

/docs/ethics/AO 94-07.DOC (3 hits)

---

## **Alaska State Legislature**

### **Select Committee on Legislative Ethics**

716 W. 4th, Suite 230

Anchorage, AK Mailing Address:

(907) 258-8172 P.O. Box 101468

FAX: 258-2106 Anchorage, AK  
99510

April 14, 1994

### **Advisory Opinion 94-07**

RE: Must participation in the Violent Crimes Compensation Commission Program be published in the journals?

You are a legislative employee covered by the legislative ethics code. You have filed a disclosure of participation in a state benefit program but asked that the committee refrain from publishing the disclosure in the journal.

### **Statement of Facts**

The facts and circumstances that you have related, and on which the committee relies in answering your questions, are as follows:

You are a legislative employee, covered by the legislative code of ethics. During 1993, you received \$763 from the Violent Crimes Compensation Program. You reported this participation in a state benefit program to the committee on February 15 but requested that the committee not publish the disclosure.

The committee has chosen to treat your request for confidentiality as a request for an advisory opinion in order to give notice of its decision on the issue your request raises.

### **Discussion**

Under AS 24.60.050(c), a legislator or legislative employee who participates in a state benefit or loan program that is not exempt under (a) of that section must disclose the participation. The programs and loans that are exempt from disclosure under subsection (a) are those that are generally available to members of the public, are subject to fixed, objective eligibility standards, and require minimal discretion in determining qualification. Under subsection (b), the committee publishes a list of programs designating those for which disclosure is required. Appendix G of the Standards of Conduct Handbook, prepared by the ethics committee and published in January 1993, lists those programs that must be reported. The Violent Crimes Compensation Program is one of the programs listed. Therefore, you are required to report your participation, which you did.

Under AS 24.60.050(c), the committee is required to

promptly compile a list of the statements [of participation in programs or receipt of loans] indicating the loans and programs and amounts and send it to the presiding officer of each house who shall have it published in the supplemental journals within three weeks of the filing date.

The statute on its face does not provide any exceptions to the requirement that each person participating in a program or loan be included on the list that is published in the journals. However, the committee believes that an exception based on the constitutional right of privacy must be read into the publication requirement and should be applied in the case of programs such as the Violent Crimes Compensation Program.<sup>1</sup>

The committee staff contacted the Violent Crimes Compensation office to discuss the privacy issue. According to the staff of that office, the names of participants in the program and files relating to them are kept confidential. There is no public access through the commission to any information on an individual. They do publish an annual report from which any identifying information concerning individuals has been removed.

In Advisory Opinion 88-1, concerning disclosure of representation before a state agency, board, or commission under AS 24.60.100, the committee relied on the constitutional right to privacy and on the state supreme court's implementation of that right to find a limited exemption to the disclosure requirement imposed by the ethics code. The committee permitted the legislator-attorney to refrain from disclosing the name of a client whose privacy would be invaded by disclosure but did require disclosure of the existence of an unnamed client, the subject of the representation, and the body before which the matter was heard.

In Falcon v. Alaska Public Offices Com'n, 570 P.2d 469 (Alaska 1977), the court considered whether a doctor who had been appointed to the State Medical Board was required to reveal the names of patients on his financial disclosure statement. The court stated that whether a privacy invasion is justified turns on the precise nature of the privacy interest involved:

There must be a "fair and substantial relation" between the statutory means and a legitimate governmental purpose. Thus to determine the validity of the disclosure provisions of the Conflict of Interest law, we must consider both the nature and the extent of the privacy invasion and the strength of the state interest requiring disclosure.

Id. at 476. (Footnotes omitted) In Falcon, the court found that the purposes of the Conflict of Interest law were to promote efficient, ethical government and preserve the integrity and fairness of the political process both in fact and in appearance. Those purposes are similar to the purposes of the legislative ethics code, stated at AS 24.60.010(1) and (2).<sup>2</sup> The court then considered how invasive the revelation of the names of the patients would be and noted that ordinarily disclosure of patients of a physician would involve only a minimal invasion of privacy but that in particular situations, the disclosure might have the effect of making public information that was confidential or sensitive. The court quoted a commentator on how to determine whether information should be considered sensitive:

[s]ensitive information is that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a

reasonable person.

Id. at 479. The court gave an example of visits to a physician who specializes in contraceptive matters or abortions as private and sensitive information. The court then concluded: that the extent to which the governmental interest in promoting fair and honest government would not outweigh the individual's privacy interest in protecting sensitive personal information from public disclosure in those kinds of situations. Id. at 480.

Applying this analysis to your situation, the committee must decide whether your participation in the Violent Crimes Compensation program should be considered to be sensitive information. If the committee finds that the information is sensitive, it must weigh whether your privacy interest should take precedence over the governmental interest in public disclosure of your participation in the program. In making this judgment, the committee will consider the possibility of the appearance of impropriety in your participation as well as the possibility of actual impropriety. The committee will also consider the degree of influence you might have had because of your legislative position.

The committee finds that your participation in the Violent Crimes Compensation program should be considered sensitive personal information. You have expressed concern about having the events that happened made public and the committee finds that a reasonable person would have similar concerns.

This conclusion is supported by the fact that the information is treated as confidential by the Violent Crimes Compensation Commission. Because the amount of money you received from the program was relatively small and because you do not occupy a position that can take official action or exert official influence over this state program, the committee finds that your name should not be made public.<sup>3</sup>

However, in order to comply as completely as possible with the statutory requirements, the committee will publish the fact that a person required to make disclosures under the legislative code of ethics did participate in the program and will disclose the amount of the benefit that you and your family received. Your name will be kept confidential.

## Conclusion

For the reasons stated above, the committee finds that under AS 24.60.050, you were required to report your participation in the Violent Crimes Compensation program to the committee but that your constitutional right to privacy requires the committee to keep your name confidential. Accordingly the committee will publish notice that a person required to disclose under AS 24.60.050 participated in that program and will report the amount you received.

Adopted by the Select Committee on Legislative Ethics on April 14, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair  
Representative Jerry Mackie  
Representative Brian Porter  
Margie MacNeille  
Edith Vorderstrasse  
Shirley McCoy

Members absent were:

Ed Granger, Vice-Chair  
Senator Jay Kerttula  
Senator Drue Pearce

94-263.plm

<sup>1</sup> Art. I, sec. 22 constitution of the State of Alaska, states

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

<sup>2</sup> AS 24.60.010(1) and (2) state

The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

<sup>3</sup> The committee does not now decide that all participants in this program should be kept confidential. Each case should be considered based on its own surrounding circumstances.

--

--

--

--

Document Properties	
<b>Title:</b>	Advisory Opinion 94-07
<b>Subject:</b>	Gifts – Lobbyists
<b>Author:</b>	Select Committee on Legislative Ethics
<b>Keywords:</b>	Opinion No. 07 April 14, 1994
<b>Comments:</b>	Must participation in the Violent Crimes Compensation Commission Program be published in the journals?
<b>Template:</b>	Normal.dot
<b>Last saved by:</b>	LAA-LFR
<b>Revision number:</b>	3
<b>Application:</b>	Microsoft Office Word

<b>Total editing time:</b>	00:00:00
<b>Created:</b>	2003/09/03 23:59:00
<b>Last saved:</b>	2008/01/28 18:35:00
<b>Company:</b>	LAA

<b>Filename:</b>	D:\DTS\DTSFiles\ethics\AO 94-07.DOC
------------------	-------------------------------------

*dtSearch 7.62 (x64) (7804)*

/docs/ethics/AO 10-01.doc (2 hits)

## **Alaska State Legislature**

### **Select Committee on Legislative Ethics**

716 W. 4<sup>th</sup> Ave., Suite 230    Mailing Address:  
Anchorage, AK 99501-2133    P.O. Box 101468  
(907) 269-0150    Anchorage, AK  
FAX: 269-0152    99510 – 1468  
Email: [ethics\\_committee@legis.state.ak.us](mailto:ethics_committee@legis.state.ak.us)

May 27, 2010

### **ADVISORY OPINION 10-01**

#### **SUBJECT: Conflict of Interest – Use of State Resources**

RE: Conflict of Interest – State Paid Travel and Collateral Campaign Activities

Note: This advisory opinion was rescinded at the June 14, 2010 Ethics Committee meeting. Refer to the August 19, 2008 letter to the Alaska Public Offices Commission for guidance in this area. (The letter is attached as an addendum to this opinion.)

