

Chair Fancher asked Tamara Maddox to check on that question, and entertained other comments on page twelve.

Senator Löki Tobin asked if informal advice could be operationalized to conform to a particular style. For instance, capitalization of "Ethics Act," and the use of full statute citations.

Representative Sara Hannan commented the last question on page twelve asks if it is ok to distribute a legislative newsletter, birthday card, or postcard 60 days before an election. A birthday card is always an individual mailing and always allowed, a post card may be to an individual or it may be part of a mass mailing. She thinks whether the mailing is to an individual or is a mass mailing is the critical distinction.

Representative Sara Hannan noted the answer to the second question on page thirteen did not reference the 60-day prohibition before an election for political mass mailings, and thought that it should.

Joyce Anderson pointed out line three at the top of page thirteen, " ... that activity must be conducted on personal non-government time," She suggested adding caution against the use of state resources as well.

Joyce Anderson noted the last question on page thirteen did not reference who made the inquiry. Further, she thinks the activity mentioned is outside the boundaries of the Ethics Act.

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Representative Sara Hannan wondered why the last answer on page fourteen cautioned the inquirer, a legislative employee, to provide advice about navigating the legislative process on their own time and with no government resources.

Tamara Maddox explained the inquirer would have been providing the advice while working for another organization.

Senator Löki Tobin commented legislative employees can do whatever they want on their own time.

Joyce Anderson mentioned when changes are made to a staff report, the changes are then submitted to the committee for a final review.

[11:37:43 AM](#)

7. BUDGET

Chair Fancher directed Tamara Maddox to update the committee on the budget.

Tamara Maddox stated the report shows available balances for outside counsel, the investigator, and for Joyce Anderson's contract. The only action item is to retroactively approve Joyce Anderson's contract amount to \$60,000 to cover the actual expenses.

Chair Fancher noted the contract dates for the outside counsel and investigator seemed incorrect. She asked Tamara Maddox to speak to that concern.

Tamara Maddox said she would research the question, but was not able to do so at the moment due to internet issues. However, she noted the balances were accurate.

Chair Fancher confirmed with Joyce Anderson that her contract began on July 17, 2023.

Representative Sara Hannan said she had vague memory from the February meeting that Joyce Anderson's contract was going to exceed the contracted amount, and thought it was approved at that time. She asked Joyce Anderson to comment.

Joyce Anderson reported she was paid as an employee rather

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than as a contractor. She wanted to put on the record she was actually paid \$54,052.04. She received employer paid benefits of \$4,035.79.

Jerry McBeath pointed out that benefits are still part of an employee's salary.

Joyce Anderson replied the additional money was paid into her Supplemental Benefits System account. If she had been on contract, the full amount would have been about \$54,000, but because she had been an employee, the total amount was more [\$58,387.83].

Jerry McBeath said he remembered hearing at an earlier meeting that Legislative Affairs would come up with small amounts of money over budget.

Joyce Anderson replied that was not the case.

Chair Fancher said she believed the discussion to which Jerry McBeath was referring was about exceeding the initial budgeted amounts in general, not specifically to Joyce Anderson's contract. To Joyce Anderson's point, Chair Fancher said while she understood the distinction between being a contractor and being an employee, the money still goes to the employee, and employees are still taxed on those benefits.

Tamara Maddox said that at the meeting to which Representative Sara Hannan referred in her question, it was discussed that Joyce Anderson's contract amount would exceed the \$50,000 but at that time, it was unknown by how much. She repeated the action needed was to increase the budget to a total of \$60,000 to cover all the known expenses, as recommended by Accounting.

Representative Sara Hannan asked for confirmation that Accounting and Legislative Affairs recommended the total contract amount be increased to \$60,000. With that understanding, she moved to amend and authorize the expenses for hiring Joyce Anderson for the period July 17, 2023, to February 21, 2024, to a total of \$60,000.

Chair Fancher entertained other discussion. There was no other discussion.

Chair Fancher entertained objections. There were no

objections. The motion was approved.

[11:45:07 AM](#)

8. ADVISORY OPINIONS (+)

a. AO 24-01

Chair Fancher directed the committee's attention to discussion about Advisory Opinion 24-01. She reminded the committee that at the full committee meeting on February 16, 2024, the committee voted to adopt a legal memo as an advisory opinion. This opinion answers whether a legislator may vote on a bill that would benefit the legislator specifically by voting on a defined contribution retirement plan. The committee's opinion is this activity is not prohibited, and it is not a conflict of interest for a legislator to vote because even though the legislator may benefit from the legislation, the legislation provides no greater benefit to the legislator than to a substantial class of persons such as other state employees or teachers. She entertained a motion to approve AO 24-01.

