

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from December 12, 2007 FULL COMMITTEE MEETING HOUSE SUBCOMMITTEE MEETING SENATE SUBCOMMITTEE MEETING Anchorage LIO, Room 220

1. Call the Meeting to Order: The meeting was called to order at 8:35 a.m. by Chair Dennis (Skip) Cook. Members present: Senator Con Bunde, Senator Hollis French (alternate for Senator Gary Stevens), Representative Bob Roses, Representative Berta Gardner, Herman G. Walker Jr. (joined the meeting at 9:05 a.m.), H. Conner Thomas, and Gary J. Turner. Member absent: Ann Rabinowitz. Staff present: Joyce Anderson and Dan Wayne, LAA legal (by teleconference).

2. Approval of Agenda: Member Thomas made a motion to approve the agenda as presented. Hearing no objection, agenda approved.

3. Approval of Minutes: Representative Roses made a motion to approve the full committee minutes from the September 28, 2007 meeting. Hearing no objection, minutes approved. Member Turner made a motion to approve the House Subcommittee minutes from September 28, 2007. Hearing no objection, minutes approved.

4. Public Comment: Theresa Obermeyer spoke to the committee on several issues which were not related to the jurisdiction of the Legislative Ethics Committee.

5. CHAIR/STAFF REPORT:

a. Disclosures: Disclosure list in the packet is current as of November 30, 2007. Ms. Anderson reported the following individuals were late in filing their disclosures but not fined as this was their first late disclosure: Senator Joe Thomas, Representative Kurt Olson, Representative Scott Kawasaki and Representative Bryce Edgmon. Senator Johnny Ellis was fined \$22 for his second late disclosure.

Senator French indicated he did not see his name listed for a board and commission disclosure last year. He included the disclosure with his Legislative Financial Disclosure report. Ms. Anderson will look into this matter.

Letter sent November 13, 2007, to Attorney General (AG) for follow up on the late

disclosures received from former Rep Jim Holm and was fined \$200. The AG does not follow up on any amounts due the State unless the amount is \$500 or more. Staff will follow up as to what action has been taken on this matter and report back at the next meeting

Ms. Anderson reported APOC is meeting today and a staff person from the AG's office will give a presentation on the subject of fines. Staff will follow up with APOC and report back at the next committee meeting.

b. 2008 Mandatory Ethics Training: Mandatory ethics training, new for this year, has been scheduled for the week prior to session and the week of session. Eight training classes have been set up so far for Juneau and it is anticipated that more may be necessary. Training will be customized to the individual needs of the attendees: administrative support staff, new legislative staff working for legislators, returning staff working for legislators and one for legislators. Training by teleconference will occur later in January for all LIO staff and others who were unable to attend one of the sessions in Juneau. One of the training sessions will be video taped by KTOO and will be available on the Ethics web site for staff who come on board after the scheduled training classes. This is a work in progress undertaking and may be revised based on logistics and other considerations.

Chair Cook reminded public members of the committee of the requirement to attend training and suggested the next committee meeting be scheduled to coincide with the sessions on legislator training.

Staff will be attending a lobbyist training session conducted by APOC to learn about the requirements and prohibitions regarding lobbyists and APOC Juneau staff will attend one of our training sessions.

c. Ethics Handbook – New Hire Packet: Staff worked with Skiff Lobaugh, LAA Personnel Director, and the ethics handbook will now be included with the new employee hire packet of information. Employees will sign a form acknowledging receipt of the booklet and responsibility for complying with the legislative ethics code. The signature not only acknowledges ethics requirements but other policies and regulations as well.

d: Informal Advice Staff Report: Staff report covers the period June 1, 2007 through November 30, 2007. The committee received the 22 page staff report at the meeting and Chair Cook suggested committee members review the report and comment at the next meeting if members have questions.

e: Web Site Proposed Changes: Ms. Anderson suggested the ethics web site include a short bio and a picture of committee members. A link will also be provided to the legislative members' web site. The administrator's bio and picture would also be included. Senator Bunde agreed this is a good idea based on the increased awareness of ethics. The committee approved the addition of these items to the web site.

f. Proposed Move of Anchorage LIO Offices: Staff provided an update. The legislature

still needs to approve legislation and appropriate funds for the project. Ethics staff completed a survey of present space and equipment and projected needs for future space. A copy is on file in the Ethics Office.

