

Alaska State Legislature

Select Committee on Legislative Ethics

Physical Address:
716 W. 4th Ave., Suite 230
Anchorage, AK 99510-1468
PH: (907) 269-0150
FAX: (907) 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK 99510-1468

MINUTES from November 19, 2009 FULL COMMITTEE MEETING Anchorage LIO, Room 220

- 1. CALL THE MEETING TO ORDER:** Chair Gary Turner called the meeting to order at 9:07 a.m. The following were present: Senator Gary Stevens, Senator Tom Wagoner, Representative Carl Gatto, Representative Berta Gardner, Member H. Conner Thomas, Member Herman Walker, Jr., Member Skip Cook, and Member Gary Turner. Absent: Member Ann Rabinowitz

Also in attendance at the Anchorage LIO were staff members: Administrator Joyce Anderson and Committee Secretary Linda Leigh. Committee Aide to Legislative Council, John Bitney, was also present. In attendance by teleconference: LAA Legal Counsel to the Committee, Dan Wayne and Information Services Manager, Curtis Clothier.

- 2. APPROVAL OF AGENDA:** Chair Turner asked to add two items to the Chair/Staff Report: Item 5(g) Legislative Travel and Campaigning—direction on how to respond to legislators; and Item 7 Rules of Procedure—add Section 12, Education, for review; Member Cook moved to approve the agenda as amended. Agenda was approved with no objections.
- 3. APPROVAL OF MINUTES:** Member Thomas motioned and moved to approve Full Committee Meeting minutes of September 24, 2009; there were no objections. Member Cook motioned and moved to approve House Subcommittee Meeting minutes of September 24, 2009; there were no objections.
- 4. PUBLIC COMMENT:** None.
- 5. CHAIR/STAFF REPORT:**

- a. Disclosures: Ms. Anderson informed the committee four legislators were late in filing; Sen Thomas, Rep Neuman, Rep Herron, Sen Hoffman. Sen Stevens asked if the 30-day filing deadline could be 60 days, the same deadline for filing travel reimbursement forms with LAA. Chair Turner noted that the legislature would need to consider a change. Rep Gatto asked for clarification on when the 30-day deadline begins. Chair Turner replied that this question was addressed at the last committee meeting and it starts on the first day of travel. Chair Turner also reminded the members that a disclosure may be amended if the approximate value of the gift of travel was substantially more than what was originally reported. Ms. Anderson emphasized that an amended disclosure would only be required if it were significantly different than what was originally reported. The Chair stated it was up to the members to decide if this is something they want to change. Sen Stevens requested Ms. Anderson look into changing the deadline and draft something up for the members. Ms. Anderson stated that HB 193, sponsored by Rep Coghill, was still in play for the 2010 session. Rep Lynn will be sponsoring the bill in 2010 since Rep Coghill is now a Senator. She will work with his office on a possible amendment.

- b. Ethics Training Update: Seven individuals have not completed ethics training. They received an e-mail stating that online training must be completed within 30 days of the date of the email. Leadership will be contacted on individuals who do not comply. Ms. Anderson also stated that she would be improving the training questions in the near future. Rep Gatto asked if employees provided reasons they have not complied. Ms. Leigh responded that one employee stated she did not recall receiving the e-mail.

- c. Informal Advice Report: Ms. Anderson offered to answer any questions on the report covering the period from September 12, 2009, through October 31, 2009. Rep Gardner referred the members to page 7 of the report and questioned advice given on whether it was acceptable to use legislative funds or POET account funds to attend memorial services in Nome for Representative Foster. She received an email from leadership where it was determined that the legislature would cover people who wanted to go to either service in Anchorage or Nome. She felt it was a contradiction and stated she would argue that if a colleague in office dies, attending the services is “legislative business”. Member Cook interpreted that the Legislature has determined that it was part of official duties to attend if you want, and agreed there were some inconsistencies. Ms. Anderson pointed out that the POET account is under the direction of APOC not the Ethics office. Ms. Anderson referred the caller to APOC then did a follow up with them. APOC made the decision. Rep Gatto requested clarification on whether the advice that was provided applied to attending the official memorial service in Anchorage or memorial services, regardless of the location. Chair Turner confirmed it was determined where the official service would be held. This would apply just for Rep Foster. Rep Gardner said the answer was based on how the question was phrased, and the question specifically asked about the memorial service in Nome. She also stated that APOC was not the determiner of which location is proper. The

actual service was in Nome and the memorial was in Anchorage. APOC does not get to determine which service she should attend. Sen Stevens stated whatever request was received in his office, attending a memorial service would be approved since it's in the budget.