Joyce Anderson so moved, then noted the draft advisory opinion was not requested by the committee. It was requested by a legislator, who did not waive confidentiality. The draft advisory opinion needs revising to reflect who actually requested it.

Representative Sara Hannan asked if it should read, " ... the select committee on legislative ethics was requested to give an advisory opinion ..."

Joyce Anderson responded her understanding is that when a legislator asks for an advisory opinion, the committee is not mentioned until the end. She suggested asking Noah Klein to comment.

Representative Sara Hannan said she assumed there is some standard phrasing.

Noah Klein of Legislative Legal Services said he did not have the exact language in front of him but the committee does have standard language and they will use the standard language so that it is consistent with any other opinion requested by a legislator.

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Chair Fancher thanked Noah Klein for his answer and for being in attendance at the meeting.

Jerry McBeath had a question about the wording in the first full paragraph on page three. It says, "We conclude that state employees constitute a substantial class of persons under the definition of substantially benefit, and that legislators are not foreclosed from voting on a measure benefiting the entire class despite the legislator's status of state employees." He wondered how "substantially benefit" is defined.

Chair Fancher said she assumed it was from statute and asked Noah Klein to comment.

Noah Klein replied that the term "substantially benefit" was defined in statute and the definition was also in the second paragraph on page two of the draft advisory opinion.

Representative Sara Hannan asked who drafted the advisory opinion.

Noah Klein said formal advisory opinions are drafted by Legislative Legal.

Chair Fancher entertained other comments or discussion. She noted the draft advisory opinion needed to clarify the opinion was requested by a legislator.

Jerry McBeath noted a correction needed to the list of committee member names on page four.

Noah Klein replied that the final advisory opinion will reflect the actual vote outcome.

Chair Fancher noted there was a motion with a minor change and entertained other discussion.

Tamara Maddox reported the advisory opinion required a roll call vote.

Chair Fancher directed Tamara Maddox to conduct a roll call vote.

Roll Call Vote

Chair Deb Fancher

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Representative Sara Hannan
Senator David Wilson
Senator Löki Tobin
Representative Mike Prax
Skip Cook
Jerry McBeath
Conner Thomas
Joyce Anderson

Members voted unanimously to approve AO 24-01.

11:51:07 AM

b. AO 24-02 Confidentiality Waived by Representative
David Eastman

Chair Fancher introduced draft Advisory Opinion 24-02. The AO was requested and confidentiality was waived by Representative David Eastman on February 16, 2024. The questions presented were about campaign donations and gifts, legal counsel, contingency fees, legal counsel through contractual arrangements and legal counsel through a law firm for pro bono legal services. She reported an advisory opinion is discussed in an open meeting when confidentiality is waived. She introduced Andrew Dunmire, of Legislative Legal, to provide a brief synopsis of the draft advisory opinion.

Andrew Dunmire said there were four questions presented in the advisory opinion request. The first question is whether it is permissible for a legislator to give a campaign donation or gift or to accept a campaign donation or gift from a member of the Select Committee on Legislative Ethics or an individual employed by that committee. The Ethics Act applies to legislators and to public members of the committee and employees. AS 24.60.080(a)(1) prohibits gifts worth \$250 or more. The conclusion reached is that a member of the committee may receive or give a gift up to that amount. Turning to campaign donations, a public member of the committee or an employee of the committee, or a person under contract with the committee may not make a financial contribution to either a candidate for the legislature, an incumbent legislator, or legislative employee who is a candidate for another public office or a person running for another office against an incumbent legislator under AS 24.60.134(a)(2), but legislative members of this committee

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are not prohibited from giving or accepting campaign contributions.

Jerry McBeath asked if that means a legislative member of the committee, such as Representative Prax, may give to campaigns and may accept but he, as a public member, may not give and may not accept. There is a clear division between members of this overall committee in terms of this particular statute.

