

ALASKA STATE LEGISLATURE
LEGISLATIVE COUNCIL
APRIL 14, 2016
3:35 PM
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MEMBERS PRESENT

Senator Gary Stevens, Chair
Representative Bob Herron, Vice Chair
Senator John Coghill
Senator Charlie Huggins
Senator Anna MacKinnon
Senator Kevin Meyer
Senator Peter Micciche
Representative Mike Chenault
Representative Craig Johnson
Representative Sam Kito
Representative Harriet Drummond, alternate

MEMBERS ABSENT

Senator Lyman Hoffman
Senator Lesil McGuire, alternate
Senator Cathy Giessel, alternate
Representative Mike Hawker
Representative Charisse Millett
Representative Mark Neuman
Representative Steve Thompson, alternate

OTHER MEMBERS PRESENT

Representative Reinbold

AGENDA

APPROVAL OF AGENDA
APPROVAL OF MINUTES
RATIFICATION OF CHARITY EVENTS
CONTRACT APPROVALS
OTHER COMMITTEE BUSINESS

SPEAKER REGISTER

Tina Strong, Procurement Officer, Legislative Affairs
Agency
Linda Lord-Jenkins, Ombudsman
Pam Varni, Executive Director, Legislative Affairs Agency

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- I. **CHAIR GARY STEVENS** called the Legislative Council meeting to order at 3:35 p.m. in Room 532 (Senate Finance) of the State Capitol. Present at the call were Senators Meyer, Huggins, MacKinnon, Micciche, and Stevens; Representatives Chenault, Johnson, Kito, Drummond, alternate member, and Herron. Senator Coghill arrived immediately after the motion for renewing the Ombudsman lease. Senators Hoffman, McGuire (alternate) and Giessel (alternate); and Representatives Hawker, Millett, Neuman, Thompson (alternate) were absent.

II. **APPROVAL OF AGENDA**

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VICE CHAIR HERRON moved that Legislative Council approve the agenda as presented. The agenda was approved without objection.

III. **APPROVAL OF MINUTES**

[3:36:32 PM](#)

VICE CHAIR HERRON moved that Legislative Council approve the December 4, 2015, minutes as presented. The minutes were approved without objection.

IV. **RATIFICATION OF CHARITABLE EVENTS**

- a. **2016 Midnight Sun Charity Shoot**
- b. **53rd Annual Legislative Skits**

CHAIR STEVENS said that the list of charitable events before members for ratification had been confirmed by his office as 501(c)(3) organizations and sanctioned by the Chair.

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VICE CHAIR HERRON moved that Legislative Council ratify the Chair's sanctioning of the following charitable events per AS 24.60.080(a)(2)(B):

- 2016 Midnight Sun Charity Shoot
- 53rd Annual Legislative Skits

The events were ratified without objection.

V. CONTRACT APPROVALS

- a. Office of the Ombudsman Lease Renewal**
- b. Stoel Rives Contract Amendment**

a. Office of the Ombudsman Lease Renewal

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VICE CHAIR HERRON moved that Legislative Council approve Renewal No. 1 of the Lease Extension with JRW Ventures, Windward Town and Country Plaza, Inc. in the amount of \$42,025.30 for May 1, 2016 - April 30, 2017.

CHAIR STEVENS objected for purpose of discussion. He requested Tina Strong speak to this item and noted that Ombudsman Linda Lord-Jenkins was available on teleconference for any questions as well.

TINA STRONG, Procurement Officer for Legislative Affairs Agency, said the original lease for the Office of the Ombudsman was for three years beginning May 1, 2013, and will be terminated April 30, 2016. There are three renewals of lease available under the lease agreement, each for a one year period. The Office of the Ombudsman would like to proceed with Renewal No. 1 for the period of May 1, 2016 through April 30, 2017. She said if Legislative Council approves Renewal No. 1, this will leave two more renewals of lease available before we have to go out to bid or do a lease extension. This lease exceeds \$35,000 in one fiscal year, therefore Council's approval is required.

CHAIR STEVENS said that although there had been discussion about moving some agencies into the Anchorage legislative office building, the expiration on the lease is too soon as we don't know where we are right now in terms of not receiving confirmation on the purchase and, of course, the Gottstein litigation has not been fully settled. He said before Council takes any serious action, we need to wait for some of those things to be decided, thus making it necessary to move ahead on this one year lease renewal option.

Discussion followed regarding whether a month-to-month lease was an option since moving agencies into the Anchorage office building was part of the proposal in bringing down the overall cost. Further discussion regarding the proposed schedule of moving agencies into the Anchorage office building, including Legislative Budget & Audit as well as the Eagle River legislative offices; how many staff the Anchorage office building might accommodate;

and how much remodeling would need to take place in order to move in these agencies, all of which would take time. There was additional discussion regarding whether a sublease would be possible as well as noting that the Ombudsman lease was approximately \$1.80 per square foot and many other state leases were in the \$3.00 per square foot range, so it was likely the Ombudsman wouldn't be the best target for maximum savings.

There being no further discussion, a roll call vote was taken.