The next question was concerning advice on page 7, “**May a legislator write a letter to a sentencing judge?**” Rep Gardner and Members Cook and Thomas provided input. It was felt that the answer provided, “that the Act does not have jurisdiction over actions with the judicial branch”, was confusing. Rep Gardner stated that what we do have jurisdiction over is *actions by legislators with agencies or constituents*. A letter from a legislator who is the chair of a legislative committee on committee letterhead going to a member of the judicial branch may or may not be appropriate. She did not fully agree with the answer provided that it is not covered because it is with the judicial branch. Member Cook agreed that we have jurisdiction of the actions of the legislator, but not the actions of the sentencing judge of the judicial branch. Ms. Anderson could not recall the reason the letter was being written and offered to retrieve her notes on the details of this conversation and provide the members more information.

- d. Outreach – Visiting Legislative Offices During The Interim: Ms. Anderson stated that the trip to Juneau was very productive. The attendance was good and her topics of discussion included constituent services, campaigning and various individual questions from legislators and legislative staff. The outreach she is providing has been very beneficial and working out very well. The next outreach visit will be in Fairbanks on December 16, and Member Cook will be participating with Ms. Anderson. This date and time was coordinated with an Interior Delegation meeting that is also being held that week, so legislators in the surrounding area will already be at the Fairbanks LIO. Ms. Anderson has been unable to coordinate a meeting with the Kenai legislators and staff due to conflicting schedules. She will attempt to meet with them in the 2010 interim.
- e. Committee Members Terms:
 - **Public Member Terms**: Chair Turner announced that his term and Members Thomas and Rabinowitz’ terms will expire in January of 2010. Both Chair Turner and Member Thomas have submitted their names for another term for consideration by Chief Justice Carpeneti. Ms. Anderson responded to two callers with questions and more information on the openings. Information has been posted on the Ethics web site for interested candidates and sent to all legislative offices for posting and inclusion in their legislative newsletters. The deadline to apply is January 15, 2010.
 - **Legislator Member Terms**: Chair Turner announced that there was a vacancy in the House, due to Rep Coghill moving to the Senate. Rep Gatto is the alternate and will remain so unless he is appointed to serve as the regular member. There is also an opening in the Senate, due to Sen Wagoner’s decision to step down. Sen Coghill has indicated he would accept the position if confirmed by the Senate. Sen Stevens noted that Sen

Wagoner's reason for stepping down was so that Sen Coghill could continue serving on the committee and due to the fact he is now the Chairman of CLEAR and will be traveling more.

- f. State Benefit and Loan Review: Ms. Anderson explained that every year the Ethics Office is required by statute to notify all of the state departments asking whether they have any changes in their benefit and loan programs. Certain state programs and loans are awarded on a discretionary basis and participation requires disclosure. Twelve of the fourteen departments have responded and all have indicated there were no changes. They were asked to respond by November 12. As of today, the Department of Commerce Community and Economic Development, and the Department of Education and Early Development have not responded.

Rep Gardner asked if AHFC Weatherization Program should be added to the list as there may be several legislators participating in it. Ms. Anderson stated "no" because it is based on funds available and when you apply for it.

Ms. Anderson stated if the remaining two departments have changes to their programs, the item will be put back on the next committee meeting's agenda for approval by the committee. If there are no changes, Ms. Anderson will send out an e-mail stating just that.

- g. Legislative Travel and Campaigning: Chair Turner stated two legislators attended political fundraisers while on state business and have requested our guidance. Chair Turner asked Ms. Anderson to proceed with the particulars. Ms. Anderson requested the committee's assistance in coming up with the wording in response to these two instances. Both legislators traveled on state business and attended a fund raising event during this time. One of the legislators called after the fact and the other called prior. It was determined, based on the current statute that there is an absolute ban on using state resources for activities connected to campaigning. Chair Turner stated that if a legislator attended a fundraiser on one of the nights while on state business, the legislator must pay for the entire trip, regardless if all five days were on state business. Sen Stevens shared his experience where he was on state business and someone handed him a check for his campaign. Chair Turner suggested telling the person to mail it to him. Sen Stevens's reasoning is that the state is paying for you to be there, and if while in that location you attend a fundraiser that doesn't incur any additional cost to the state, there shouldn't be an issue. Rep Gatto asked members if you are considered to be on state business 24/7, while on a trip on state business. Additionally, he asked what if you're on state business and meetings are over for the day and you have an evening out. Are you still on state business, and are you prohibited from an evening out or are you on your own time? Is there a time in the evening when you are off state business? Rep Gardner felt it was about "fairness" to an opponent. She posed this example: a non-incumbent candidate for a legislative office learned the legislator/candidate campaigned while on a state paid business trip, where is the fairness when the non-incumbent had to pay out of pocket to attend the event. The non-incumbent would feel at a disadvantage. However, if a person handed

you a check that you didn't ask for while you were on state business, she considered it *de minimis*. Members proceeded to discuss more scenarios.