This opinion was initiated by the Select Committee on Legislative Ethics.

#### **Question Presented**

In an August 19, 2008 letter to the Alaska Public Offices Commission, this Committee held that a legislator who travels on legislative business using state resources may not engage in political campaigning or other partisan political party activities during the trip. In reaching this decision, the Committee examined the restrictions imposed upon legislators under AS 24.60.030(a)(2)<sup>1</sup> and 24.60.030(a)(5)<sup>2</sup>, as well as the legislative purposes set out in AS 24.60.010. The committee, at their February 17, 2010 meeting, asked for a review of this position.

#### **Discussion**

While we note the prohibitions in the statute above, we also believe that a practical solution exists which ensures compliance with the statutes, provides a practical solution to the issue presented, and incorporates other provisions of AS 24.60 to ensure compliance. In short, we believe that the nature of the business rather than whether it is paid for with state resources should be the governing standard in determining whether an ethical violation has occurred. A statement signed by a legislator designating the primary nature and purpose of the business rather than whether it is paid for by state resources should suffice to govern whether or not collateral activities can or cannot occur. Violations or false statements made in this designation can be enforced pursuant to AS 24.60.030(3)<sup>3</sup>. If a legislator gives as his or her primary or sole purpose for taking the trip as engaging in political campaigning or partisan political activity, then he or she would not be entitled to state paid travel expenses. On the other hand, if the legislator gives as his or her primary purpose traveling to and from the Legislative session, visiting constituents, or engaging in other legislative business, then they should not be barred from engaging in

other incidental activities like political campaigning or partisan political activity during the trip. While this requires reliance on the “honor system,” legislators are held to similar standards in soliciting, accepting or receiving gifts.<sup>1</sup>

As has been explained to us, this issue arises primarily in the context of travel by legislators and how it affects different legislators from around the state in different ways. Some legislators are not required to use any state funds to travel to and from the session or to service their constituents. Other legislators use state funds to travel back and forth to Juneau for the session and/or to meet with their constituents.

Issues have arisen about whether it is appropriate to engage in other types of activities when State funds have been used to pay for travel expenses in ether context.

Previous discussions have cited AS 24.60.030(a)(2) and (5) for the proposition that if any travel expenses are paid by the State of Alaska to cover or reimburse travel costs, it is a violation of the ethics statute to engage in any activities which are characterized as political campaigning or other partisan political activity. These arguments are based upon the specific language in the statute and also on the limited exceptions set out in the accompanying statutory language<sup>2</sup>. While facially sound, this argument creates significant differences in how different legislators must conduct their affairs in the performance of their duties. For example, all out of town legislators who are compensated for traveling to and from their home towns to Juneau at the beginning of the session would never be able to engage in political campaigning or other partisan political activity before the session began or after it expired. Arguably, a violation could also be alleged if a legislator returned home at the state expense and promptly engaged in political campaigning or other partisan political activity. Neither of these scenarios is faced by legislators who incur no travel costs for attending the Legislative session in Juneau. Additionally, many legislators’ representation districts are vast in size and require significant travel expenses in order to properly represent their constituents. If a legislator accepts state money to pay for travel costs to visit his or her constituents, they cannot then engage in any activities characterized as political campaigning or other partisan political activity during the trip. Again, this is not an issue for legislators who do not have to incur travel costs to visit their constituents.

We believe this argument blurs the distinction between direct costs and indirect costs associated with travel by legislators. Another way to look at indirect costs is that they are incidental costs.<sup>6</sup> Because of the nature of the expense, travel costs can either be a direct or indirect expense of a particular endeavor.

If a legislator incurs travel expenses for the sole purpose of engaging in non-legislative purposes, or partisan political activity, or for his or her private benefit, then use of state funds to facilitate those activities would not be appropriate or permitted. But when a legislator engages in multiple activities – legitimate legislative business and other activities which may have specific prohibitions in statute – while traveling, it is the primary purpose of the trip that dictates when state funds can be used to cover travel expenses. The tenor of AS 24.60.030 is to preclude direct use of public funds for non-legislative purposes and it is not clear that travel expenses for mixed activities was intended to be prohibited. The primary harm that this subsection prevents is the use of state resources for the direct purpose of political campaigning or partisan political party activity.

Additionally, this argument ignores the prohibitory language found in AS 24.60.030(a)(3). This statute makes it an ethical violation for a legislator or legislative employee to “...make a false statement in connection with a request, or application for compensation, reimbursement, or travel allowance from public funds.” Legislators are currently required to fill out a pre authorization travel form naming their purpose for engaging in the proposed travel.<sup>7</sup> This “statement” could be challenged or evaluated in light of the legislator’s actual activities at a later time. Certainly, if a legislator made a false statement in this context, he or she would be in violation of AS 24.60.030(a)(3). These statements are a part of the public record and can and may be scrutinized by citizens who could file a complaint based upon the actual



activities of the legislator. This Committee would then be called upon to make a determination of whether a violation has occurred under AS 24.60.170.

This opinion is consistent with committee decisions addressing similar issues. For instance, in Advisory Opinion 96-05, a legislator requested an advisory opinion about whether it is appropriate to accept payment for the costs of a trip on which the legislator conducted both legislative business and personal business. The Select Committee issued the following opinion:

The ethics committee cannot comment on whether you have complied with legislative policy with regard to travel and per diem allowances.

Legislative Council is the body which sets those policies, and which is, together with the House and Senate leadership and the chair of legislative committees, responsible for interpreting and implementing that policy.

The ethics committee notes that in approving a request for travel funds, the individual entrusted with approval authority is responsible for reviewing the purpose of the proposed trip and determining that the use of travel money is a valid use of public funds.

Id., at p. 1. The opinion goes on to state:

It is permissible under the legislative ethics code for a legislator to accept state payment for the costs of a trip on which he or she conducted governmental business. As noted above, the committee does not have authority, in the context of advisory opinions, to use its judgment in lieu of a legislator's judgment in determining what is necessary state business or how much state business is necessary to justify accepting state payment for a trip.

The committee also cautions that if a legislator or legislative employee were to intentionally use a facade of legislative business to obtain a government-paid trip but were to fail to conduct any governmental business to justify governmental payment, the committee might well find a violation of AS 24.60.030(a)(2).

Id., at p. 2.

### **Conclusion**

In short, the enforcement provisions under AS 24.60.030(a)(3) provide sufficient protection against improper use of state funds for transportation costs.<sup>8</sup>

Adopted by the Select Committee on Legislative Ethics on May 27, 2010.

Members present and concurring in this opinion were:

Senator John Coghill

Senator Gary Stevens (via teleconference)

Representative Les Gara (alternate member)

Representative Craig Johnson (alternate member)

Antoinette "Toni" Mallott

Members dissenting from this opinion were:

H. Conner Thomas, Chair  
Gary J. Turner, public member  
Dennis "Skip" Cook, public member

Member absent:

Herman G. Walker, Jr., public member

BRC:jma

---

---

## Alaska State Legislature

### Select Committee on Legislative Ethics

716 W. 4th, Suite 230     Mailing Address:  
Anchorage AK 99501-2133     P.O. Box 101468  
(907) 269-0150     Anchorage, AK.  
FAX: 269-0152     99510 – 1468  
Email: [ethics\\_committee@legis.state.ak.us](mailto:ethics_committee@legis.state.ak.us)

August 19, 2008

Holly Hill, Executive Director  
Alaska Public Offices Commission  
2221 East Northern Lights, Rom 128  
Anchorage AK 99508-4149

Ms. Hill:

The Select Committee on Legislative Ethics (Committee) is writing in regard to a request (from the former executive director, Brooke Miles) for input concerning regulations to be drafted by the Alaska Public Offices Commission in 2008 on the subject of paid state travel and collateral campaign activity.

Review and discussion of Advisory Opinion 06-03-CD issued by the Alaska Public Offices Commission on October 31, 2006 occurred at four committee meetings; December 12, 2007, January 16, 2008, May 12, 2008, and August 19, 2008.

The Committee looked at the restrictions imposed by AS 24.60, the Legislative Ethics Act, on a legislator or legislative employee who while traveling on legislative business using legislative resources engages in political campaigning or other partisan political activity.