YEAS: Meyer, Coghill, Huggins, MacKinnon, Micciche, Chenault, Johnson, Kito, Herron, and Stevens

NAYS: None

The motion was approved 10-0*.

*Initially, Representative Drummond was asked to vote, but after some discussion, it was clarified that she is the alternate for the minority House member only, and since Representative Kito was present, her vote was made null.

b. Stoel Rives Contract Amendment

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VICE CHAIR HERRON moved that Legislative Council approve an amendment to the legal services contract with Stoel Rives LLP, in the amount of \$100,000 to represent the Legislature with any matters related to 716 W. 4th Avenue.

CHAIR STEVENS objected for purpose of discussion.

DOUG GARDNER, Legal Services Director, said that, in short, we need more money. He said the balance currently with Stoel Rives is \$82,000 because this has been the first opportunity to request additional funds be approved by Legislative Council. He said he was requesting an additional \$100,000 to ensure we can pay current bills and to ensure there is enough should it be needed for additional work, depending on what the Legislature does regarding the budget in the next couple of weeks.

REPRESENTATIVE KITO asked Mr. Gardner to confirm that the original \$100,000 approved for work by Stoel Rives had been expended, there is an additional \$82,000 in new billings and Mr. Gardner is requesting \$100,000 to give him some

leeway depending on what happens with the Gottstein litigation. Mr. Gardner confirmed that was correct.

A roll call vote was taken.

YEAS: Meyer, Coghill, Huggins, MacKinnon, Micciche, Chenault, Johnson, Kito, Herron, and Stevens

NAYS: None

The motion was approved 10-0.

VI. OTHER COMMITTEE BUSINESS

a. FY15 Legislature Audit

b. Records Policy Amendment

a. FY15 Legislature Audit

CHAIR STEVENS noted for members that no action was needed on this item and asked Pam Varni to speak to it.

PAM VARNI, Executive Director for the Legislative Affairs Agency, stated that Elgee, Rehfeld, Mertz are the independent auditors and there was one more renewal option left under the current contract. She said it was a clean audit with no exceptions.

There were no questions and no action regarding this item.

b. Records Policy Amendment

[3:48:16 PM](#)

VICE CHAIR HERRON moved that Legislative Council approve the amendment to the Legislative Council Records Policy as per the attached draft.

CHAIR STEVENS objected for purpose of discussion and asked Mr. Gardner to speak to this issue.

MR. GARDNER said one of the main purposes of Legal Services is to protect and defend legislative immunity. Some of the items Legislators have in their office might not be subject to legislative immunity, some may; it's a complex discussion beyond probably where we are today. He said the problem was a Legislator has records that are subject to immunity, records and analyses of the things within the sphere of one's legislative duties. When a Legislator dies and they haven't left any instructions, Legal Services believes that the fairest reading of the constitution was

that, absent a waiver, those records remain confidential and subject to legislative immunity. Then it becomes very difficult for the people who are addressing the records without any direction from the Legislator that holds the immunity to deal with them. He said at the direction of the Chair and working closely with the Rules Chair offices (Representative Johnson and Senator Huggins), Legal Services tried to tackle this issue by creating a form that would explain legislative immunity and an attempt to address this issue as it pertains to records when a Legislator becomes disabled or dies in office. One of the aspects of the form that was important was for Legislators to have the option to designate someone who can address those records. Without a form such as this, Legal Services' position is that a Legislator's records remain confidential in order to protect the Legislator and maintain constitutional confidence.

Mr. Gardner said that on page one, the incapacity of a Legislator was addressed in paragraph B; death of a Legislator was addressed in paragraph C, much in the same way, which is basically an assertion that those records are subject to immunity and are confidential unless, in section D, there is a waiver. The waiver imposes the responsibility on the Agency to provide a form to each Legislator at the beginning of each Legislature. The form would be very easy to change at any time. The default position in the policy is that the records won't be released if there is no waiver on file. He said section E was a really important section that provided for responsibility of office records and outlined possible examples. Section E noted that the responsibility for organizing and maintaining documents rests with each Legislator; acknowledging that all of the different confidences were in a honeycomb of the Legislator's records. He said there was some discussion with the Rules Chairs that if this policy was adopted, there might be some training during Legislative Orientation that provides for best practices for record keeping under this policy. The policy focuses on preserving legislative immunity to the maximum extent possible while recognizing that Legislators have the authority to release records and will be responsible for any release that occurs.

Mr. Gardner said that he recently discovered that the Legislative Affairs Agency was storing a fair number of records for certain Legislators. In recognition of the fact that the Agency does not want to be handling too many confidential records; both from a legal and a space standpoint. Should something happen, the provisions in the

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policy noted that the Agency will not be storing records for more than five years; within 90 days, they would address records left over if a Legislator dies or leaves office - either with a dispersal per the instructions or with a confidential burn of the records if there was no directive.

Mr. Gardner said it would be very helpful both to Legal Services and to individual Legislators if Legislative Council considered and implemented the policy.