6. BUDGET

a. FY08 Budget Update: \$112,505 out of a total appropriation of \$174,400 has been spent as of November 30, 2007. It is anticipated there will be sufficient funds to cover expenses through June 30, 2008.

b. Upgrade of Administrator's Position: Chair Cook reported on the suggested upgrade of the Administrator's position from Range 21 to a Range 24. Ms. Anderson is currently a Range 21, Step F. Representative Gardner asked if the committee had the authority to upgrade the position. Pam Varni, Executive Director LAA, reported all legislative positions are in the unclassified category. Several years ago the Joint Rules Committee created another classification called "professional assistant" and then created the tier of 22, 23 and 24. She reported there is a limited number of Range 24's and they work for leadership. She indicated this committee has the flexibility and discretionary authority to change the "range" for the administrator position. Member Walker asked for clarification on the process. Ms. Varni stated the committee has the authority to give the Range 24 increase today as long as the budget is not exceeded. The normal process is to include this type of request in the next budget cycle for approval of funds by the legislature.

Further, Ms. Varni reported the request for FY 09 would be for 100% time for the administrator versus the 90% time presently allocated. Ms. Varni and Ms. Anderson had previously discussed the change in time worked.

Member Turner asked whether this topic should be discussed in executive time. Chair Cook stated there are really two questions before the committee today: the range for the administrator position and the performance of Ms. Anderson. When performance is discussed the committee will go into executive session. Representative Gardner asked whether the increase could go into effect immediately. Ms. Varni reported there is enough money in the budget to do this if the committee decided to do so today and then the FY09 budget would be budgeted appropriately for this increase.

Senator Bunde mentioned the fact the Governor is requesting no more than a 4% increase in budgets for FY 09 and wanted the committee to factor this information into the decision and proceed with caution. Representative Gardner said the job description has had a significant change along with an increase in duties that justify the change in range.

Member Turner asked if the step increase could be increased to 24F instead of 24A. Ms. Varni stated internal procedures are in place when a range is changed. The individual would receive a two step increase in the new range.

Member Thomas made a motion to approve the range for the administrator position for a Range 24A. Discussion held. Chair Cook explained the motion: a person coming into this position would be a Range 24. Senator French asked if the range would always be a 24.

Ms. Varni stated the range could be at any range when a person is initially hired. Senator Bunde suggested a range of 21 to 24 based on experience. Ms. Varni suggested the Committee have an internal policy of hiring within a Range 21 to 24. Budget allocation would always be at a range 24 but the Committee could hire at a lesser range. Member Conner stated his motion should be Range 24 and not Range 24A. Roll call taken: YES - Senator French, Senator Bunde, Representative Roses, Representative Gardner, Members Thomas, Walker and Turner and Chair Cook. Motion carried.

Committee went into **Executive Session** to discuss matters of a personnel nature at 10:00 a.m. Ms. Varni participated in the Executive Session. The Committee returned to Open Session at 10:10 a.m. Senator Bunde made a motion to advance Ms. Anderson to a Range 24 effective FY 09, which begins July 1, 2008, and change the position to 100% time. All members present voted yes. Motion carried.

c. FY09 Budget Request: FY 09 budget request is the same as FY 08 except for the change in personnel costs. Representative Gardner asked if travel costs should increase for FY 09. Ms. Anderson stated costs are increasing but the budget amount seemed adequate at this point in time. Ms. Anderson stated the area that may need more money is Services. Due to the climate today the services of the committee's outside legal has increased. Ms. Varni pointed out budgeted amounts can be moved from account to account. Senator Bunde recommended we stay within the recommended 4% increase. Representative Gardner made a motion to increase the budget by 4% in the Services category for FY 09. Senator French suggested personnel services be increased at this time and hold any other action until January. Ms. Varni stated the budget is due prior to the beginning of session due to the shortened session and recommended the committee finalize the FY 09 budget recommendation today. Representative Gardner asked Ms. Anderson if she would be working 100% time in FY 09 or is this figure just a projected percentage. Ms. Anderson stated 100% is anticipated.

Senator Bunde made a motion to forward the budget as presented with the increase in personnel. Roll call vote taken: Representative Gardner – NO. Senator French, Senator Bunde, Representative Roses, Members Thomas, Walker and Turner and Chair Cook – YES. Motion carried.

7. ADVISORY OPINION 07-04 CONSTITUENT SERVICES: The request was submitted by Rynnieva Moss, staff to Representative John Coghill. Ms. Moss asked the committee to provide guidance as to whether or not the aide in each of three examples given can provide services described in the manner that is in compliance with restrictions on the use of state resources under the Legislative Ethics Act. Four legislative staff members were interviewed by Ms. Anderson and a recap was in the committee's packet. The December 7, 2007 draft advisory opinion was distributed. Mr. Wayne went over the draft. The opinion concludes a legislative aide may devote up to 10 hours helping a constituent with the use of state resources. After 10 hours providing assistance to a constituent would confer a private benefit. Senator Bunde questioned what if a person volunteered on their own time to advocate for a constituent as a personal representative on a case. Mr. Wayne stated this activity would not be prohibited. Senator Bunde spoke in

favor of the opinion.