Sen Wagoner stated if he were traveling to Anchorage on state business and already filed his travel paperwork, and 3 days later heard there was a fundraiser, he did not see why he would have to return to Kenai only to turnaround and catch a flight back to Anchorage for the fundraiser. He felt that it would be wrong if you had scheduled a fundraiser and then created a legislative activity that would allow the state to pay for your travel to that location. Chair Turner responded to Sen Wagoner's scenario that as the statute is written today, if you used state funds for the trip you would have to return to Kenai and fly back to Anchorage to attend the fundraiser to be in compliance with the statute, or pay for the travel with other than state funds. He further stated that if we advise legislators that it's "situational," then Ms. Anderson is going to find herself providing guidance in violation of the statute.

Member Thomas stated an APOC advisory opinion directed at executive branch elected officials and employees allows a percentage allocation as long as the person is not designing the trip for both purposes. Member Thomas stated the committee did not have a choice at this time to allow a similar percentage allocation and therefore the two legislators are required to pay the state back.

Chair Turner suggested HB 193 may be the vehicle to change the statute in this regard. Ms. Anderson stated letters had been sent to the Senate and House State Affairs chairs and Judiciary chairs informing them of this issue. The Ethics Committee did not want to initiate legislation in this area but felt it was important to inform the appropriate legislative chairs of the facts and potential problems. As of today, she has not received a response from either.

Ms. Anderson asked for guidance on what to include in a letter when this scenario occurs. Chair Turner requested Mr. Wayne's input. Mr. Wayne indicated the committee could issue an opinion stating the money is not considered state funds under 24.60.030, if it is reimbursed after the fact. It does not currently state that in the statute but the committee could "interpret" it that way. What's prohibited is using state funds and resources for the purpose of political fundraising or campaigning. The committee could distinguish between the primary purpose of the trip and secondary purpose of the trip and state the purpose of the trip is not for political fundraising or campaigning as long as there's another legitimate purpose or state purpose that is greater, or a primary reason for the trip. It does not necessarily address Rep Gardner's policy question about fairness, but it would allow someone to take a trip to their district on state business and conduct political business separately and not be in violation. Chair Turner stated this could result in Ms. Anderson weighing individual scenarios for each legislator who would have to provide her the amount time s/he spent on state business and on campaigning.

Member Thomas recollected previous consideration of these scenarios at several committee meetings. He stated he believed the committee has already considered these issues and determined the committee wasn't going to interpret

it this way. This conclusion was based on advice from Mr. Wayne indicating there is an absolute ban on the use of state resources for campaigning.

Member Cook suggested asking yourself if this is something you would have attended had you not been on state time. If the answer is no, then you are taking advantage of the state business. If you would have paid to go there when you were not on state business, then you should pay for the trip, even though you were on state business.

Member Cook asked if the two scenarios presented today occurred before the last clarifying statement the committees had on these issues. Ms. Anderson stated that one member was at one of the Outreach discussions committee staff conducted, which is why s/he called. Ms. Anderson advised him/her to pay back the airfare, which was done. The second individual had already taken the trip, received the newsletter, which explained the campaign prohibition and called in a panic. Ms. Anderson advised the legislator the issue would be brought before the committee today. So one was before and one was after.

Member Cook voiced that if it occurred before the committee clarified this issue in the newsletter, he would not require the individual to reimburse the state. S/he may have been following the “general tendency” and did not feel s/he should have to reimburse the state in full.

Sen Wagoner recommended “consistency” when handling these two individuals. Member Thomas felt that the travel facilitated the meeting. Chair Turner and Sen Wagoner both concurred that the individuals should reimburse the state the cost of travel and per diem for that day, which is what it would have cost him/her to attend the event. The legislator should not have to reimburse the state for the other days on legislative business, which in one of the cases was 4-5 days because there were no additional state dollars spent by attending a fundraiser on one of the nights.