A legislative resource, including money provided by the legislature to cover or reimburse costs incurred by a legislator or legislative employee while traveling on legislative business, is a government asset or

resource. A government asset or resource may not be used by a legislator or legislative employee for involvement in or support of or opposition to partisan political activity. AS 24.60.030(a)(2). More specifically, a legislator or legislative employee may not use or authorize the use of a government asset or resource for the purpose of political fund raising or campaigning. AS 24.60.030(a)(5). (Partisan political activity, political fund raising and campaigning are herein referred to as “partisan political activity.”)

The legislature may wish to revisit the absolute restriction in AS 24.60 in view of the vast difference between urban and rural areas in our state. Legislative districts vary greatly in the land mass encompassing a district. Both cost and time expended to visit areas within a district also vary greatly. Travel for a matter of legislative concern or for partisan political activity can be quite costly and time consuming. The extreme example of traveling to a remote area of the state for legislative business and then returning to the legislator’s home base and again traveling to the same area for partisan political activity was discussed.

Based on these factors, the Committee looked at de minimis use of state resources as a possible solution. However, de minimis use of a legislative resource for partisan political activity is prohibited under AS 24.60. To allow de minimis use of state resources for partisan political activity would require a legislative change in AS 24.60. Currently the only exception for de minimis use of state resources is for personal reasons if there is no cost to the state or the cost is promptly reimbursed.

If the legislature adopted an exception to AS 24.60.030 to permit partisan political activity that required the legislator to reimburse the state for pro-rated costs of such activity then the use might be considered de minimis. A legislator or legislative employee could then attend an event, for example, that had the overtones of being campaign related or was actually campaign related while on a legislative business trip if the primary purpose of the trip was for a matter of legislative concern. Committee members very strongly stated that a legislative trip should not be planned or scheduled around a campaign activity and further underscored no additional expenses to the state must be incurred when conducting the partisan political activities.

Under a de minimis use exception, the allocation formula allowed under Executive Branch ethics and outlined in AO 06-03-CD is the method the Committee feels is most equitable and fair. The allocation of state funds would be determined based on the percentage of time spent on state business and the percentage of time spent on partisan political activity. The percentage of time spent on a partisan political activity would be used to determine the allocated cost for reimbursement to the state.

After considerable debate, the committee determined travel to and from the legislator’s home district to attend a legislative session should be exempt from the requirement of allocating costs for partisan political activity.

We hope our comments will be helpful to the Commission in preparing draft regulations on this subject. I am available to answer any questions.

Sincerely,

Herman G. Walker, Jr.  
Chair, Select Committee on Legislative Ethics

Cc: Ethics Committee Members

<sup>1</sup> In pertinent part, AS 24.60.030(a)(2) states, “A legislator or legislative employee may not ... use public funds, facilities, equipment, services, or another government asset or resource for a non-legislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, legislative employee, or another person...”

<sup>2</sup> In pertinent part, AS 24.60.030(a)(5) makes it unethical to “use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning...”

<sup>3</sup> AS 24.60.030(a)(3) makes it an ethical violation for a legislator or legislative employee to “...make a false statement in connection with a request, or application for compensation, reimbursement, or travel allowance from public funds.”

<sup>4</sup> Under AS 24.60.080 only four types of gifts require disclosure. Legislators are held to the “honor system” in determining how to identify other gifts received. A gift log is no longer required by statute but recommended. *See also* AS 24.60.010 (7) “compliance with a code of ethics is an individual responsibility...”

<sup>5</sup> AS 24.60.030 has a number of noted exceptions to the general rules that state resources may not be used for partisan political activity or political campaigning. *See* AS 24.60.030(a)(2)(A)-(K), AS 24.60.030(a)(5)(A)-(E), AS 24.60.030(d) and AS 24.60.030(h).

<sup>6</sup> AS 24.60.030(h) allows incidental campaign activities during the employee’s workday while on government time. If the activity is more than incidental the employee shall take leave time. A similar analogy could be made regarding legislative travel.

<sup>7</sup> Each legislator must complete a Senate, House, Finance Committee or Legislative Council Pre Travel Authorization Form prior to travel for legislative business and a Legislative Affairs Agency Travel Claim form to request reimbursement after travel has been completed. Additionally, the Senate and House each year approve guidelines for travel and per diem for legislators. Legislative Council has also a travel and per diem policy for both legislators and legislative employees.

<sup>8</sup> The Committee recommends that the Legislature consider amending AS 24.60.030 to clarify this matter.

<b>Document Properties</b>	
----------------------------	--

<b>Title:</b>	ADVISORY OPINION 10-01
<b>Subject:</b>	Conflict of Interest – Use of State Resources
<b>Author:</b>	Select Committee on Legislative Ethics
<b>Keywords:</b>	Opinion No. 01 May 27, 2010
<b>Comments:</b>	Conflict of Interest – State Paid Travel and Collateral Campaign Activities
<b>Template:</b>	Letter.dot
<b>Last saved by:</b>	Sherri Wayne, Systems Programmer
<b>Revision number:</b>	21
<b>Application:</b>	Microsoft Office Word
<b>Total editing time:</b>	03:14:00
<b>Created:</b>	2010/07/27 00:29:00
<b>Last saved:</b>	2011/03/02 01:54:00
<b>Company:</b>	Legislative Affairs Agency

<b>Filename:</b>	D:\DTS\DTSFiles\ethics\AO 10-01.doc
------------------	-------------------------------------

*dtSearch 7.62 (x64) (7804)*

# Alaska State Legislature

## Select Committee on Legislative Ethics

Physical Address:  
716 W. 4<sup>th</sup> 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 June 16, 2010 FULL COMMITTEE MEETING Anchorage LIO, Room 550

1. **CALL THE MEETING TO ORDER:** Chair Conner Thomas called the meeting to order at 12:05 p.m. Members present: Senator John Coghill, (via teleconference), Senator Gary Stevens, Representative Les Gara, (alternate for Rep Gardner), Representative Carl Gatto, Gary J. Turner, Dennis (Skip) Cook, Herman G. Walker, Jr., Antoinette (Toni) Mallott. Staff present: Joyce Anderson, Administrator. Also present: Brent Cole, Legal Counsel and Dan Wayne, LAA Legal Counsel (via teleconference).
2. **APPROVAL OF AGENDA:** Chair Thomas asked if there were any objections to the proposed agenda and hearing none, the agenda was approved.
3. **APPROVAL OF MINUTES:** Vice Chair Turner requested the word “almost” be inserted on page 4, third paragraph, first sentence, before “three years now”. Member Walker made a motion to approve the minutes as amended. No objections.
4. **PUBLIC COMMENT:** Representative Craig Johnson stated he served as an alternate for Rep Gatto at the May 27<sup>th</sup> Ethics Committee meeting and wanted to clarify his position on the subject of legislative travel and campaign activity on the same trip. He did not believe it was a violation to have a conversation with a constituent on campaigning in a super market while traveling on state business. He did feel it would not be appropriate to schedule a state paid trip and a fundraiser at the same time. He further stated he believed there needed to be a balance between these two activities but questioned whether the Ethics Committee had the ability to do this within the structure of the law. Rep Johnson wanted the Committee to know for the record that he did not agree with what he and the Committee approved at the last meeting.
5. **CHAIR/STAFF REPORT:** Ms. Anderson informed the committee the NCSL’s State Legislatures magazine, June edition, had published an article about 25 innovative web sites. The searchable database of more than 100 advisory opinions from 1984 to the present on our website was showcased. The article also mentioned disclosures could be filed online.

Ms. Anderson also informed the committee that she recently learned the audio from our Ethics Committee meetings were not available to the public and requested the Committee consider making them available, like other interim committees, on BASIS. The Committee determined the audios should be on BASIS. Sen Coghill suggested BASIS and the Ethics website be linked as well.

6. **REVIEW OF ACTION TAKEN AT MAY 27, 2010 MEETING - STATE PAID TRAVEL AND COLLATERAL CAMPAIGN ACTIVITIES:** Chair Thomas reminded members an advisory opinion was approved at the May 27 meeting authorizing collateral campaign activities when on a state paid trip as long as the trip was primarily for legislative business. The results were: YES: 5; NO: 3; with one member absent. A couple of days later, Rep Gara, who voted yes, requested reconsideration of his vote. (See his request via E-mail in meeting packet.)