Representative Gardner stated the distinction in the first example is that the legislative staff person is acting in lieu of the constituent versus assisting the constituent. She has a concern about the 10 hour limit because some cases certainly take more than 10 hours. Member Walker indicated the ten hours is an estimate and you must look at the individual case and its complexity. Member Turner asked legislators if the limit is painting them in a box. Senator French said no; 10 hours is a lot of time and the time limit is a good rule of thumb. Representative Roses said 10 hours is a good time frame for an individual issue but the constituent problem may branch out into other areas and require legislation. Member Walker pointed out that if that occurred, then the constituent issue then becomes a general issue and not an individual issue and the 10 hour recommendation no longer applies.

Senator Bunde made a motion to accept the draft opinion as written with the change on page 2, second sentence to read as follows: "In Advisory Opinion 07-02, we..."
Roll call vote taken: Senator French, Senator Bunde, Representative Roses, Representative Gardner, Members Thomas, Turner and Walker and Chair Cook – YES. Motion carried.

8. ADVISORY OPINION 07-05: Blackberry Use: Representative Reggie Joule requested clarification on the use of Blackberry's for personal use and campaign use. Representative Joule pointed out some legislators own their Blackberry while some are using a state owned Blackberry. Discussion held. Senator Bunde suggested using the POET account for purchasing the Blackberry and then its use could be for any reason. Senator French stated using the state owned Blackberry to make calls to your wife or for picking up your car is de minimis personal use which is allowed under statute but using it for partisan political activity should not happen.

Mr. Wayne explained the draft opinion. The opinion draws a distinction between the use of a piece of equipment and the labor used to maintain the Blackberry server to operate the Blackberry. Mr. Wayne pointed out item (3) on page 6 of the opinion: a member who owns a Blackberry and reimburses LAA for the full cost of the monthly cell phone service plan for the billing period in which campaigning or political fund raising is done may use the cell phone features of the device including text messaging.

Ms. Varni stated item (2) on page 6 is not currently allowed: a member may reimburse LAA for the full purchase price of the Blackberry and use the device for campaigning or political fund raising. She also pointed out the State Department of Administration is currently working with the IRS on tax consequences of using cell phones (and lap top computers) for personal uses and considering payroll deduction as a means to comply with the requirements.

Another option not mentioned in the opinion is having a member use their personal Blackberry and LAA reimbursing the member for legislative use through submitting a detail listing of phone calls. State Blackberry's are programmed with the legislative email address. Personal Blackberry's will not use the legislative email address. The procedure would be similar to the current practice when the legislative office phone is used for a

personal long distance call – a form is submitted with reimbursement by the legislator or legislative employee.

Senator French made a motion to table the opinion based on the complexity of the issues and the discussion today. Section (2) and (3) of the Conclusion needs to be rewritten. Personal use is de minimis and should be permitted but political and campaign use should be prohibited. Representative Roses stated he has a Blackberry and used it while on vacation to keep updated on legislative business. He, however, stated that after reading this opinion he will be returning the device because he doesn't want to have a complaint filed against him for inappropriate use. It isn't worth it. Member Turner agreed with both legislators. Representative Gardner pointed out the caller ID on calls will say State of Alaska on a state owned Blackberry. She agrees that anything political should not be on a state owned device. No objection to the motion. Advisory Opinion 07-05 will be placed on the agenda for the next committee meeting.

Mr. Wayne asked for clarification from the committee concerning redrafting the opinion. Should the option of reimbursement of a personally owned device be included in the new draft? The committee determined yes. Also include a statement that the use of email for the same reasons.

9. ADVISORY OPINION 07-06: Host and Endorse Campaign Fundraiser: The request for this opinion was from the Ethics Committee. Does AS 24.60.031 prohibit a legislator or legislative employee from hosting or co-hosting a campaign fund raising event for a candidate for the state legislature during a legislative session? Does AS 24.60.031 prohibit a legislator or legislative employee from endorsing a candidate for the state legislature during a legislative session? Mr. Wayne explained the draft. The opinion makes a distinction between hosting and endorsing a legislative candidate. Endorsing a candidate in a signature ad that solicits votes but does not solicit contributions is permitted. Placing your name as a campaign fundraiser as a host during a legislative session is prohibited. In general, the conclusion is that any direct or indirect hosting or co-hosting or soliciting participation in a campaign fund raiser by a legislator during a legislative session is prohibited and would be a violation.