CHAIR STEVENS said that past situations have placed the Legislative Affairs Agency in a very difficult position and the policy solves it; he said he appreciated the good work of the Rules Chairs - Senator Huggins and Representative Johnson - who helped move this forward.

REPRESENTATIVE KITO said there wasn't much time provided to review the policy before Council and it would be helpful to have the opportunity to understand the full implications. He said for himself as a Legislator right now, he has documents in his office, documents on his computer, and when he leaves office, those documents are what? Does Legal Services hang onto those and tells him what he can take or does he remove them as he leaves office?

MR. GARDNER said he didn't know the answer to that. It's something Legal Services has discussed and it's a good question, but they don't have an answer at this time.

REPRESENTATIVE KITO said that Legislators retire or leave office all the time; what happens to their documents?

MR. GARDNER said that as a practical matter, Legislators probably elect to take their records. The difference between that and a situation where a person dies in office is that, for instance, you-Representative Kito-have sorted your records; decided you want to take some and that's a conscious decision. You may decide you want to give them to the University of Alaska, but that's a conscious decision by you. If someone dies without a waiver, they're not able to make that decision and, in recent events, this office has been put in a very difficult position trying to work through that. He said he thought Representative Kito could take his records; they are his.

REPRESENTATIVE KITO followed up to say that, if he can take his records, he understands there might be issues that might be confidential. That means, as he believes it, that

those records belong to him and, therefore, being personal property, if he dies in office then his heirs should be eligible to receive those documents; understanding that if his heirs are receiving those documents, that he could expect that Legal Services would go through and identify if there are confidential item(s) that shouldn't be released to an heir. He said it still seems to him that those documents, because they were in the position of the Legislator and did not belong to Legislative Affairs at the time, would still be in possession of the Legislator when the Legislator passes away; and that Legislator's documents should go into the estate of the Legislator minus the Legislative Affairs review of the documents that might be confidential.

MR. GARDNER said that the premise in the question, that they are your records, is true to the extent that you waive that confidentiality and that you are alive to deal with them. He said Legal Services has given a lot of consideration to this and there is not a lot of law in America that really addresses this. He said there is an argument that you create these things on State time and with State effort, and there are some competing interests there in terms of whose property they are. He said that if a Legislator is alive and can waive them, he thinks that the Legislator can make a decision about their records; they're not incapacitated and you can take them. He didn't want to comment on Representative Gruenberg's situation which is really the line of questioning that Representative Kito was taking him down.

Mr. Gardner said that Legal Services' position, and what they think the law clearly is, if you don't waive it, the legislative body has an interest in legislative immunity. This is not just an individual situation; that also is not settled in the case law. That's why we're dealing with this as a policy. In any one Legislator's records, there may be emails between Legislators, and the body has an interest in this. To say it is your property, he does think you can leave with your records if you can make that decision. He absolutely does not think they are personal property that passes through a will.

REPRESENTATIVE KITO said he may disagree. If he leaves office, his term expires, he takes the information with him-emails that he has sent or received. He is now out of office and he takes that email and shares it with somebody else, he doesn't see Legal Services coming in and being

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able to exercise authority over him after he was no longer a Legislator.

MR. GARDNER agreed with that. He said Legal Services has been put in a very difficult position absent a waiver where there are a lot of records that you all have a constitutional interest in as a body. He said they are not trying to police anybody. If you leave office and you disclose files and they have confidential information in them, that's your business and your problem; but when we have a Legislator that dies, we've got this situation for the body, we've got to protect the immunity. He said he thinks the case law is clear that upon death, he does not believe that the records of a Legislator, absent a waiver, pass through a will. They are not like personal property. The courts have said that in order to release records, there has to be a clear and specific waiver so that people don't get ahold of a Legislator's records after they die. They are not personal property that pass through a will. If he didn't think that, the current situation with Representative Gruenberg's files would be handled very differently.

CHAIR STEVENS said the real difficulty is that if someone were to die in office, it puts us in a very difficult position.

REPRESENTATIVE KITO said he was trying to understand why there is a distinction. He offered the hypothetical situation that if his term expired on January 1, 2017, he had all of his stuff packed up, and on January 1, 2017, he died; he questioned what happened to all of those records.

MR. GARDNER said he does not have a perfect answer for all that. There are some practical realities and he thinks once the documents leave and a Legislator has made the conscious decision to take them out, he thinks that under some circumstance the Legislature might be able to step in if there's an immunity issue. He doesn't know what the lengths are and he is trying to be practical and pragmatic.

REPRESENTATIVE JOHNSON said they discussed piercing the legislative immunity veil and what the consequences might be. He asked Mr. Gardner if he was confident that with this waiver, the Legislature would not be in that situation.

MR. GARDNER said he wouldn't mind having additional discussion in an executive session.

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CHAIR STEVENS noted that Council needed to vacate the room for a scheduled conference committee meeting. He postponed this item for the next Legislative Council meeting, and encouraged all members to sign the waiver as he had done in case any of them expired between now and the next meeting.

There being no further business before the committee, the Legislative Council meeting was adjourned at 4:05 p.m.

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