Chair Thomas stated it was his role as chair to decide if the request was timely. Because the advisory opinion had already been made public, including notification to the Press, and advice had already been given out based on the opinion; he ruled the request was not timely. He stated he asked Ms. Anderson to contact each Committee member to see if there was any interest in rescinding the opinion. Several members expressed their interest in discussing this item further and possibly rescinding the advisory opinion.

Chair Thomas indicated if there was a motion today to rescind the committee's previous action and it passed, the item would be put on the table for discussion. Rep Gara made a motion to rescind the action taken by the Ethics Committee on May 27, 2010.

**Discussion on State Paid Travel and Collateral Campaign Activities:** Chair Thomas reminded members the Committee did not have the authority to set policy but only interpret the Legislative Ethics Act. The Chair gave the floor to Rep Gara to allow him the opportunity to explain his request to rescind and present his recommendations.

Rep Gara summarized the E-mail he sent to members: We were given two options at the last meeting; one prepared by Mr. Brent Cole, outside legal counsel, and the other prepared by Mr. Dan Wayne, LAA Legal Counsel. He stated Mr. Cole's opinion was flawed in that campaign fundraising activities were permitted and Mr. Wayne's opinion was also flawed by banning of legitimate, free speech.

Rep Gara recommended accepting Mr. Cole's opinion focusing on the "primary purpose" rule and adding a statement indicating, **"fundraising on a state-paid trip can create the appearance of impropriety."**

The Chair asked Mr. Wayne if the Committee has the authority to make the type of modification Rep Gara is recommending and to also give his legal opinion on the freedom of speech issue. Mr. Wayne stated the Committee has the authority to interpret the statute based on the facts of the question and statutory language. He stated he understood Rep Gara's concerns.

Mr. Wayne pointed out in his updated opinion that if the political activity the person is engaged in is made possible by the use of state resources, and then s/he should not engage in it. The opinion included relevant examples. However, Mr. Wayne concluded the subject matter can be complicated and it would not be difficult to think of unusual conundrums that people could run into.

Sen Stevens agreed this issue was complicated and suggested the committee make it simple and clear for legislators to know when they are in violation and when they are not. He questioned if the legislature should be working this issue, not the Committee.

Member Walker stated that he understood the merit of Sen Stevens' position and Rep Gara's and believes this should be a legislative fix. The public members have been in favor of a legislative fix from the start. He stated there needs to be a balance between urban and rural legislators with the way the state is laid out. The balance should not be determined by this Committee.

Member Cook concurred with Member Walker stating he felt the Legislature should fix this issue, not the Committee. There are problems with both opinions but ultimately it's the statute that is the problem and needs to be addressed. He felt the statute was too absolute in that campaigning is prohibited and there are no exceptions, whatsoever. There are exceptions for everything else. If the Legislature can come up with a quick fix to the state jet issue (Administrator's Note: When this issue came to light, legislation was passed to address it the next legislative session), then they can fix and corrected this situation as well. Member Cook believes the Legislature does not want to loosen up the rules; they want the Ethics Committee to do it for them. As a member of the Committee, he is not willing to do what the Legislature should be doing. The Legislature passed the statute, let the Legislature fix it.

Member Mallott stated she was under the impression from the May 27 minutes that Sen Coghill was going to take this issue to the Legislature for review. Member Mallott also brought up a very common scenario that could occur while a legislator was visiting a village on state business. If a legislator declined an invitation to a potluck to discuss campaign issues, the legislator would be insulting the village and community. Potlucks are a common event in small villages.

Chair Thomas redirected the discussion and requested Mr. Cole to address Rep Gara's concerns before addressing Member Mallott's comments.

Mr. Cole stated it was not uncommon for a statute to be rewritten. He also stated it was not unusual to have two or three interpretations relating to the same statute. Legislators need guidance and he felt Mr. Wayne's interpretation allows for too many limitations for legislators while they are traveling on state business. He did not feel his opinion was "extreme", as some members had stated. He stated if legislators are on a state paid trip to a village, the legislator should be able to communicate with the people there on all facets.



Chair Thomas asked Mr. Cole if the Committee has the authority to revise the opinion as Rep Gara suggested. Mr. Cole stated he believed the Committee has the authority. It would first require rescinding the advisory opinion which has already been approved and then rewriting certain sections as the committee directed. However, he did not agree with Rep Gara's recommendation of prohibiting fundraising only.

Sen Stevens agreed with Mr. Cole's comment that legislators need guidance and it needs to be clear. If a legislator files paperwork to attend a meeting and states the meeting is the primary purpose of the trip, and he approves it as Senate President, and the legislator also attends a campaign fundraising event for himself or herself while on the trip, anyone can file a complaint saying that was not the primary purpose of the trip. In his opinion, it is obvious and clear to him that this person violated the ethics code.

Rep Gara agreed the issue is clarity. He did not agree with Mr. Wayne's opinion since it banned free speech. Rep Gara also stated he agreed that this was the Legislature's job but it was not realistic to expect it to pass. From past experience, even with the best intentions, it is difficult to pass a bill. That is why it is important to come up with something now; a rule that honors the statute but isn't unreasonable or with unintended circumstances.

Rep Gara stated Mr. Cole's opinion makes sense but liked the idea that the Ethics Committee could bar things that raise the appearance of impropriety. Chair Thomas added the Committee has in the past deemed the appearance of impropriety was not in and of itself an ethics code violation.

Mr. Cole stated he did not see how you could say fundraising raises the appearance of impropriety but then allows other candidate campaign activities. In his opinion all campaign activities raise the appearance of impropriety.

Rep Gatto agreed leeway was important but finding the right language was a difficult task. What a legislator might see and what another perceives as proper or improper can be very different.

Chair Thomas believed it boils down to the purpose of the trip; i.e., the specific set of circumstances. He does not believe they can come up with any rule that can guarantee a complaint won't ever be filed.

Sen Stevens stated that he was invited to attend two fundraisers the night before, which he did not attend, but questioned if the Committee was referring to personal fundraisers for the legislators on the state paid trip or any fundraiser. Mr. Wayne indicated there is another opinion on this subject. He believes the statute reads whether you are helping someone else raise money for their campaign or raising money for your campaign, it's all considered fundraising. This would include the situation where your name is listed on an invitation to a fundraiser. Mr. Wayne offered to look up the opinion and provide additional information. Sen Stevens then questioned if it included attending fundraisers for other candidates, such as a fundraiser for Sen Murkowski or President Obama. Member Cook stated the statute reads, "no partisan political activity", which includes all

levels of partisan political activity. Member Cook indicated that's the problem with the statute; it's very broad. Sen Stevens stated the words "primary purpose" definitely clarifies things for him and that he preferred the term.

Chair Thomas stated that there was a motion on the floor and asked each member to voice their opinion before taking a vote.

- Member Cook stated the Legislature should make the policy call through legislation.
- Sen Coghill stated he preferred Mr. Cole's opinion in that the term "primary purpose" was defined and was against rescinding the opinion.
- Rep Gara stated he would like a rule that meets the public's expectations – when on a state paid trip you are not going to a fundraiser on the same trip. He clarified the prohibition doesn't mean you shouldn't be able to talk to a voter or the press while on that trip. He is against the approved opinion and hopes the Committee comes up with a rational rule.
- *MEMBER MALLOTT'S COMMENTS WERE INAUDIBLE.*
- Member Walker had no comment at this time.
- Sen Stevens stated he was against rescinding the opinion without replacing it with something else. He believes in the honor system; i.e., signing paperwork that states the primary purpose of a trip is for legislative business. He believes the committee is delving in dangerous territory in that we are close to writing legislation which is not the Committee's job.
- Rep Gatto stated he was against rescinding the opinion.
- Chair Thomas agreed with Member Cook. The Legislature was clear when they wrote the current legislation. No state resources can be used for campaigning. He also agrees that the prohibition does not mean a legislator cannot talk on the phone about campaign issues. But he stated there are no exceptions in the current statute for the use of state resources and that is a concern that has been voiced by many members. He stated the Legislature should be addressing this issue. Chair Thomas explained that in August of 2008 the Ethics Committee's letter to APOC is what generated this discussion. There was an opinion drafted but never adopted. The Committee maintained its position that there were no exceptions in the statute.

Sen Stevens voiced concern and frustration over rescinding Mr. Cole's opinion due to the fact Legislators had been notified of the opinion and received advice based on the opinion and now the opinion may be rescinded today.