Senator Bunde asked if during the 90 days prior to an election, such as a special session, it is permissible to campaign except in the capital city. Mr. Wayne affirmed the statement.

Senator Bunde asked if the same restrictions apply to an incumbent candidate. Mr. Wayne said yes. Senator French asked that the words "non-incumbent" be stricken from the opinion to make it clear the prohibition applies to campaigns for all candidates for the state legislature. Senator Bunde made a motion to accept the opinion with the recommended changes. Roll call vote taken: Senator French, Senator Bunde, Representative Roses, Representative Gardner, Members Turner, Thomas and Walker and Chair Cook – YES. Motion carried.

10. ADVISORY OPINION 07-07: Legislative Phone Number & Campaigning: The opinion was requested by Representative Gruenberg. Does a member of the legislature

violate the Ethics Code if, while campaigning for legislative office, the member displays the member's handwritten or professionally printed legislative office phone number on the member's campaign flyer or verbally provides the number to constituents with the notation or state "For Legislative Business," or distributes the member's legislative business card to constituents? Ms. Anderson stated Representative Gruenberg had requested an opinion on the same subject in 2006 but the committee declined to issue an opinion. Ms. Anderson gave an overview of the opinion. Listing a legislative phone number on campaign materials is prohibited under two sections of the Legislative Ethics Act; AS 24.60.030(a)(5) and AS 24.60.030(b). Ms. Anderson referenced Complaint H 98-04 issued by the House Subcommittee in 1998 where the committee found probable cause that a campaigning legislator listed the legislator's office phone number on 22,200 pieces of campaign material. The reasons for the finding of probable cause were: legislator authorized staff to handle campaign calls; legislator required or allowed staff to handle campaign related phone calls; and that the legislative phone number is a state resource. Responding to incidental campaign activities such as unsolicited campaign calls is permitted. Including the legislator's phone number on campaign material does not fall within the definition of unsolicited.

Representative Roses asked if forwarding your personal phone number which is also your campaign phone number to your legislative office is permitted. The answer is no. Chair Cook suggested adding a footnote to the opinion to this effect.

Senator French moved to accept the opinion with changes. Roll call vote taken: Senator French, Senator Bunde, Representative Roses, Representative Gardner, Members Thomas, Turner and Walker and Chair Cook – YES. Motion carried.

11. STATE PAID TRAVEL & COLLATERAL CAMPAIGN BUSINESS: The item is on the agenda due to an APOC opinion defining the use of the state jet for both government purposes and campaign purposes. APOC is considering regulations on this subject which would include legislators as well and would like comment from the Legislative Ethics Committee on this subject.

Mr. Cook stated APOC determined the use of the state jet for both purposes is allowed if the cost of the activity for a non-government purpose, prorated based on the percentage of usage, is reimbursed to the state. Chair Cook asked if the committee should address this issue. Member Thomas indicated this subject is similar to the discussion earlier on the use of Blackberry's for campaign use and would suggest the committee issue an advisory opinion on this issue.

Representative Roses agreed. Senator French agreed as well and stated the opinion would most likely fall on a small group of legislators. Chair Cook stated the item will be on the next committee meeting agenda.

12. 2008 ETHICS LEGISLATION SUGGESTIONS: Three suggested changes were recommended: remove the strict prohibition on gifts from lobbyists who are immediate

family members; prohibit campaigning in the location where the legislative session is held versus just in the Capital City; and add a third fine structure for late disclosures. Member Turner spoke on the subject of increasing fines and stated that without teeth in the law, the requirement to file disclosures is not enforceable because there is no deterrent effect. Further, the AG will not follow up on the collection of unpaid fines if less than \$500. Member Turner recommended \$100 per day with a maximum of \$2,500. Senator French recommended submitting a letter to legislators with our recommendations and let the legislature decide. Representative Gardner suggested the recommended fine should be for a willful late filing and not for an inadvertent or a late filing which is already spelled out in statute. The committee agreed.

13. OTHER BUSINESS: A request for compassionate gifts was received and approved by Chair Cook and Senator Cowdery, chair of Legislative Council as required by AS 24.60.075. The request was made by Representative Richard Foster. Representative Roses pointed out the receipt of gifts do not include the receipt of a kidney.

14. ADJOURN: Senator French made a motion to adjourn at Noon. The Senate Subcommittee will meet at 1 p.m. with the House Subcommittee to follow at approximately 1:30 p.m.