Mr. Wayne provided a recap of what he just heard and felt he was hearing a suggestion that when someone violates the statute, the committee can absolve that person of the violation after the fact by requiring him/her to reimburse the state the cost. AS 24.60.030 does grant authority to reimburse in lieu of a violation. The statute is clear in that a person covered by the Act cannot use state resources or state funds for campaign purposes. Therefore, the committee cannot guarantee that if you reimburse this money no complaint will be filed either by the committee or by someone else. The committee can recommend the legislator pay back the money but should qualify the statement by saying that action will not guarantee a complaint will not be filed. If a complaint is filed, the committee would take into consideration the fact the state was reimbursed.

Member Walker joined the meeting at 10:12a.m.

Ms. Anderson stated that she had provided the advice Mr. Wayne just stated in similar situations. For example, a staffer had performed campaign-related

activities during a regular workday but did not fill out a leave slip. Ms. Anderson received a call from a member of the public accusing a staffer of performing campaign related activities on state time. She called the staffer and confirmed a leave slip had not been completed and advised the staffer to fill out a leave slip that day. She then advised the staffer that s/he would be in violation of the Act but would no longer be in violation by filling out a leave slip. She also advised that a complaint could still be filed if the person calling in so chose to do so.

Member Cook agreed that it does benefit the person to correct their error when it is realized s/he was in violation of the Act. It can prevent a complaint from being filed against them. It also gives the committee a chance to say that the individual corrected the situation and no action is necessary.

Chair Turner asked the members if they agreed if Ms. Anderson should provide advice recommending the person reimburse the cost of travel to and from and per diem for the of day the event occurred. Member Gardner clarified that Chair Turner was asking members if they agreed on this advice as well as the advice already given to the two individuals at hand.

Sen Wagoner asked if we are also saying that any legislator who attends a fundraiser prior to the beginning of a legislative session in Juneau would be responsible for the cost of his or her travel with this policy. Member Thomas pointed out that this very subject was discussed at a previous committee meeting and the committee clarified that this restriction did not apply. Sen Wagoner felt that it was not in statute and did not feel the committee could make this exception on its own and requested where this was found. Ms. Anderson responded the committee determined travel to Juneau was not considered a trip for legislative business similar to going a meeting or conference. Legislators and staff are actually going there to live for the session. Currently, legislators and staff are permitted to conduct campaign related activities in the location of their residence; i.e., Anchorage, Wasilla, Fairbanks, etc. Their residence during the legislative session is in Juneau.

Per Chair Turner's request, Ms. Anderson stated the advice she would be providing, as follows:

If a legislator travels for a legislative purpose, and while on that trip, they also attend some campaign activities, that have to do with fundraising or campaigning, we would suggest that the legislator reimburse the state for travel to and from that location, based on the fact that they are in violation of the Ethics Code, and that per diem for that day also be reimbursed. Ms. Anderson said she would also state that although it was not a requirement of the Act, they could be looking at a possible complaint being filed against them if they don't pay back the state.

Sen Stevens stated he wanted a vote as he did not support the advice put forth. Member Walker stated that based on what he has heard from committee

members, the statute needed to be addressed before the committee could advise anyone to reimburse the state travel expenses.

Sen Stevens requested that Ms. Anderson look into specific wording for changing statute. Chair Turner requested proposed wording from Sen Stevens since he was not in favor of what Ms. Anderson presented before the committee. Sen Stevens stated the use of computers, cell phones, blackberries, etc., should be considered as *di minimis* usage and legislators could participate in a political event as long as it did not incur additional costs to the state and legislative business is the main reason for the travel. Ms. Anderson suggested that we consider following the same procedure as the state's executive level where they do an allocation. For example, if you spent 10% on a fundraiser, then that is what you would pay back. Ms. Anderson offered to work with some legislation.

Members agreed that the advice that would be decided for the two individuals at hand should be close to what they will be proposing in the change in statute.

Member Thomas motioned that **if a legislator travels on legislative business, and while on that legislative business attends a campaign fundraising event or campaign event, that the travel to and from that location, as well as per diem for that particular day, it would be suggested that s/he pay back to the state for those costs. Although not required by statute, s/he would pay back the state because they would not have immunity from a complaint, but it would be in their favor to do so.**

The Chair requested that the record show that this recommendation is based on what is currently in statute and the best recommendation at this point.