Chair Thomas agreed that it is frustrating to him as well, but if the current opinion is rescinded today and no other opinion is approved, the recommended advice to legislators and staff would be what was in place prior to adopting Mr. Cole's opinion in May. The advice provided after the May 27 opinion was adopted would stand and action taken by legislators and staff during the period the opinion was in force would not be in violation of the Act.

Chair Thomas asked Ms. Anderson to take a roll call vote. YEAS: Skip Cook, Rep Gara, Toni Mallott, Gary Turner, Herman Walker, Jr., Chair Thomas, NAYS: Sen Coghill, Rep Gatto, Sen Stevens. Motion to rescind the committee's May 27 action passes.

Chair Thomas suggested the members break for 10 minutes to review Mr. Wayne's advisory opinion.

Sen Stevens recommended legislators be notified immediately that Mr. Cole's advisory opinion was rescinded today. Ms. Anderson stated she would send out an "All Users" e-mail ASAP.

(Herman Walker leaves the meeting and does not return.)

1:40 p.m. - Members reconvened.

Mr. Wayne presented a revised draft of the 2008 advisory opinion not approved by the committee. He explained that he reviewed previous discussion on this subject and incorporated some of the examples in this opinion. He clarified his drafted opinion was to assist the Committee and not to advocate for any particular policy. The Committee can accept it, modify it or reject it.

(Sen Stevens temporarily leaves the meeting.)

Mr. Wayne proceeded to point out the changes he made from his first draft opinion. He changed the wording from "legislative resources" to "state resources" throughout the opinion to be consistent with the term used in statute. The examples will aid in understanding where the Committee might "draw the line". The long paragraph on page three is new and addresses the interpretation of the two prohibitions in statute in regard to legislators and staff traveling to and from legislative sessions. There was some discussion at previous meetings in relation to the term "incidental" and the long paragraph on page 3 and page 4 covers those concerns. The second paragraph on page 5 covers "inadvertent" campaign activity that many members voiced concerns about; for example, if you're approached by a constituent in the super market with a campaign related issue while traveling on a state paid business trip.

(Sen Stevens returns to the meeting.)

Sen Stevens requested a definition of the terms "political fundraising", "campaigning" and "partisan political activity". Mr. Wayne provided Sen Stevens some examples but explained there were no definitions in statute. Mr. Wayne indicated there are the

obvious examples of when you are campaigning, but there are also gray areas which may be more obvious or less obvious to some and fall subject to interpretation.

Rep Gara requested clarification regarding phone calls and a scenario during a month long special session. What if a legislator received a call from the press stating your opponent has accused you of doing something you did not and you feel you need to address it immediately, and you do, are you engaging in “political activity”. Mr. Wayne stated he would have to know the facts of the subject matter that was before the press. Without the facts, he could not answer the question.

Vice Chair Turner commented that APOC also did not have definitions on these three terms. They have said it would greatly help them if there were definitions. He also commented that he did not fully agree with any of the options today and reminded the members there was still the option to adopt the Executive Branch’s method, which was prompted by the use of the executive airplane by a sitting governor, such as portioning the expense out.

Members discussed what the next step should be. Rep Gara stated he could agree with members if the consensus was more discussion and more work on the issue. However, he was concerned about what was to be the rule in the meantime. He offered taking it to the Legislature, but felt time was of the essence. He felt that a ruling should be made today and requested feedback from members on his recommendation of adopting Mr. Cole’s opinion with the exception of fundraising.

Sen Coghill indicated the pressing concerns were definitions, the freedom of speech issue, and when impropriety of fundraising occurs. He feels the Committee wants a rule that is “prescriptive” rather than something they can use as a guide. For example, the members want to be able to tell people when it is okay to fundraise rather than what is the impropriety in mixing legislative work with campaign work. He felt this was discussion for the Legislature, as was defining terms. He agreed that the statute was too narrow, but the Committee has been pretty clear about what an impropriety might look like. He voiced it was not impossible to get things passed in the Legislature it just takes tenacity. He felt the statute is what it is but there is also a record of the numerous discussions held on this issue and minutes available to the public that shows why the impasse is so difficult to navigate.

Members discussed the next step. Legislators asked what advice the Ethics office will be giving to legislators. Chair Thomas replied that the Committee will stand behind what the statute says and the position outlined in the committee’s letter to APOC.

Rep Gara made a motion to accept Mr. Cole’s opinion with the exception of fundraising, reiterating that he felt a rule needed to be in place today. If a ruling was not made today, he felt what could happen is that a complaint will be filed and then the Committee will be forced to come up with a rule. He disagrees with this practice.

The Chair disagreed with Rep Gara in that the Committee has already taken a position. The position the Committee has taken is outlined in the letter to APOC. What the Committee has not done is adopt an advisory opinion.

All members agreed there should not be a vote without Member Walker's presence. Rep Gara withdrew his motion.

Members reviewed the August 19, 2008 letter to APOC. Rep Gara noted that the freedom of speech issues continue to be a problem.

Chair Thomas concluded that the item today will be tabled for the next Committee meeting.

7. **ADJOURN:** Member Cook moved to adjourn the meeting at approximately 2:30 p.m. No objections.

# Alaska State Legislature

## Select Committee on Legislative Ethics

Physical Address:  
716 W. 4<sup>th</sup> 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 May 27, 2010 FULL COMMITTEE MEETING Anchorage LIO, Room 220

1. **CALL THE MEETING TO ORDER:** Vice Chair Gary Turner called the meeting to order at 11:32 a.m. Roll call was taken by Joyce Anderson. Members present: Senator John Coghill, Senator Gary Stevens (attending by teleconference), Representative Les Gara (11:35 a.m.) alternate for Rep Gardner, Chair H. Conner Thomas (11:40 a.m.), Representative Craig Johnson (12:00) alternate for Rep Gatto, Gary J. Turner, Dennis (Skip) Cook, Antoinette (Toni) Mallott. Staff present: Joyce Anderson, Administrator. Absent: Herman G. Walker, Jr. Also present Brent Cole, Legal Counsel and Dan Wayne, LAA Legal Counsel (attending by teleconference).
2. **APPROVAL OF AGENDA:** Vice Chair Turner requested a motion to approve the agenda. Motion to move and approve the agenda made by Rep Johnson. No objections.
3. **APPROVAL OF MINUTES:** Sen Coghill motioned and moved to approve the minutes of the Senate Subcommittee meeting of February 17, 2010, and the Full Committee meeting minutes of February 17, 2010; no objections.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
  - a. **Ethics disclosures:** Ms. Anderson stated that disclosures, filed between February 18<sup>th</sup> (deadline for annual disclosures) and April 18<sup>th</sup> (last day of session) will be published in the Legislative Journal at the end of June. The next publication of interim disclosures will be in January of 2011, unless deemed otherwise by House Clerk and Senate Secretary. A current list of disclosures submitted will be updated and posted on the Ethics website.
  - b. There were eight late disclosures filed since the last committee meeting in February. Four were first time late filings and no fine was assessed; Rep Kawasaki, Rep Millett, Rep Stoltze and T. Bannister. The other four varied in reasons for lateness:

Rep Holmes was fined \$25 for an inadvertent late filing; Sen Huggins was fined \$25 for an inadvertent late filing; S. Long was fined \$100 for a late filing; and Sen Dyson's late filing was waived since he had filed with APOC.

- c. **Informal Advice Staff Report:** Ms. Anderson provided an explanation of the informal advice provided between November 1, 2009, and May 14, 2010. The report does not include routinely asked questions but questions involving more detailed advice. Ms. Anderson stated that the current method used in preparation of this report is tedious and time consuming. However, she is anticipating the availability of a database this summer which will simplify this task. The database is being developed by the State of Massachusetts and would be available free. Sen Coghill complemented Ms. Anderson on categorizing the report stating it was helpful to him to review advice in this manner.

- 6. **SECOND LEGAL OPINION:** Chair Thomas arrived at 11:40 a.m. and relieved Vice Chair Turner who was temporarily sitting in for him. Mr. Cole was not scheduled to arrive until 12Noon to present this item. Chair Thomas provided members a history of the subject and the discussions previously held leading up to this point, noting that there are members present today who were not present at prior meetings.