Andrew Dunmire replied that Jerry McBeath was correct. Turning to the second question: whether it is permissible for a legislator to retain legal counsel through a contractual arrangement where the law firm is compensated based on fundraising rather than being paid directly by the client, he said he thinks this is analogous to an issue that was addressed by this committee in AO 23-02, in which the committee determined that paying for legal services through a lawfare fund was not permissible under the Ethics Act because it would not meet the "in-kind" definition adopted when interpreting the statute.

Representative Mike Prax noted he could not imagine a situation where a law firm would agree to an arrangement in which the law firm would raise funds that benefit the client and be willing to accept the amount they raised as compensation. And that is not permissible.

Andrew Dunmire said question three asked whether it's permissible for legislators to retain counsel through contingency fees. There is nothing in the Legislative Ethics Act that prohibits contingency fee agreements between an attorney and a client. The issue is that the types of cases that generally result in contingency fees are what normally people would think of as torts, an auto accident or medical malpractice. It seems unusual that there would be a matter of legislative concern that would result in a contingency fee. If an attorney entered into a written contingency fee contract with a client and gave them some kind of benefit or represented them in a contingent matter in a way that they would not do for somebody who wasn't a legislator, that could be a gift.

Chair Fancher entertained questions.

Jerry McBeath asked who determines what is a matter of legislative concern. He imagined from the perspective of

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the legislator, anything she or he does is a matter of legislative concern. They always act in terms of the broader interest.

Andrew Dunmire gave Jerry McBeath an example of a situation that would not be a matter of legislative concern: if a legislator were in a car accident and the legislator wanted to sue the person responsible.

Jerry McBeath asked what if a legislator is being attacked for their opinions. He is concerned the draft advisory opinion may not be clear-cut enough to be useful to the committee in decision making.

Senator David Wilson said he thought the examples of personal matters were good ones. If there is a question, it would be deliberated by the committee and they would make that determination.

Jerry McBeath asked for confirmation that the answer depends on whether or not a complaint is filed.

Chair Fancher said the answer in the draft advisory opinion is based on the fact that Representative David Eastman is a legislator and the answer was directed to him.

Andrew Dunmire addressed the fourth question: whether it is permissible for a legislator to retain legal counsel through a law firm that exclusively provides pro bono legal services. That would not be a violation of the Legislative Ethics Act because free or reduced-price legal services are an in-kind contribution. In that case, the legislator is not receiving the benefit of somebody else paying for his lawyer.

Jerry McBeath asked what if the pro bono law firm exists explicitly for the purpose of supporting a particular political agenda, for instance, free speech or election reform. Would that change the answer to the question?

Chair Fancher said if the pro bono firm is willing to represent anyone, then it is ok. She asked Andrew Dunmire if he would confirm her understanding.

Andrew Dunmire confirmed Chair Fancher's understanding. He said the interest of the pro bono law firm is not necessarily relevant, whether it is a first amendment law

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firm or some other advocacy type of organization. AS 24.60.080(c)(8) allows in-kind gifts of legal services in matters of legislative concern.

Chair Fancher asked Skip Cook and Conner Thomas if they had comments. Conner Thomas said the draft advisory opinion was clear and he had no problem with it. Skip Cook agreed and said it is up to the individual to choose who he wants to represent him. It is not within the committee's purview to sort that out.

Joyce Anderson recommended adding to the conclusion to the first question a citation to the statute referenced, AS 24.60.134(a)(2), because people often only read the conclusion.

Joyce Anderson also wondered if it would be appropriate to add at the end of answer two a statement that the gift is not in-kind, and therefore, would not qualify for the exception under AS 24.60 080(c)(8).

Joyce Anderson also recommended adding to answer four that pro bono legal services are an in-kind gift and they qualify for the exception under AS 24.60 080(c)(8), again, with reference to the statute.

Representative Sara Hannan asked Andrew Dunmire to add Joyce Anderson's suggested language to the answer to question two, not replace it, because she thinks the answer to question two is clear.

Jerry McBeath said he still had concerns about the answer to question four. He suggested adding language that makes clear [it is ok to use the services of] a pro bono law firm that any legislator might be able to use.

Representative Sara Hannan said she thinks Jerry McBeath's suggestion distracts from the answer because a pro bono law firm working from one perspective may not take cases on another perspective. The Disability Law Center, for instance, does pro bono work on disabilities. If a person wants to discriminate against people with disabilities, the Disability Law Center may not take the case. She thinks it depends on the issue and the matter of legislative concern.