Roll call votes: Yeas: Rep Gardner, Member Thomas, Member Cook, Chair Turner; Nays: Sen Stevens, Sen Wagoner, Rep Gatto; Undecided: Member Walker; motion does not pass

Members agreed that although they did not like the advice Ms. Anderson would have to give to the second individual at hand, the best advice she could give that individual would be to refer him/her to the statute and follow it the best of his/her ability. Any additional advice would be against the committee members' decision.

Per diem was discussed among Rep Gatto and other members and members agreed to post-pone this topic of discussion due to the fact that interim per diem would be a moot point when the legislative convened.

The Chair asked Ms. Anderson if she had any comments on the committee's decision to refer the second individual to the statute. Ms. Anderson stated she would rather not be the person to deliver this recommendation as she felt this legislator would be counting on her advice and the committee's decision was for the legislator to use her best judgment with what was in statute and if someone should file a complaint, the issue would be addressed then.

Member Walker felt a fairness issue was at hand since Ms. Anderson provided advice for the first individual.

Sen Stevens brought up the percentage issue asking if that was the direction the committee was headed. Member Thomas reminded the members that the committee had discussed and decided they were not going to take a stand on this and that the Legislature could revisit it if they wanted a change. Member Cook stated this was the decision the committee agreed on but questioned whether we shouldn't address it or initiate some wording since it continues to haunt the committee. He did not necessarily agree that the committee should adopt it, but look into some possibilities in legislation to accomplish it. Sen Wagoner agreed with Member Cook and felt that if Legislature wants to address it that is fine. He suggested that since we have an attorney, we should draft up the bill. Member Walker concurred. Ms. Anderson agreed that if she did put something together, she would submit it as a proposal and that the committee is open to suggestions and offer it as a change. Sen Stevens agreed to the plan put forth. Sen Wagoner felt Sen Coghill might be able to take this on and address it as it is a fairly simple amendment and due to the fact that he is already working on making legislative changes and suggested Ms. Anderson speak to Sen Coghill.

Members took a 10-minute break at 11:00 a.m. Sen Stevens left the meeting.

6. BUDGET:

- a. FY10 Budget update: There are sufficient funds to meet obligations for the remaining FY10. If a public hearing was held or another issue was to arise, funds may not be adequate. Rep Gatto asked what happens to unexpended funds. Ms. Anderson responded they are returned to the general fund. Ms. Anderson pointed out that the "Services" category of the budget has money allocated for public hearings so the committee does not have to go to the Legislature and ask for funds for this purpose when the matter may be one of their own. There hasn't been a public hearing since 2001.
- b. FY11 Proposed Budget: The Chair asked the members to consider changing part-time staff; increasing time from 50% to 60% and changing the position from casual labor to a salaried position. Reasons: due to the increase in workload and retaining staff by providing benefits. The budget impact would be an increase of \$2,578. Member Cook felt this was well outlined in the packet and motioned to approve.

Senator Stevens joined the meeting.

Rep Gatto requested clarification on the proposed changes. Ms. Anderson stated that the changes would allow this position to have health insurance, leave time, and holiday pay, which is currently not offered. It also includes the 33.35% benefit rate. Sen Wagoner asked about union affiliation. Ms. Anderson stated that none of Legislative staff were part of a union. Also, Ms. Leigh is part of PERS due to the fact she will be working during a legislative

session. Ms. Anderson clarified that the state would pay 50% of health insurance, and leave and holiday pay would be pro-rated based on the part time hours worked.

Motion to approve passes.

Members moved into “Executive Session” to discuss Administrator’s position.

Members came out of “Executive Session”.

Motion made by Chair Turner to increase the Administrator’s salary from Range 22, Step C, to Range 24, Step D. A roll call vote was requested by Sen Wagoner: Yeas: Sen Wagoner, Rep Gatto, Rep Gardner, Member Cook, Member Thomas, Member Walker, Chair Turner. Nays: None; Absent: Sen Stevens; Motion carried.

- c. FY11 Suggested Budget: Ms. Anderson provided a four-year-comparison table, noting the increases. She explained operating costs and inflation have caused the changes in the budget. She asked the members to submit a recommendation for FY11’s budget.

Chair Turner provided the members recommended FY11 dollar amounts as follows:

71000 Personnel	\$161,618 (includes above mentioned changes)
72000 Travel	\$ 27,000
73000 Services:	
<i>Professional</i>	\$ 17,000
<i>Hearing Costs</i>	\$ 13,000 (kept on reserve)
<i>Communications</i>	\$ 1,500 (no changes)
<i>Rental/Leases</i>	\$ 9,000 (no changes)
74000 Commodities	\$ 1,800 (no changes)
	Total \$230,918
	FY10 \$214,800
Difference is 7.5% increase	\$ 16,118

The increase in Travel is due to the number of committee meetings held and the fact travel expenses for legislators serving on the Ethics Committee are now paid out of the Ethics Committee budget. Other factors contributing to the increase in Travel are Ms. Anderson’s travel to Juneau for testifying on ethics related legislation, mandatory ethics training classes in Juneau and Outreach travel.

A motion was moved to approve the FY11 recommended budget as presented by Member Cook. Roll call vote: Yeas: Sen Stevens, Sen Wagoner, Rep Gatto, Rep Gardner, Member Cook, Member Thomas, Member Walker, Chair Turner. Motion carried.

Ms. Anderson will meet with Senators Hoffman and Stedman (Senate Finance) prior to the legislative session in order to ensure the FY11 recommended

budget is explained. Committee members will be notified and join Ms. Anderson when she meets with the Senators.

7. **COMMITTEE'S RULES OF PROCEDURE:** Ms. Anderson requested clarification of Section 9, Informal Advice to reflect current practice and clarify existing procedures. This was prompted by a telephone call from the Press requesting a copy of advice she provided to a legislator. When she responded that the advice was confidential, the individual requested documentation as to why this information was confidential.

Currently, the language in the Rules states the "identity" of the person for whom the advice is provided is confidential; however, it does not state that the "advice" itself is confidential. Ms. Anderson consulted with Brent Cole, outside legal, and offered suggested language. Ms. Anderson read the changes to the members.

Member Cook recommended adding in paragraph (b) REVIEW BY COMMITTEE: the following: "The staff report is not confidential". Member Thomas concurred that he did not want the staff report to become "confidential" either. However, as it stands currently, it does appear to him that it is, even though it was not intended to be confidential.

Ms Anderson suggested inserting in paragraph (b) REVIEW BY COMMITTEE: immediately after the words, "A brief summary of informal advice" the following: "which is not confidential".

Member Cook offered another suggestion to insert in paragraph (a) CONFIDENTIALITY: after "Informal advice" the following: "other than a summary described in (b) below, is confidential, unless confidentiality is waived in writing."

Mr. Wayne asked the members if a person could be immunized by dumping a bunch of facts on Ms. Anderson. The members discussed the wording in AS 24.60.158 and AS 24.60.165 and concluded that wording in paragraph (a) CONFIDENTIALITY: already contained the necessary wording.

Chair Turner asked for a motion to approve the amended wording, as stated in paragraph (a). Member Thomas moved. Motion passed.

2) Section 9, Education: Added language stating leadership will be notified when a person has not completed ethics training within the statutory requirement of 30 days. Motion to approve was made by Rep Gardner. Motion passes.

8. **ADVISORY OPINION 09-03 – Use of State Resources requested by the Ethics Committee:** Mr. Wayne provided the members an overview of the Advisory Opinion, noting it has been simplified from the previously drafted opinion of September 15, 2009. The new opinion allows for a limited exception for personal use as allowed in AS 24. 60.030(a)(2)(A). Mr. Wayne

referred to page 2; “The matter boils down to a question of whether the usage described in the facts presented fall within a narrow exception for limited personal use of public facilities operated by the legislature”. Additionally, Mr. Wayne made a change in the wording of facts in the first sentence, which had been changed for accuracy purposes. The change is that the Legislature’s Building is a public facility; however this fact does not affect the opinion.

Chair Turner voiced his concern that the Advisory Opinion was too broad and opens the Capitol to all kinds of uses that we would not be able to control. Chair Turner also expressed a previous concern of separation of church and state since the group in question is a “faith-based group.” He stated the opinion appears to allow religious groups, regardless of type, who do not have an established meeting place, to use the Capitol Building.

Member Walker questioned if the “faith-based” issue, which was predominately the issue previously, was now less of an issue. Mr. Wayne responded by stating that the Committee’s authority does not extend to deciding the legal issues about the separation of church and state. The mission of the Committee is to interpret the Legislative Ethics Act and determine whether or not something is permitted by the act or violates the act. The act isn’t concerned about the separation of church and state. Mr. Wayne stated he did not believe the Committee could issue an opinion or should issue an opinion in the area of separation of church and state.

Member Thomas stated the Advisory Opinion captures the concerns that were brought forth. It limits the facts and does what the Committee indicated it wanted it to do.

Sen Stevens questioned if the legislative committee rooms in the Annex would be considered part of the Capitol. Mr. Wayne suggested changing the word “building” in the first paragraph to “Capitol”.

Members Thomas and Cook both felt that “informal” should be inserted before the words “faith-based” group. Since we are not referring to “formal” groups, such as the Boy Scouts, Girl Scouts, etc. Member Walker reminded the members that the facts of the question cannot be changed. Members acknowledge this, however, the word “group” identifies itself as “informal”, thus added informal does not change the fact. Ms. Anderson also suggested adding the bolded words as follows: “held by an **informal** group **of current legislators and staff**.”

Members also recommended changing the last paragraph before the Conclusion by replacing “their” cost with “the” cost and removing “at the most”, and after nominal, removing “and the value related to the use – that, the group’s monetary savings or gain resulting from its use of the facility – is nominal.”

Mr. Wayne restated the changes to the members.

Rep Gatto motioned to approve the amended wording of the Advisory Opinion. Ms. Anderson took a roll call vote: Yeas: Rep Gardner, Rep Gatto, Sen Stevens, Member Walker, Member Thomas, Member Cook; Nays: Chair Turner; Absent: Sen Wagoner, Member Rabinowitz. Motion passes.

- 9. Links to non-legislative web sites from a legislative web page:** There are two issued before the committee today: allowing access to Facebook on legislative computers and allowing a link from a legislative web page to social networking sites.

Mr. Bitney, legislative aide to Legislative Council, stated that the Internet Technology (IT) Committee, a subcommittee of the Legislative Council, would like to set up some policies and procedures to allow legislators to begin using social networking sites. For example, he has received requests from people wanting to use Facebook to communicate with their constituents. Currently, if you try to access these sites with your legislative computer, it is blocked. The IT Subcommittee has requested that Legislative Council lift the block. However, with it come responsibilities. Currently, policy only allows one link on a legislative web page; this link to the majority or minority caucuses' web page.

Mr. Clothier, IS Manager, provided the members a recap stating the question brought to the subcommittee concerned access to social networking sites. Existing policy states that Legislative Council has approved one link to a personal website. It can be a Majority site, Minority site, etc. What are the ethical considerations in allowing this link? The IT committee decided to ask the Ethics Committee to review this concept, answer any questions and to see if there were any opinions on this subject.

Chair Turner asked why there is a limitation to one link. Mr. Clothier stated that it was a *di minimis* use concept. IT does not maintain the sites. They simply put in a disclaimer when someone accesses a link going outside the legislature, stating that you're on your own.

Sen Stevens questioned whether increasing the number of links would be additional costs to the state. Mr. Clothier stated it was difficult to answer, but did not believe an increase in workload would be significant. Rep Gatto asked if one link took you to a page offering other links would still meet policy and Mr. Clothier answered yes.

Sen Wagoner expressed that due to the recent discussion on state resources usage, an existing legislator would have an advantage over an incumbent and this should be considered. Chair Turner added that it can be advantageous and/or detrimental; for example, if you're an incumbent and you befriend someone on Facebook, then you've opened yourself up to befriending everyone else on the friend's page you've befriended which can lead to them writing anything about you in a negative or favorable way.

Member Walker asked what other state Legislatures were doing. Mr. Clothier stated he reviewed some Legislatures who had 50-100 legislators who had links, and some Legislatures who did not. Member Walker asked if Mr. Clothier found an existing policy that he recommended. Mr. Clothier stated that many legislators want their personal websites easily accessible to their constituents. In terms of adding links, it seems beneficial to him, although there may be some disadvantages, referring to Sen Wagoner's mentioned concern. Member Walker voiced his approval of adding a link and stated he would bring this up at the COGEL conference in December.

Sen Stevens stated that Blackberries were provided to legislators, but with restrictions; for example, they cannot be used for fundraising or campaigning, and he believes the same requirements should be applied here. Sen Stevens also noted that constituents want more and more ways to communicate with legislators. Plus, legislators need to know what the public wants. He agrees that the world is changing and we need to consider what's happening around us. Chair Turner acknowledged the world of Facebook, but cautioned anyone can see your Facebook page from here to Washington, DC. Anyone of your "friends on Facebook" can start fundraising for you on your site. Of course, when appropriate, this can be beneficial.

Member Walker requested that the question presented before them be restated. Mr. Clothier restated the question as follows: "Does the Ethics Committee agree that existing policy is fine by providing one link off of the state's web page to an independently maintained site, which may or may not be Facebook." Facebook may be one of the avenues a legislator might take up for that link. Should one link be made accessible for each legislator or not? Or should multiple links be made available?

Rep Gardner concurred with Rep Gatto's suggestion: have one link that takes you to a web page that has all the links you want people to have access to and let them decide which option to go to.

Mr. Bitney read the current policy before the members, which incorporates sections of AS 24.60.030(a)(2). "In general, a legislator or legislative employee may not use state provided access to the Internet for non-government purposes or for the private benefit of the legislator, the employee or another person." The link should not be, Wendy's Burgers, Wal-mart, etc., it should be for a governmental purpose.

Mr. Wayne pointed out that AS 24.60.030(a)(2)(H) states "that reasonable use of the internet by a legislator or legislative employee is not prohibited by this statute, except if the use is for an election campaign purposes." (a)(2) says, "a legislator or legislative employee may not use public funds, facilities, etc., etc., for involvement in or support of partisan political activity or for the private benefit of the legislator or legislative employee or another person." This paragraph does not prohibit" (h) "reasonable use of the internet, except for the use of election campaign purposes."

Mr. Clothier read the “Disclaimer” that is currently on the legislature’s web page when someone links to another site: “Notice: You are now leaving the Alaska State Legislature...LAA is not responsible for the content of the page to which you are going. You should be redirected automatically in 10 seconds to the site you are going to. If you do not want to wait, click here now.”

Rep Gardner asked if the subcommittee was taking a “proactive” approach to this or have they received requests for access to more than one link? Mr. Clothier responded that they were being pro-active and he has not received any requests from anyone requesting more than one link; however, Mr. Bitney has. Mr. Bitney elaborated stating that currently, legislators have their own web pages that they maintain outside of their office, and have requested a link from their office in order to maintain them from their state computer.

Mr. Anderson asked if access to Facebook and a link was allowed for a Facebook page, would this mean legislators would be working on Facebook pages from their offices? Mr. Bitney explained that there were two issues at hand; one being providing a link to which a legislator would have access; and how would that apply. For example, could an opponent set up a legislator for an ethics violation, or can an innocent supporter set them up. Mr. Bitney further stated that if a link is authorized, training by the Ethics Office on how to use it will be necessary.

Ms. Anderson asked if the link is permitted, does that open it up for staff to have the ability to go to the link, too? Mr. Clothier answered no. If a legislator has a Facebook page link, currently, policy is to block it.

Member Walker voiced his opinion that he did not feel it would be unethical to have a link to Facebook, according to the statute read aloud by Mr. Wayne. Procedurally, how Mr. Bitney and/or Mr. Clothier cleans it up, is a different matter.

Mr. Clothier stated that currently, the existing language of the policy does not mention fundraising or campaigning language. Wording could be updated. The policy has been in existence at least 9 or 10 years.

Member Thomas stated that the question is whether or not the current policy is being used appropriately, and he agreed with Member Walker that it was.

Member Cook asked what links are legislators opting for currently. Mr. Bitney stated that the only link that is accessible is the site called the Majority web page or the Minority web page for the respected caucuses. Mr. Clothier stated that Senator Hoffman has a link off of his web page called; Senator Hoffman.com. Most of the information that is on their biographical pages is captured from the Majority or Minority web sites.

Member Thomas stated that the question before them was whether or not policy should be expanded to allow access to social networking sites, within the one link.

Mr. Clothier clarified that the question doesn't address social networking so much as the link; a social networking site might be one you happen to go to, which is currently blocked for employees on our network, but it's not blocked for the public.

Ms. Anderson asked Mr. Clothier if they were considering adding more than one link. Mr. Clothier stated they were staying with just the one link and not putting any limitations on what that link might be.

Member Walker motioned that legislators be allowed to make the one link connection. Chair Turner stated that this was already existing policy.

Mr. Bitney stated the intent of the IT-subcommittee was to take this discussion to the next Legislative Council meeting at which time they will decide whether or not to approve a link to social networking sites. The IT committee recommendation is allow access on a trial basis subject to review.

Sen Wagoner stated that it was not up to the Ethics Committee to say whether or not it's acceptable. It's up to Legislative Council to decide; however, it will be up to the Ethics Committee to monitor and deem whether it's ethically acceptable. No other action is necessary from the Ethics Committee.

Motion to adjourn meeting was made by Sen Stevens.

Meeting adjourned at 1:12pm