Chair Thomas referred members to the letter in today's meeting packet written by the Ethics Committee in response to APOC's (Alaska Public Offices Commission) request for the Ethics Committee's input concerning regulations on the subject of paid state travel and collateral campaign activity. At the time of this request, (December of 2007), APOC had no regulations in place. APOC's request is what generated the Ethics Committee to hold various discussions and ask for an advisory opinion on the subject. A draft opinion discussed at the January 2008 meeting was not approved or issued but the committee concluded there absolutely cannot be a mixing of state resources for campaigning or incidental partisan political activity. The Committee then wrote APOC stating the position of the Ethics Committee; however, no advisory opinion was ever adopted or a vote taken by the committee.

The Chair also noted that this issue comes up often, most recently, at his and Vice Chair Turner's confirmation hearings, where the House Judiciary Committee questioned both of them about the committee's advice and recommended that the Committee consider submitting a second opinion. The Chair stated that the question before them today is if they should adopt the second opinion or rely on the advice in the draft opinion written by Dan Wayne, LAA legal counsel.

The Chair asked Dan Wayne to go over his opinion and his view on Mr. Cole's second opinion. Mr. Wayne stated he reviewed Mr. Cole's opinion and indicated he did not agree with Mr. Cole's analysis. Mr. Wayne expressed that his opinion was based on **AS 24.60.030, "A legislator or legislative employee may not use public funds, utilities, equipment, services or another government asset or resource for a non-legislative purpose for involvement in or support of or opposition to partisan political activity or for the private benefit of either the legislator or legislative employee or another person."** Mr. Wayne provided the exceptions, as follows:

**“This paragraph does not prohibit a) the limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duty. And either the cost or value of related use is nominal or the legislator or legislative employee reimburses the state for the cost of the use.”** If this were the only exception, “personal use” *could* encompass campaign use or political use. But there’s another exception having to do with political campaigning, which is AS 24.60.030(a)(5), and states as follows: **“A legislator or legislative employee may not use or authorize the use of state funds, facilities, equipment, services or government asset or resource”**, which is similar to the first exception he read.

He further stated, for the purpose of political fundraising or campaigning, there are five exceptions: **1) this paragraph does not prohibit a) the limited use of state property and resources for personal purposes.** This reiterates the “personal use” exception. It also says it doesn’t prohibit the use of mailing lists, computer data or information obtained by a government agency and available to the general public for non-legislative purposes; it doesn’t prohibit the storing or maintaining election campaign records in a legislator’s office, and it doesn’t prohibit a legislator from using a legislator’s private office in the Capitol city during a legislative session and for the 10 days immediately before and the 10 days immediately after a legislative session. Also, a legislator is not prohibited from using photographs of him or herself.

He pointed out that what we don’t see in this prohibition under 24.60.030(a)(5) is an exception that allows some sort of *de minimis* or case-by-case basis political campaign usage of state resources. In his opinion, he’s said that’s a “blanket” prohibition. If the exception had “allowed limited use of state property and resources for political purposes or political campaign purposes, or personal purposes including political campaign use,” the statute would have so stated. Mr. Wayne stated he was willing to draft something else, if the Committee determined the statute should be interpreted otherwise.

The Chair asked if there were any questions. Sen Stevens asked Mr. Wayne to comment on what the words “primary purpose” means in the second opinion. Mr. Wayne explained that in his opinion the statute does not allow for any “splitting out” or any division between a primary purpose or secondary, minimal purpose as is the case with “personal, non-legislative” use of state resources. Mr. Wayne referred Sen Stevens to Mr. Cole for an explanation.

Sen Stevens pointed out that in Mr. Cole’s opinion he mentioned the difference between a legislator who represents a district in downtown Anchorage versus one in rural Alaska with multiple cities/boroughs. For example, at the end of session, when he traveled to Homer from his Kodiak residence, his purpose was to explain what transpired in session. However, since people in Homer know he’s running for office in August, it is very difficult reporting what the legislature did and report nothing on the fact that he’s running for office. Sen Stevens felt that although this subject needs to be simplified and clear and kept as separate as you can, it was very hard to do.

Member Cook stated he initially sided with the prohibition of campaigning with the use of state funds, however, can appreciate what legislators have said and their concerns.



He suggested adopting the formula that was developed when the state owned the aircraft for state travel; that if anyone is going to use the aircraft on state business, if campaigning occurred and exceeded 10%, then the legislator would reimburse the state. When there's reimbursement, you are not using state funds. The "limit" allows someone to address a campaign related question or issue if it inadvertently or unexpectedly comes up and would address concerns brought forth by Sen Stevens.

Rep Gara stated he agreed with Sen Stevens. He emphasized the importance of the word "for". For example, did you take the trip "for" the purpose of campaigning" or "for" a legislative purpose? "For" is the key word in the statute. He felt Mr. Coles' analysis was correct. Rep Gara stated that the practical matter is that people from Anchorage have an advantage over people from Kodiak or Nome, etc., because the reality of political campaigning is the activity is more prevalent in larger cities. If you're in Nome, most of your donations are going to come from outside of Nome. He pointed out the following example: I can go to a legislative meeting during the day in Anchorage and in the evening, I can go to a campaign activity after hours; others who come here for a legislative purpose cannot attend a campaign event after hours.

Vice Chair Turner stated that discussions on this have gone on for almost three years now. He respects the opinions and input from the legislators, but as he's gone on record in the past, there is an advantage to the incumbent, especially in an election year. For example, the challenger has to pay for his/her trip to Anchorage to campaign.

Chair Thomas asked Mr. Wayne about his footnote in his opinion (Draft Opinion 07-08) **"Although legislators and legislative employees travel to the capital city and sometimes other locations within Alaska in order to participate in legislative sessions, the committee does not consider that travel, or travel outside of the capital, to be within the scope of this opinion...."** Mr. Wayne referred the Chair to wording from the letter written by the Ethics Committee to APOC in the second to last paragraph, **"After considerable debate, the committee determined travel to and from the legislator's home district to attend a legislative session should be exempt from the requirement of allocating costs for partisan political activity."** The Chair stated that the letter to APOC was written *after* Mr. Wayne's opinion was drafted and asked if Mr. Wayne could recollect background on the reasoning for his footnote. Mr. Wayne could not recollect the revolution of the footnote but recalled the committee having a lot of discussion about it and believed at the time there was no "black and white" legal authority to say that travel to and from the session from the home district was exempt, but that as a practical matter had been considered that way and the committee adopted that exception, informally, in their letter to APOC.

The Chair introduced Mr. Cole to the floor and requested that he provide the members a quick overview of his Second Legal Opinion.

*NOTE: MR BRENT COLE'S TESTIMONY WAS INAUDIBLE; PLEASE REFER TO HIS SECOND LEGAL OPINION LETTER FOR DETAILS THAT MAY NOT BE IN THE MINUTES.*

Mr. Cole explained that he was an “outsider” but aware of the issues and concerns by legislators as well as the general public. He stated his opinion was written with the existing statute in mind, regardless if it does not contain the best language or does not directly address the issue. Existing law has to be followed. He stated he did not focus on one or two provisions of the statute but encompassed all of the provisions in 24.60.030. Conflict of Interest and Unethical Conduct. Mr. Cole stated his opinion contained a melding of all concerns. His solution is provided in the second paragraph of his opinion stating, **“we believe that the nature of the business rather than whether it is paid for with state resources should be the governing standard in determining whether an ethical violation has occurred. A statement signed by a legislator designating the primary nature and purpose of the business rather than whether it is paid for by state resources should suffice to govern whether or not collateral activities can or cannot occur. Violations or false statements made in this designation can be enforced pursuant to AS 24.60.030(3) If a legislator gives as his her primary or sole purpose for taking the trip as engaging in political campaigning or partisan political activity, then s/he would not be entitled to state paid travel expenses.”** Mr. Cole added that AS 24.60.030(a)(3) was not considered previously. AS 24.60.030(a)(3) makes it an ethical violation for a legislator or legislative employee to **“...make a false statement in connection with a request, or application for compensation, reimbursement, or travel allowance from public funds.”**

The Chair requested comments, consideration or discussion on using percentages.

*TESTIMONY FROM THE CHAIR, MR. COLE AND MR. WAYNE IS INAUDIBLE. SEN STEVENS MENTIONS DIFFICULTY IN HEARING TESTIMONY. HOWEVER, SEN STEVENS IN HIS TESTIMONY COMMENTS ON THE DISCUSSION BETWEEN THE CHAIR, MR. WAYNE AND MR. COLE.*

Sen Stevens believes the terms “de minimis” and/or “primary” are understandable but splitting the cost and dealing with percentages could be difficult and cumbersome. Sen Stevens also refers to page 4 of Mr. Cole’s opinion, **“...the individual entrusted with approval authority is responsible for reviewing the purpose of the proposed trip...”** noting that this is another “check and balance” on the use of state funds. It is the President of the Senate and the Speaker of the House who are responsible for reviewing and examining a request for state paid travel and have the authority to question a request and in turn either approve or deny the request. Basically, legislators are under the “honor system” when it comes to a request for reimbursement for legislative travel.

*DUE TO THE DIFFICULTY OF HEARING TESTIMONY, SEN STEVENS NOTIFIES THE MEMBERS HE MAY LEAVE THE MEETING. MS. ANDERSON ASKED SEN STEVENS TO NOTIFY THE CHAIR WHEN HE LEAVES.*

Rep Gara recommended the members interpret the statute as presented in Mr. Cole’s opinion. He stated there will be a lot of problems if we do not. He provided the following scenario in relation to attending a conference: The conference lasts 6 hours but you are normally you’re up 18 hours a day which leaves the remaining 12 hours to be spent doing whatever you do on your personal time, whether you’re at the movies, shopping, visiting friends, etc, it’s all “personal time”. However, in this instance your

“free” time is not “de minimis” to the time spent at the legislative conference. If the committee approves a rule that says, “other than de minimis use”, the above example would not fit into the box. He provided another example: If you go to Washington, DC, you’re going to want to see many of the attractions which may result in spending a substantial amount of your day doing non-legislative business. We cannot take a set of rules designed to prevent corruption and use them to prevent rational activity. When rural members come in for a Caucus meeting, over a period of 2-3 days, most of the time they spend here, they are not doing legislative business. The meetings end at two o’clock and afterwards, they’re dining at a restaurant, etc.

Rep Gara stated he feels the whole legislative process favors the incumbent, although attempts to level the playing field are made by limiting campaign contributions and limiting fundraising activities during legislative session. If we reject Mr. Cole’s opinion, the current rule disfavors the incumbent. He explained that during the AGIA special session here in Anchorage, that lasted about 30 days, he was able to campaign and go door-knocking after hours. Others who were here from out of town could not do this on their free time. He reiterated his previous statement: Were you there “for” the AGIA or were you there “for” campaigning? Additionally, he felt what we are doing is regulating someone’s free time. If a fundraiser were held during the day during the AGIA session, that is a different story and the person would have violated the statute.

Mr. Cook stated the legislature approves the statutes and the committee is trying work within that framework and has been for the last three years. He feels the statutes are clear in that there is an explicit prohibition on the use of state resources for campaign related activities in that there are exceptions for personal use but no exceptions for political campaigning activity. The simplest way to fix this problem would be for the legislature to amend AS 24.60.030 and remove the prohibition on political campaigning activity or put limits on it in the statute, as was done with the Executive Branch and the state jet. Legislators and the public get upset with the Committee for trying to impose rules, but the committee is only interpreting the statutes that were passed by the legislature. He recommends fixing the statute instead of asking the Committee to interpret it. He would like to see a reimbursement formula similar to AS 39.52.120(f) in which public funds weren’t being used for campaigning.

Sen Coghill stated he agreed with Member Cook. However, when a person is in the political arena, that person is always a political person. S/he will always be a policy person with a point of view of a political nature. Under Mr. Wayne’s opinion a legislator is always going to be “unethical” because partisan or political activities occur all of the time. Sen Coghill believes the committee needs to address it.

Sen Coghill voiced his opinion on the power of the incumbency. He agreed with Rep Gara. In Mr. Cole’s opinion, there are certain disadvantages to legislators and incumbents. He would like to see the term “primary purpose” addressed. He would like take this opinion and move forward with it even though there are questions on the definition of the term “primary”. He stated he would be willing to work with Sen Stevens in defining “primary purpose”. Sen Coghill also stated that if he were elected again, he would take this issue to the legislature. He felt Mr. Cole’s opinion should be

adopted, even though there are questions about what is considered “primary” and he questioned whether the premise of an honor system is reasonable to move forward with.

Sen Coghill motioned that we accept Mr. Cole’s legal opinion and adopt the opinion for the Ethics Committee.

Vice Chair Turner stated he had a concern with there being two different standards. One based on AS 39.52.120, with the 90/10 split, and Mr. Cole’s opinion, with the term “primary purpose”. He believes there will be a lot of questions on why the Executive Branch holds one set of standards and why the Legislature holds another. Mr. Cole stated that the answer would be because there is a specific statute for the Executive Branch and there is not one for the Legislative Branch. Mr. Cole further added that it is not easy to pass any legislation in regards to ethics. Having the issue brought out into the public eye may force the legislature to act. The decision today is going to create more interest, hopefully making legislators realize the legislature needs to get together and address the issue. The public is going to demand it. What’s consistent with the statute and what’s consistent with reality must be balanced. The difficulty with Alaska is that it’s very diverse. It’s not just the Republicans or Democrats, it involves urban and rural and incumbent and non-incumbent. It encompasses a lot of different interests competing, which makes this a challenge.

Rep Johnson stated if the motion is adopted, it would be much easier for Sen Coghill, Rep Gara and himself to clarify this in statute through legislation. This would be the opinion the committee would be operating under and this is the law as it stands now. He stated the statute could then be crafted to be consistent with the committee’s opinion and put one of the legislative committee member’s names on it. The statute would endorse what has been previously determined as unethical behavior by the committee.

The motion was brought before the members for a vote.

YEAS: Sen Stevens, Sen Coghill, Rep Johnson, Rep Gara, Toni Mallott. NAYS: Skip Cook, Gary Turner, Chair Thomas; motion passes.

## **7. FY2011 BUDGET BRIEFING:**

- a. Travel:** Ms. Anderson briefed the members that the Committee had requested an increase in travel due to the fact the travel budget has been consistently exceeded. The Committee also requested an upgrade in the Administrator position and an increase in time for the Secretary’s position. The travel budget received a decrease of \$2,500 for FY11, the Secretary’s position changed from 50% time to 60% time with benefits, and there was no change in the Administrator position. Members were referred to a handout reflecting travel expenses for legislators. Sen Stevens stated he approves travel for senators and travel expenses should be coming out of Senate funds and not Ethics Committee funds. Ms. Anderson stated she would notify LAA Accounting of this change.
- b. Ethics meeting with House Finance:** Vice Chair Turner provided an update to the members on his and Ms. Anderson’s meetings on February 16, 2010, with House

Finance committee members regarding the Ethics budget. Here is a recap: Speaker Chenault was noncommittal. Reps Dahlstrom and Kerttula both who were favorable for a budget increase. Rep Thomas thought the requests were somewhat reasonable but was not comfortable increasing the budget. Sen Stevens was in favor of the increase. Rep Hawker first wanted to know if we had submitted our budget to the governor and if he had accepted it. Ms. Anderson stated the ethics budget has never been presented to the governor in the past and she doesn't think the committee required to do so. They were unsuccessful in meeting with Rep Stoltze after numerous attempts. Rep Gara recommended going to both the governor and legislature for budget requests.

- c. **Annual Report:** Ms. Anderson proposed to the committee that an annual report be prepared to improve the visibility of Ethics Committee within the Legislature. Ms. Anderson did some research and found that other Ethics Committees have annual reports. The report would include statistics and goal planning. Ms. Anderson proposed that the report be submitted to legislators at the beginning of legislative session. Sen Coghill stated that when session starts he already has at least 50 annual reports to read through. Rep Gara cautioned against preparing a report. The most important items are already available, the rulings and the informal advice. He stated the time to prepare a report exceeds the need of additional work on the administrator's plate. Chair Thomas suggested Ms. Anderson draft a report and present it to the committee for input to see if it would be beneficial or not.

- 8. **LEGISLATIVE OVERSIGHT OF ETHICS COMMITTEE:** Vice Chair Turner stated he felt the Ethics Committee is becoming more politicized. The committee is experiencing budget decreases and intent language placed in the budget by the House Finance Subcommittee –Legislature, to name a few. He also noted there are no minutes or an audio recording of the finance meeting in which to review the actual comments by legislators. Also, at the February 16 meeting previously mentioned, it was evident that many legislators may have had issues with many of the Advisory Opinions the Committee has recently passed and informal advice given by the Administrator. As Member Cook mentioned earlier, the committee interprets what's in statute. Additionally, at his and Chair Thomas' confirmation hearings, they felt attacked by some House Judiciary committee members who questioned why the Committee would recommend legislative changes to statutes as well as suggesting that the Committee bend the rules as necessary to fit each fact specific situation. Vice Chair Turner also noted that the Administrator salary is not at the same salary level as her peers in similar positions and upon requesting a salary increase, it was declined again.

Based on the above reasons, Member Turner has come to the conclusion that the Committee should discuss the possibility of becoming a "Commission" like other states have done. This would mean becoming an independent state agency, much like APOC. Vice Chair Turner referred to the article in the packet where Kentucky legislators understood how difficult it could be to sit in judgment of colleagues on ethics issues, then walk out of the meeting and ask those same colleagues for support on a bill or amendment.

Vice Chair Turner, through the Chair, requested that Ms. Anderson present her research to the members. Ms. Anderson stated the difference between a Committee and a Commission is that a Committee is made up of legislators and public members and a Commission is made up of public members only. On the handout titled, "Research of Ethics Oversight Agencies", there are six states which have Legislative Ethics Committees and/or Commissions, eight states that have State Ethics Commissions, Executive and Legislative Branches under one body, and thirty three states are comprised of legislators, and the remaining three states differ from all of them.

*(INAUDIBLE – MINTUES REFLECT THE RECOLLECTIONS OF MS. ANDERSON REGARDING THIS QUESTION)* Sen Coghill asked Ms. Anderson if she attended any seminars at the COGEL (Council on Governmental Ethics Laws) conference in December 2009 or talked to other participants about this concept and also the subject of budget issues. Ms. Anderson responded she attended a seminar on the subject of budgets and stated other jurisdictions have had problems with their budgets when a controversial decision or decisions were made by the ethics body.

Rep Gara stated that he understood Vice Chair Turner's concern and has witnessed some of it too, where the conduct of legislators was inappropriate toward the public members of the ethics committee, but did not believe that changing the status of Committee was going to change this type of conduct. APOC is a Commission and they get just as much, if not more than the Ethics Committee. Their budget has gone up and down as well. In the end, the Legislature has to approve the budget anyway.

Vice Chair Turner indicated Member Walker was in favor of this idea as well. Vice Chair Turner had hoped this would be a way to gain a little more independence. Under a Commission, the decision on the Administrator's salary would not be influenced by a legislator who may have a difficulty with the Administrator of the Ethics Committee or the committee itself. Having worked in the University system, salary levels are determined through the HR system without political influence. Additionally, the treatment received at the confirmation hearings for public members was influenced by the decision rendered by the Ethics Committee, and not by their personal service or qualifications, which is the point of a confirmation hearing.

Members agreed to table the item for the next meeting where Member Walker would have an opportunity to participate in this discussion.

Rep Johnson did not feel changing the status of the committee would change anything. He did not believe Vice Chair Turner's example of the University system applied, due to the fact the University is part of a collective bargaining unit. Sen Coghill noted there's always room for improvement. He understood Vice Chair Turner's point, with regard to the Committee becoming politicized where this can be an advantage or disadvantage. Sen Coghill noted that he's been on a lot of boards in the past and witnessed decisions from political influence, and unfortunately, it is not an uncommon practice. Rep Johnson stated he sat through the board of Fish & Game confirmations and the political influence is very notable. He apologized if the confirmation hearing was more brutal

than it should have been. He personally appreciates the public members' service on the Ethics Committee and asked the members not to take it personally.

Ms. Anderson stated this has been a challenging year for the Ethics office. Ms. Anderson stated that APOC is now fully staffed after being understaffed for many years. They are now able to perform audits which they have not been staffed to do in the past. The same is true for the ethics office. Her position started out as 80% time and then increased to 90% and is now 100%. During that time period her workload increased. Even before the increase in time, the hours worked were close to 95% to 98%. The ethics office now has a permanent part-time staff person. Now that APOC and the Ethics office have more resources, both agencies are able to do more than just maintain the office. There is time to conduct research and be proactive instead of just reactive. For example, the office reviewed legislative candidate web sites to ensure "solicitations for contributions during a legislative session" were not listed on the web site. Quite a few legislators were notified and removed the prohibiting language. More oversight has been occurring this year than in the past and some of it has not been received very well. Ms. Anderson feels this is unfortunate. The ethics office, in being proactive, is trying to prevent a complaint from being filed against a legislator or a staff person for violating the ethics code.

Chair Thomas recognized and acknowledged testimonies before him today and recommended more follow up on this subject at the next meeting.

9. **OTHER BUSINESS:** Sen Stevens requested to speak on an issue that is not on the agenda. Chair Thomas allowed Sen Stevens to proceed. Sen Stevens stated that he feels sometimes the ethics committee/office goes beyond its responsibilities and look for things to get involved in that the committee should not. One of which has caused consternation among staff and members of the legislature is in regards to the legislature's Accomplishment Book. It is a booklet that the majority publishes every year at the end of every session. It contains detail about what transpired regarding fiscal matters and accomplished legislation. It is his understanding that Ethics staff has now stated the Accomplishment Book is a campaign issue and cannot be distributed two months before the election. He disagrees with this statement because the booklet has been published after session every year and he does not feel this is a campaign-related-item. He would like the Committee members to address this.

Chair Thomas did not know what advice was provided and asked Ms. Anderson if she could respond. Ms. Anderson stated she was aware that Accomplishment Booklets are printed every year and stated that perhaps the staff person she spoke with may have misunderstood the comments she provided. Ms. Anderson stated she had originally met with the staff person regarding another issue and then asked about the Accomplishment Booklet and how it was going to be distributed. The staff person replied that it had already been distributed by E-mail. Ms. Anderson stated she went on to explain an Ethics statute states such a booklet cannot be "mass mailed" during the 60 days before an election if the publication is "from a legislator or about a legislator." She proceeded to pointed out to Sen Stevens that she did not say the booklet could not be distributed.

Sen Stevens stated it may have been a misunderstanding but he was making it clear now that he will allow any Senator to hand out any of the booklets at any time up to the day of an election. He asked Ms. Anderson if she had any objection. Ms. Anderson replied by stating “no” to his question and explaining the statute talks about a “mass mailing” but it does not talk about handing out individual Booklets. Mass mailing means it would be mailed to a group of individuals. Sen Stevens reiterated that is not up to the Ethics office to decide whether or not a Senator can do a mass mailing of the booklet to everyone in their district at any time.

Ms. Anderson replied that she would have to research the statute further about the definition of a “mass mailing” and get back to Sen Stevens. She read AS 24.60.030(c) which states, **unless approved by the committee, during a campaign period for an election in which the legislator or legislative staff employee is a candidate, the legislator or legislative employee may not use or permit another to use state funds, other than funds to which the legislator is entitled to under 24.10.110 (which is a legislator’s personal allowance account) to print or distribute a mass mailing to individuals eligible to vote for the candidate. Campaign period begins 60 days for the date of an election.”**

Sen Stevens suggest there be a legal opinion and disagreed with the interpretation. He further stated the booklet was not a campaign item and that it contained the accomplishments of the legislature. Ms. Anderson stated the committee previously issued an advisory opinion on the subject and she would pull the opinion for reference. Sen Stevens stated he was not referring to any mass mailing other than how the Accomplishment Booklet could be distributed. He stated it should be up to the legislator to determine the distribution method and not Ethics. Chair Thomas recommended Sen Stevens request formal advice or a legal opinion. Sen Stevens stated he did not want a legal opinion and reiterated that he believed the Accomplishment Booklet could be published and distributed any way a legislator wanted.

Rep Gara requested a re-visit to an existing opinion regarding a link on a campaign web site that would take the viewer to a legislative website. He stated APOC had referred him to the Ethics office as they thought Ethics had a ruling on this topic. Ms. Anderson stated that APOC is the deciding authority on what can and cannot be on a Campaign website, not the Ethics Committee. She will forward a copy of her paperwork on this issue to Rep Gara.

**10. ADJOURN:** Member Turner made a motion to adjourn the meeting at 2:00 p.m