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Senator David Wilson asked Jerry McBeath if he wanted to make sure that any member with a similar issue would have access to the pro bono services.

Jerry McBeath gave an example of his concern. Would a legislator be able to retain a particular law firm in a legislative matter, and it would not be considered a gift.

Chair Fancher said if the law firm did pro bono work and is willing to provide pro bono services to any legislator with a similar request. That is how she reads the answer.

Representative Sara Hannan said she reads it to mean the entirety of a law firm's work is pro bono in all circumstances versus an individual case being taken pro bono - a firm that does exclusively pro bono work on an issue, or for anyone, they always do, they don't charge anyone ever.

Chair Fancher asked what if the law firm was a one-man shop.

Representative Sara Hannan asked if the law firm always does pro bono work.

Joyce Anderson noted the fourth question uses the word, "exclusively," in the provision of their pro bono work.

Jerry McBeath replied he would need a list of law firms that provide exclusively pro bono work to understand and vote on the question.

Conner Thomas said he thought it was critical to add the word, "exclusive[ly]" to the answer to question four when referring to the pro bono law firm.

Chair Fancher asked what language Conner Thomas might use in that case.

Conner Thomas replied, "[a] legislator may retain pro bono services through a law firm that provides exclusively pro bono services."

Chair Fancher asked Andrew Dunmire his thoughts about Conner Thomas's suggestion.

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Andrew Dunmire said he thought it was okay, but unnecessary. The issue under the Legislative Ethics Act is the relationship between the legislator and the attorney in the specific matter in which that person is represented. The exception in AS 24.60.080(c)(8) is that a gift of legal services in a matter of legislative concern can exceed the \$250 limit. If an attorney who represents clients for pay chooses to represent one legislator for free it would still be pro bono. He doesn't think that would be any different than if a legislator was represented by a firm whose entire business is doing pro bono work.

Tamara Maddox asked would it make a difference if an attorney who provides services for a fee set up a separate business [that does pro bono services.]

Andrew Dunmire responded it would not. In a matter of legislative concern, any attorney can provide pro bono legal services to a legislator regardless of whether they work at a for-profit law firm or an exclusively non-profit law firm.

Representative Sara Hannan said Andrew Dunmire's answer had redirected her thinking. It is not relevant whether a pro bono law firm or a for-profit law firm provides representation. It hinges on the matter of legislative concern.

Conner Thomas stated the question asked is: Is it permissible for a legislator to retain legal counsel through a law firm that exclusively provides pro bono legal services? He wondered why that should not be the question answered as opposed to broadening the answer.

Representative Mike Prax said he has a friend who is an attorney. His friend asked the representative to sponsor a bill. The representative expects his friend to do the work to perfect the bill. That is clearly legislative work, and would not violate the Ethics Act. On the other hand, if his attorney friend were to represent him in an APOC violation, it would be pro bono, and it would be considered an in-kind gift that needed reporting. Is that a valid distinction?

Representative Sara Hannan said APOC is not a legislative concern. That is campaign. That would be the distinction.

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Senator David Wilson said Representative Mike Prax's example would depend on the APOC violation. Did the violation occur during campaign season or were you late filing a disclosure because your staff forgot to hit the send button? Then it is legislative concern because your staff is allowed to help you with some of your APOC filings. It would not be ok for the attorney to represent you pro bono because you spilled hot coffee in your lap at McDonald's. APOC and other quasi-legislative business allowed is a gray area.

Chair Fancher entertained a motion to adopt AO 24-02.

Representative Sara Hannan so moved.

Chair Fancher directed Tamara Maddox to conduct a roll call vote.

Roll Call Vote

Representative Sara Hannan	Yes
Senator David Wilson	Yes
Representative Mike Prax	Yes
Chair Deb Fancher	Yes
Skip Cook	Yes
Conner Thomas	Yes
Jerry McBeath	No
Joyce Anderson	Yes

Senator Löki Tobin was absent.

Tamara Maddox announced the majority of committee members voted to adopt AO 24-02.

Chair Fancher said Legislative Legal would make the edits requested and a final draft will be sent to committee members for review.

Joyce Anderson recommended a time limit to review the draft.

9. OTHER BUSINESS

10. ADJOURN

Chair Fancher entertained a motion to adjourn the meeting.

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Jerry McBeath so moved. The meeting adjourned at 12:23.

[12:23:07 PM](#)

ADJOURN: