

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from October 28, 2013 FULL COMMITTEE MEETING Anchorage LIO, Conference Room 220

1. **CALL THE MEETING TO ORDER:** Committee Chair H. Conner Thomas called the meeting to order at 8:40 a.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Chris Tuck, Janie Leask, Dennis "Skip" Cook, and Gary Turner. Staff present: Joyce Anderson. Teleconference: Dan Wayne, LAA Legal and Rep Paul Seaton. Absent: Representative Charisse Millett, Senator Anna Fairclough, Herman G. Walker, Jr.

Public member Janie Leask was introduced to the committee by the Chair. Chair Thomas stated that Ms. Leask was initially an alternate member and recently became a regular member when Toni Mallott resigned from the committee. Ms. Leask stated that she was a life-long Alaskan, whose father was from Metlacatla, Alaska. She has lived in Anchorage since 1959, and worked for Alaska Federation of Natives for 15 years, serving seven of them as president. Her career continued with the National Bank of Alaska and Alyeska Pipeline Service Company, ultimately working for First Alaskans Institute, a statewide, non-profit dealing with Alaska native public policy issues and leadership development. She retired in 2010, and recently moved to Homer. Ms. Leask comes from a very competitive family and is still involved in sports and plays hockey. She strongly believes in public service and supporting those in public office.

2. **APPROVAL OF AGENDA:** Approved with no objections.
3. **APPROVAL OF MINUTES:**
  - a. **August 21, 2013 Full Committee** – Mr. Wayne referred members to page 7 of the minutes, and third paragraph down, stating that although he did not recollect exactly what he said at the meeting, he would like to make a motion to revise the first sentence. Chair Thomas asked Mr. Wayne to recommend a modification. Mr. Wayne suggested the following:

“Mr. Wayne commented that he thought that the statute was easier to interpret and less confusing because it doesn’t contain exceptions or limitations.”

Member Cook made a motion to approve the August 21, 2013, minutes as corrected. No objections. Motion passes.

- b. **August 21, 2013 House Subcommittee** – Representative Tuck motioned to approve. No objections. Motion passes.
- c. **March 12, 2013 Full Committee** – Member Turner motioned to approve. No objections. Motion passes.
- d. **March 26, 2013 Full Committee** - Member Cook motioned to approve. No objections. Motion passes.

4. **PUBLIC COMMENT:** None.

5. **CHAIR/STAFF REPORT:**

- a. Informal Advice Staff Report – Ms. Anderson referred members to the Log Totals report that was just handed out. She noted the report is emailed to committee members on a monthly basis and therefore is no longer being provided in the committee packets. Ms. Anderson stated that although she tends to receive more phone calls during an election year, she has received more than usually during this interim. The calls focus on campaign issues and redistricting; specifically, what is allowed and what is not allowed.
- b. 2013 Online Ethics Training – Ms. Anderson reported the training video became available on September 9, 2013. As of October 23, twenty- three people have taken the training online. The training video consists of four segments and is approximately 3 hours long. The first three segments are designed for employees who do not directly work for legislators. The fourth segment is specifically for staff who directly work for a legislator. The segment addresses newsletters, campaigning, constituent services, and a few other topics. Those who are not required to view Segment 4 have the option to view it or skip it.

Senator Gardner asked if it was still Ms. Anderson’s recommendation that legislators attend the “in-person” training versus taking the online training. Ms. Anderson replied yes. Senator Gardner asked if the online training was available to anybody. Ms. Anderson replied that anyone could view the video by logging on with his/her legislative user name and password, adding that perhaps she should mention that in the next newsletter. Ms. Anderson reported to the committee that a legislator terminated an employee for stating that s/he had completed training when s/he had not. The legislator discovered that the employee had not completed training when the Ethics office contacted the legislator to find out why the employee had not taken the training after two email notification from this office.

Member Cook asked if the Ethics office had an electronic record of those who complete training. Ms. Anderson answered yes. Ms. Anderson stated that the legislator who fired his/her employee suggested that legislators should receive notification of when their employee has completed training. Ms. Anderson stated if the committee agreed to the suggestion, she would work with Media Services in accomplishing it. Members agreed to the suggestion.

Representative Tuck asked if legislators of other states could view the online training. Ms. Anderson stated yes, and explained a "guest" sign in is available upon contacting the Ethics office.

- c. Ethics Disclosures – Ms. Anderson referred members to the handout reflecting the number of ethics disclosures and categories filed between January 1 and September 30, 2013. A total of 474 disclosures were filed with the majority being Gift of Travel and/or Hospitality disclosures.

Member Leask asked how the numbers compared to last year. Ms. Anderson replied that she would have to get back to Ms. Leask for an answer.

- d. Office Move – Ms. Anderson reported the Ethics office is scheduled to move to a temporary office on G Street on Monday and Tuesday next week. Ethics is not moving in with the other legislative offices and the LIO in the McKinley Building because Ethics needs a secure location. The office space is slightly larger than the current space; three rooms instead of two. Information Services is working on a computer hook ups and phone issues are being addressed. Phone calls will be set up to be forwarded to our new phones. Additionally everything in the Ethics office is being moved to G Street. Legislative offices will have items placed into storage since the temporary offices are very small. Adjustments will have to be made as the Ethics office will not have a mailroom or supply room. Extra office supplies will be brought over with the move. When the new building is finished, the Ethics office will move into the same location on the second floor. The Anchor Pub, next door to the current LIO, will also be a part of the new legislative building. A request for new furniture will be submitted. The temporary Ethics office will be set up with used, surplus furniture, as needed. Since there are two desks at the temporary location, we will be utilizing them and not taking our existing desks there. It is anticipated the new offices will have new furniture as well. Senator Gardner added that the furniture is not coming out of our budget because it belongs to the Legislature.

Member Leask asked where the November 21 House Subcommittee meeting will be held. Ms. Anderson stated she was unsure. It may be at the temporary LIO location or held in the front office of the temporary Ethics office location. Ms. Anderson additionally stated the meeting will

be in Executive Session and the teleconference aspect of gaveling in and then adjourning will need to be determined.

- e. Facebook Update – Ms. Anderson stated that Ethics does not have access to Facebook, which makes it difficult to answer questions from legislators. Legislative Council has a meeting scheduled on Wednesday, October 30, 2013, where it is expected the council will be making a final decision on who will or will not have Facebook access. Ms. Anderson stated she would be providing testimony and asked if any of the members wanted her to say something on behalf of the committee.

Senator Gardner commented that she did not see why all the fuss. She did not understand the reason for the hesitation of allowing the use of Facebook in the office; most of the offices have iPads. If you cannot get it on your computer, then you use your iPad. Statutes already exist regarding the use of state resources for campaigning, and legislators are responsible for ensuring that staff is making full use of their time.

Representative Tuck stated that upon hiring, employers are looking at Facebook in determining whether or not they want to hire the applicant. There have been some national labor relations decisions about Facebook as well as a Supreme Court case on First Amendment Rights addressing the use of Facebook in this regard. Employers are using it to determine people's employability. However, this practice has been shot down and an employer can no longer use Facebook for this purpose. Rep Tuck said he was aware of one Legislative department that wanted to be able to utilize Facebook for employment opportunities. Ms. Anderson interjected that it was the Ombudsman's office. Rep Tuck also stated that some legislators had expressed concern about people accessing their personal FB pages and wasting time. Rep Tuck agreed with Sen Gardner in that legislators are responsible for the productivity of their staff; whether it's on their cell phone or using the state phone for personal calls. He agreed that it was important for the Ethics office to have FB access for purposes of monitoring and for keeping informed of what's going on. Rep Tuck stated that although he was not very active on his FB page, he was surprised of how many people contacted him through it, which has increased his activity responding to messages. If not for this reason, the Ethics Committee should have access to it. People are using it more and more; it's easier to locate an email address and use FB to send someone an email from that resource.

Ms. Anderson stated that it was her understanding that a person could have a Facebook account without having a Facebook page and asked members if this was correct. Member Janie Leask replied that she has been using Facebook for several years and that in order for people to access your page, you would have to accept their invitation to allow them this access. Member Leask agreed that it would be beneficial for the committee to have FB access.

Chair Thomas stated it appears there is no opposition to Ms. Anderson taking a position at Legislative Council's meeting and stating the Ethics Office would like to have an account.

6. **BUDGET - FY 14 Update:** Chair Thomas stated that budget totals were included in the packet and referred members to Ms. Anderson if there were any questions.
7. **Revisit ADVISORY OPINION 12-04, Use of State Resources – Campaigning: Limiting the use of links to an Internet website created or maintained with legislative resources -** Chair Thomas invited Representative Seaton (via teleconference) to re-state his position and asked if he was asking the committee to revise the opinion or to clarify it.

Representative Seaton referred members to the first page in the packet, (AO 84-04 (An excerpt from the opinion--related to the binding interpretation of an opinion), paragraph 4: "Frequently the letter of the law will remain static, while the social circumstances which existed at the time the opinion was enacted have changed"). He stated that he felt this statement applied to today's opinion with regard to links provided on a web page. He explained that during campaigning, when discussing a bill with someone, providing the bill itself is difficult for most people, as they are often lengthy and complicated. The sponsor's statement of that bill is often referenced instead as it lays out the parameters of the bill and offers information in an easy and understandable format. The sponsor statement is located on the House Majority and House Minority web page. The statements are not maintained in BASIS. Representative Seaton continued to restate his testimony that he provided at the Ethics Committee meeting that was held on February 26, 2013. (See documents in today's packet of testimony from minutes and prior documentation provided by Rep Seaton.) Representative Seaton stated that providing a link to the House/Senate websites on campaign materials should not be prohibited, as it would allow constituents easy access to information, especially if providing the link verbally is already allowed while a legislator is campaigning. He additionally noted the fact of who managed which web pages, which changes from a political website to a non-political website, and vice versa; either the Legislative Affairs Agency or the house/senate majority/minority.

Chair Thomas asked Rep Seaton if providing a link to BASIS on his campaign page would be sufficient. Representative Seaton stated that a link to BASIS is not direct enough as it still requires constituents to search through several clicks to get to the exact site. He would like a direct link to the sponsor statement.

Chair Thomas commented that the issue at hand is less about who manages or maintains the sites than including legislative contact information in a political setting or on material. Senator Gardner agreed with Chair Thomas' comment. The fact of the matter before them today was not about the quickest, easiest way to provide information while campaigning; rather, it is about assessing the fairness for a challenger who does not have access to what the serving legislator

has access. Senator Gardner suggested copying the sponsor's statement page, cleansing it from all legislative contact information and posting it directly on the campaign website. Senator Gardner stated this is what she has done in the past and used it for campaign letterhead and carried it with her when campaign door knocking. Senator Gardner pointed out that challengers do not have access to the caucus websites, which are often partisan. They are still a state resource that you would be directing constituents to during your campaigning. Senator Gardner stated she is in favor of maintaining the existing opinion.

Ms. Anderson suggested that the committee clarify what they have said in the opinion. She referred members to the top of page 2 of the opinion, that says, "If, as part of a political election campaign communication, a serving legislator's political campaign were to publish an address or electronic link to an Internet website created or maintained with legislative resources, and that Internet website displayed contact information for the legislator's legislative office, then for the purposes of the Legislative Ethics Act it would be as if the campaign had listed the legislative contact information on a campaign advertising flyer."

Ms. Anderson stated that when she reads this sentence, she sees two parts. It's saying that there has to be displayed legislative contact information and that if a legislator's going to provide a link to BASIS, or provide a link to the Majority and Minority web pages, that is *not* a direct link to legislative contact information. Perhaps this sentence needs to be clarified in the opinion, not necessarily changed.

Chair Thomas invited Dan Wayne to the discussion. Mr. Wayne addressed the Chair and committee stating that the paragraph Ms. Anderson referenced appears to be specifically talking about contact information, and the listing of contact information on a campaign-advertising flyer as was discussed in AO 07-07. He stated the paragraph does not actually say whether or not linking to some other kind of website that lists, for example, caucus information, is prohibited under the reasoning in AO 07-07. The opinion is making a point about contact information. Elsewhere the opinion discusses what would be applicable to the Majority and Minority websites. He suggested that if the committee wanted a specific exception for the Majority and Minority website, just add that to the opinion.

Chair Thomas asked if the Majority/Minority websites already contained legislators' contact information. Members answered yes, and Ms. Anderson stated that there is a link that will eventually lead the person to each legislator's web page with their contact information. However, the person has to navigate through it to find the information. It may take two or three clicks.

Senator Gardner stated the bottom line during a campaign is that a challenger does not have the benefit of a state paid place that has all of the opponents' legislative work summarized or accessible. What the committee is trying to do today in part is have a "firewall" to make sure the benefits or advantages an incumbent has don't make it unfair to the challenger.

Member Cook felt strongly on the fairness to the challenger. However, is it also unfair for a legislator who has been serving for many years to be prohibited from talking about his/her career on his/her campaign materials. Yet, the challenger who had an illustrious career is able to talk at length about career highlights.

In response to Member Cook's comment, Sen Gardner indicated an incumbent could talk about career highlights by taking the work and cleansing it of legislative contact information and putting it on the campaign website. It may be an extra step for the legislator, but that's what campaigning is all about.

No motion was made to change the Advisory Opinion. The committee proceeded with Item #8.

8. **ADVISORY OPINION 13-04, Use of State Resources – Does the Act and AO 12-02 allow for an exception to conduct fundraising activities for foster youth, wards of the State? Requested by Representative Les Gara**  
Representative Gara distributed a handout noting AS 47.10.080(f), A child found to be a child in need of aid is a ward of the state.

Chair Thomas invited Representative Gara to the floor. Representative Gara began by thanking Ms. Anderson for working with him. He stated he was about 80% of where he wanted to be on his effort in getting laptops to foster children. Representative Gara stated that presently he is allowed to solicit used laptops for a non-profit and money for laptops to be purchased by a non-profit. His office stores them and then transports them to Facing Foster Care in Alaska (FFCA), a non-profit. Their office is located in an OCS location and is run by one part time person who works full time at the University. Volunteers in the community fix the computers, get them in working condition, and cleanse them of whatever is on them. The Alaska Office of Children's Services matches the laptops with the foster youths. Representative Gara stated he would like his office to transport the non-working computers to the volunteers or computer shop where the computers are repaired; an activity which is presently prohibited under AO 12-02. He stated that he believes according to AO 12-02, this service does not have a legislative purpose. A legislative office is allowed to do certain things for non-profits, such as receive items for non-profits or solicit for non-profits.

AS 47.10.080 states that foster youth are wards of the state and are people to which the state has an obligation. He believes that helping foster youth by obtaining laptops for them has a legislative purpose. Advisory Opinion 12-02 is based on the premise that helping foster youth does not have a legislative purpose. Rep Gara provided the committee with foster care statistics and challenges that foster youth face. He asked members to consider AS 47.10.080 and realize that helping foster youth has a legislative purpose.

Rep Gara stated that this request to allow his office to perform this service will require more time than "de minimis" time, which is currently stipulated in AO 12-02. Rep Gara indicated he would not send his staff to transport the computers if they have other legislative work to perform. In the summer, work is lighter which

would allow staff time to perform this service, unlike the winter when they are in Juneau.

Senator Gardner asked Rep Gara if foster youth who age out of the system and transition into independent living are still technically wards of the state. She also asked if it makes a difference if the non-profit was a "registered" non-profit or not. Rep Gara responded that youth under 21 who are still in foster care are considered wards of the state. Foster youth in the independent program can lose the state's funding or they can continue to receive the state's support up to age 23. In response to Sen Gardner's second question, Rep Gara stated he believed if FFCA was not registered as a non-profit they would still be able to help foster youth but he didn't know the answer for certain.

Rep Tuck stated because foster youth are wards of the state, helping them has a legislative purpose and FFCA is assisting the legislature in doing that, rather than the legislature assisting FFCA in performing activities. He further explained that this was something we would like to see happen for our foster youth. He stated FFCA is not the one who is benefiting, rather we are the ones benefiting and they are assisting us. Rep Tuck posed the question that if FFCA didn't exist, wouldn't we still have a computer/laptop program duty to get laptops to OCS and get them repaired? FFCA is taking on the duty and fixing the computers for us and assisting us.

Member Leask thanked Rep Tuck for stating his view because she was struggling with the fact the State of Alaska has the responsibility to foster care youth. She posed the question; what is that level for the State of Alaska versus a legislator? She agreed with what Rep Gara was doing but asked if it was permitted or are we taking that leap to where any legislator that wanted to could take on such a project. Is there a delineation to where you have the State of Alaska OCS but now going to a different level? Is that ok? Are we going to the level of an individual legislator versus the State of Alaska?

Chair Conner stated Member Leask had a legitimate question and if the members go down that road, they may want to request a legal opinion before moving forward.

Member Cook stated that although he is in favor of helping foster kids, the question here is: Does a legislator, just because s/he can say something has a legislative purpose, have the right to go out and organize a campaign to promote that legislative purpose? The committee issued AO 12-02 because a legislator determined education had a legislative purpose and therefore was allowed to solicit monetary donations to advance that cause. No one can argue that this activity doesn't have a legislative purpose; but does that mean that a legislator is allowed to use their office, state resources, and staff to organize and support a particular non-profit to do that? Foster children are wards of the state, but the purpose of the legislature is make laws that benefit the citizens of the state, including foster youth and to appropriate funds to enhance those goals. The legislature has undertaken this goals via means of a budget for OCS. Why isn't OCS



providing laptops? The Executive Branch is responsible for implementing laws that the legislature passes. It's up to them to take care of foster youth, wards of the state. That's not to say individual legislators cannot support foster youth, or a particular project for foster youth, or be a part of a non-profit organization supporting foster youth on their own time. However, if these activities are permitted in legislative offices with the use of state resources, we are using unappropriated resources instead of appropriating funds to get it done. It's not to say that the cause is not for a good purpose. It's also not to say that the state isn't responsible.

Chair Thomas asked members if there were any other questions for Rep Gara. Seeing none, he invited Dan Wayne to explain the draft opinion and provide any additional input he may have.

Mr. Wayne stated he wrote AO 13-04 so that it could be applied in a general way that would be useful as a guideline for legislators who are connected with any charity. He pointed out that in AS 24.60.030(a)(2) there are three prohibitions with two that were most applicable. The AO does not focus on the terms "legislative purpose" or "non-legislative purpose." Neither are defined in the Legislative Ethics Act. Rather, he focused on use of government assets or resources for the private benefit of a person. If AO 13-04 were adopted as written, the AO wouldn't prohibit a legislator or legislative employee from volunteering their own time to do any amount of work they wanted for a charity. However, when it comes to using legislative resources and assets, including the time of legislative staff, the limited use exception would apply. The committee would determine whether or not an activity was allowable within that limited use exception on a case-by-case basis which leaves the limited use exception open ended. Footnote 6 has examples of past opinions where the committee has tried to say what is permitted or prohibited within that limited use exception. (AO 04-01, AO 06-01, and AO 13-03.)

Mr. Wayne stated the term "person" is not defined in the Ethics Act but is defined in Title 1 under general definitions. General definitions apply to all statutes unless there is a particular definition within that statute. In 01.10.060(a)(8), "person" also includes corporations which could relate to a charity.

As far as the question about wards of the state and therefore activity related to wards of the state having a legislative purpose, the prohibition does not apply at all because it's legislative work. Mr. Wayne stated that may be a policy call. He posed the question -- are there other constituencies that would also be considered wards of the state. He referenced prisoners. There are state laws that require the state to provide health care to people in prison. He didn't know if they were categorized as "wards of the state or not," but they're treated as wards of the state when they are in prison. What about a charity providing aid to prisoners. Would the activity be considered a legislative purpose which would allow the expenditure of legislative resources to help the charity from a legislative office. He stated he did not want to diminish the situation that foster kids are in, but the example might not be the only constituency that legislators feel is kind of in the same way—a special relationship with the state.

Rep Tuck asked Mr. Wayne with regards to the definition of a person and what is written on page 5 in the conclusion at the end of the paragraph, is the "person" to which he refers the foster child or FFCA? Mr. Wayne stated he was referring to the charity because under the facts, that's who's receiving the benefit. Obviously, the charity passes the benefit on. However, they're the direct beneficiary of the assistance that they would be getting.

Rep Tuck suggested the opinion be divided between monetary donations and laptop donations. It was his understanding that with monetary donations the charity receives the benefit; but as far as receiving the laptop, it seems logical that the charity is receiving an obligation. They're doing the additional work and then passing that laptop onto foster youth. The charity doesn't keep that asset. It is not theirs to keep.

Sen Giessel commented on Rep Tuck's suggestion in that they weren't talking about laptops. The fundamental question here is the state resource in the form of legislative staff time. Staff is paid wages and it's public money. That's really the issue. It's not whether staff is helping provide laptops, coats, or health care.

Rep Tuck stated that it was brought up earlier that there were two types of purposes of the Legislature. Legislators also have constituent work aside both of those purposes. He stated when someone contacts his office in need of assistance, from pot holes to navigating through our healthcare system, we're there to assist and aid and help out. We use staff time to assist the person. He believes the same scenario applies to foster youth and laptop computers and falls under his constituent duties. He referenced Mr. Wayne's statement about prisoners being wards of the state as it is something to be looked at when talking about our ability to assist constituents. He stated a constituent has to be a direct constituent. He stated that he felt that legislators have the obligation to the constituencies of the prisons as well as the constituencies of the foster care. A lot of the legislator's legislative duties and staff duties fall under constituent work.

Ms. Leask testified that she was having trouble determining whether or not an individual legislator is considered the "state of Alaska," and would like this clarified. Ms. Leask agreed that the state has a responsibility to the wards of the state and we give resources to them, but where does it say that the state of Alaska is an individual legislator? Ms. Leask stated that if she could get past that hurdle, and know for a fact that legislators have that authority, then the rest of it falls into place and makes sense.

Chair Thomas responded to Ms. Leask's concern. He stated that it's been the position of the committee that an individual legislator is not a representative of the entire state for this type of purpose. Although the committee has never asked for a legal opinion, this is something that the committee could consider.

Ms. Leask asked the committee what is the next step in this discussion. Would bypassing that hurdle come first and then the question of laptops and to what

degree legislative staff and state resources could be utilized? Chair Thomas replied the committee would have to look at that issue first if the committee was going to consider what Rep Gara is asking. If the committee adopted the opinion, then the committee would not.

Member Cook stated the committee has long recognized that legislators are involved in constituent activities and the committee has addressed this subject many times. In the past, the committee has placed limits, such as what a staff to a legislator can do. He further stated there are limitations when the matter has progressed to a certain stage such as the hearing stage. The legislator can offer assistance but with limitations. If someone approached a legislator and asked what the process is to become a foster parent, the legislator may help by directing the constituent in the right direction and help the constituent through the bureaucracy to get to the right place; but for the legislator to take on a cause, the committee has had to enforce existing statute limitations.

Rep Tuck stated in response to Ms. Leask's question on whether or not legislators are considered the state, stating that yes, legislators are the state but government is divided up into judicial, executive, and legislative. The question becomes whose responsibility is it of those three branches to be able to perform this type of work? If it's mainly the responsibility of the executive branch, does that exclude any opportunities to get involved by the legislative branch or the judicial branch?

Chair Thomas asked the committee for a motion to either approve the opinion or present a request to Mr. Wayne to address the issue on whether or not this activity has a legislative purpose and therefore not subject to the various, existing restrictions outlined in the opinion.

Rep Gara requested to respond to some of the questions raised by the committee. First, he addressed when is a legislator a representative of the state. Rep Gara explained that there are two roles of a legislator; one being that we promote existing state policy. In this situation, we are working with a state agency that does not have the state resources to give laptops to foster youth. He stated he believed that it was a policy in favor of the state to promote laptops for foster youth. Therefore, he considered the activity to have a legislative purpose. Second, in response to the analogy of prisoners being wards of the state, he stated that we are not guardians of prisons; however, we are legal guardians of foster youth. The executive branch has set this policy, and the legislative branch is allowed to promote it. Another example of promoting a policy of the executive branch is promoting the recruitment of foster care parents. Rep Gara stated that as a legislator, he will be speaking at churches in attempt to recruit foster parents.

Chair Thomas asked Rep Gara if it was his stance that because foster youth are wards of the state, that there should be no limitations in the effort to obtain laptops for them. Rep Gara replied yes. To further back up his statement he pointed out that the state has a policy regarding the matching of laptops with foster youth.

Member Turner (INAUDIBLE) asked how many hours staff would be using to collect the computers, transport them to a repair shop for cleansing, and get them to FFCA? Rep Gara stated again that he would not allow his staff to perform these duties if they had other legislative work to do. He estimated the amount of time staff needed would be approximately two hours a month. Member Turner believed that amount of time would be considered de minimis. Rep Gara stated the de minimis term was very difficult for legislators to understand. If two hours a month were to be made a guideline, then that would work. Member Turner stated that determining a specific time limit for various issues/activities in the past has been a challenging task. Because of the difficulty, the committee has steered away adding percentages and various amounts of time to opinions.

Sen Giessel commented that with regard to some of the global issues that have been brought up in this discussion, legislators were elected for finite areas of our state. Legislators do not represent the state of Alaska unless they are convened. As an example, Sen Giessel mentioned the board of directors of an organization. Individual board members do not represent the board. The board exists only when convened. Additionally, legislators may support any initiative, but to assign staff to promote certain things is not appropriate. Legislators may designate their time because they are salaried. She commented that if she wanted to provide support on homelessness, for example, she would ask her staff if they would like to volunteer time on it, but not during work hours, or paid staff time. Sen Giessel posed the question, what if a staffer was picking up a laptop during regular work hours and was involved in an automobile accident. Who is liable? If they were performing this task during staff time, the state would be considered liable. Sen Giessel commented that this cause should be promoted to the public who have an interest in foster care as well. They are the ones who should be volunteering their time, not legislators, but citizens.

Rep Tuck asked the committee if the legislature has the right to assist the executive branch. If yes, then do they have the ability to utilize staff? Rep Tuck shared a scenario of a recent case on education which was heard in Superior Court. The question was whether or not the state was providing adequate education to rural Alaskans equivalent to urban Alaskans. In the Superior Court decision, it was determined that the executive branch was not responsible for that education; monetary was not the only purpose of providing education; programs are also required. That responsibility landed with the legislature. In the case of today's scenario, who is the defendant? Is it the Department of Education, the Department of Law, or the Legislature's legal department?

Ms. Leask restated her question from her earlier testimony, which was, if it was the Legislature's responsibility, then when does it actually become the responsibility of an individual legislator, if at all.

Member Turner motioned to approve the Advisory Opinion 13-04 as drafted.

A roll call vote was taken: YEAS: Member Cook, Sen Gardner, Sen Giessel, Member Leask, Rep Tuck, Member Turner, Chair Thomas. NAYS: None. ABSENT: Member Walker, Rep Millett. Motion passed.

Members took 10 minute break  
Meeting reconvened at 10:45 a.m.

**9. RULES OF PROCEDURE – Suggested revisions and updates**

**a. SECTION 2 Administrative Policies**

Ms. Anderson stated that the first proposed change was changing the term “Ethics Code” to “Ethics Act” throughout the Rules of Procedure. AS 24.60 is officially called the Ethics Act via statutory language.

Ms. Anderson proceeded to read aloud the proposed changes. The committee changed the second sentence of Subsection (g)(2) on Page 2 of 14, from: The committee will review proposals at a committee meeting held during the last quarter of the calendar year. The committee may meet at other times as necessary. To: The committee will review the proposals at least on an annual basis. (Deleting the third sentence completely.)

Chair Thomas asked Ms. Anderson to explain the benefit and loans program process to committee members before reading aloud the proposed changes.

Ms. Anderson explained state statute requires that individuals who participate in certain state benefit and loan programs disclose participation because there are no fixed eligibility requirements. They are awarded on a discretionary basis; and because they are awarded on a discretionary basis, the intent of the statute is to prevent any undue influence by the legislature in granting that particular benefit or loan. Therefore, it is disclosed and the committee reviews the benefit and loan programs each year for changes or additions or if they are deleted or moved to another department. Occasionally, a program might be added. The committee reviews major changes such as additions or deletions to the list.

Member Cook motioned to approve and adopt the revisions under SECTION 2. No objection. Motion passed.

**b. SECTION 5 Executive Sessions**

Ms. Anderson stated this section was a major re-write as it has been confusing and need additional clarification.

Member Turner asked to add to Subsection (c)(2), “upon questioning being completed with that individual that they be asked to depart the session.” Ms. Anderson replied to Member Turner’s suggestion that it was removed but could be added back in under Subsection (b).

Senator Gardner suggested the following language from Subsection (c): “No one other than the Committee’s legal advisor and ethics staff will be allowed in the

executive session for deliberations and voting on the opinion.” Members concurred with reinserting the proposed language.

Member Leask referred members to Subsection (5), and asked if the requester of a confidential advisory opinion can be someone other than a legislator, legislative employee, etc., for example, a spouse or domestic partner of a legislator, who is also covered by the Legislative Ethics Act. Ms. Anderson stated that if a spouse of a legislator wanted to request an advisory opinion, the legislator would be the actual requester.

Senator Gardner motioned to approve and adopt the revisions under SECTION 5. No objections. Motion passed.

c. SECTION 6 Teleconference

Ms. Anderson explained this section contained outdated language that no longer applied such as portable, cellular, and party line.

Member Turner asked the members if under Subsection (c)(4), that 20 days after receiving the decision was the postmark date that it was mailed and if the committee members think it should be more specific. Ms. Anderson recommended that Member Turner’s suggestion be noted in the complaint section versus the teleconference section.

Member Cook suggested a technical correction to Subsection (b). The entire sentence when read through is not a complete sentence. He suggested adding the word “During” in front of the word Discussion; the sentence would begin with the word “During” instead of Discussion.

Member Leask motioned to approve and adopt the revisions for SECTION 6. No objections. Motion passed.

d. SECTION 10 Advisory Opinions

Ms. Anderson pointed out the changes and additions to this section. Additionally, in the first sentence of Subsection (b)(1), the word “both” should be removed.

Member Leask motioned to approve and adopt the revisions under SECTION 10. No objections. Motion passed.

e. SECTION 11 Disclosures

Ms. Anderson pointed out the changes and additions. Member Turner suggested that under Subsection (a), the second sentence should also say that the committee will accept electronic or digital signature.

Members decided to insert “electronic forms” and “electronic signatures” and remove the words “faxed forms” and “faxed signatures”.

Member Cook motioned to approve and adopt the revisions under SECTION 11. No objections. Motion passed.

f. SECTION 13 Potential Complaints

Ms. Anderson pointed out that all of Subsection (a) was one paragraph, as was all of Subsections (b) and (c). She subdivided them for ease in reading and understanding.

Member Turner motioned to approve and adopt the revisions under SECTION 13. No objections. Motion passed.

g. SECTION 14 Complaints

There were no changes. Members proceeded to the next Section.

h. SECTION 17 Complaints - Decisions

Ms. Anderson stated the recommendation made by Member Turner earlier does not apply to this section as she had previously indicated. She stated she would like to follow up with Member Turner's recommendation and address it at the next meeting. The issue to which he was referencing addressed what is considered "receipt" of the complaint decision. Ms. Anderson explained that sometimes it is difficult reaching someone, or not having confirmation that someone has received it for a variety of reasons or circumstances.

On page 14 of 14, Ms. Anderson stated that Subsection (g) of SECTION 17 was added and divided into three major areas. Ms. Anderson point out that (g)(1) states that the committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency (or APOC if it a campaign activity.) Ms. Anderson pointed out that if the complaint involved five separate allegations and only one of them is related to APOC or addresses an activity that is possibly criminal in nature, the agency would only receive the appropriate material. The material may be redacted if necessary to remove other non-applicable information.

Rep Tuck motioned to approve and adopt the revisions under SECTION 17. No objections. Motion passed.

Ms. Anderson commented that September of 2011 was the last time the Rules of Procedures were revised. Member Turner asked the members if the members think they should add how often the Rules of Procedures should be reviewed, for example, every two years, and insert that into them. Members agreed that they would bring the matter up again at the next committee meeting along with the other item Member Turner discussed regarding receipt of a complaint decision.

10. **OTHER BUSINESS:** Ms. Anderson stated the COGEL (Council on Governmental Ethics Laws) Conference is in Quebec this year. Funds are available in the Ethics budget for members to attend, if anyone is interested.
11. **ADJOURN:** Senator Giessel motioned to adjourn the meeting at 11:20 am. No objection.

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from January 23, 2014 FULL COMMITTEE MEETING Thomas Stewart Building Beltz Room #105

1. **CALL THE MEETING TO ORDER:** Committee Chair H. Conner Thomas called the meeting to order at 9:05 a.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Chris Tuck, Rep Craig Johnson (9:30 a.m.) Janie Leask, Herman G. Walker, Jr., Dennis "Skip" Cook, and Gary Turner; Staff present: Joyce Anderson; Others present: Dan Wayne, LAA Legal; Teleconference: Doug Gardner, LAA Legal, Sana Efird, DHSS, Jared Kosin, DHSS; Absent: Representative Charisse Millett

Chair Thomas welcomed Member Janie Leask who was appointed from alternate member to regular member as of September 19, 2013, replacing Former Member Toni Mallott following her resignation.

Chair Thomas welcomed new, alternate member from Ketchikan, Christena "Tena" Williams, who was appointed to serve on January 13, 2014.

Chair Thomas thanked the members for serving and Ethics staff Linda Leigh for organizing the meeting.

Chair Thomas stated that this was his last meeting chairing for the committee, and that Member Gary Turner will chair the next committee meeting.

Representative Tuck joins the meeting.

2. **APPROVAL OF AGENDA:** Motion to approve was made by Member Leask. There were no objections.



**3. APPROVAL OF MINUTES:**

- a. **October 28, 2013 Full Committee** – Chair Thomas stated that these minutes were incomplete and not in today's packet. They will be carried forward for approval at the next committee meeting.
- b. **October 28, 2013 Senate Subcommittee** – Senator Gardner motioned to approve the minutes. There were no objections. Motion passes.
- c. **November 21, 2013 House Subcommittee** – Member Turner motioned to approve the minutes. There were no objections. Motion passes.
- d. **November 21, 2013 Senate Subcommittee** – Senator Giessel motioned to approve the minutes. There were no objections. Motion passes.

**4. PUBLIC COMMENT:** None.

**5. CHAIR/STAFF REPORT:**

- a. Informal Advice Staff Report – Ms. Anderson informed the members that the reports were incomplete and being worked. It's been extremely busy at the Ethics office due to the move out of our old office and into the temporary office, as well as preparing for committee meetings that were held in October and November.
- b. Update: Public Member Committee Appointments – Ms. Anderson updated the members on Member Leask's appointment to the committee as a regular member. She also stated that Ms. Leask's and Ms. Williams' names have been referred to the Senate and House Judiciary committees for confirmation hearings.
- c. 2014 Ethics Training Update - Ms. Anderson stated that she conducted training last Friday for new and returning staff. It was a long class and interesting, good questions were asked. Additionally, Representative Guttenberg attended the class as he was unable to attend last January due to his wife's health situation. The online training video is also available for those who are unable to make the in-person training session. It has been up since May.
- d. Ethics Disclosures – Ms. Anderson referred members to the handout reflecting the number of ethics disclosures filed between January 1 and December 31, 2013, and the categories of disclosures that are being filed. There were 605 disclosures filed, most of them being Gift of Travel and/or Hospitality disclosures.
- e. COGEL Conference – Ms. Anderson reported that she attended the Council on Governmental Ethics Laws (COGEL) conference in Quebec, Canada, this year. Dan Wayne, LAA Legal, and Joan Mize, APOC's administrator in Juneau also attended. The conference covered elections, campaigning, financial disclosures, and ethics. One of the segments covered investigations and what you need to look for. They also gave helpful hints on how to conduct investigations, which sometimes the Ethics and APOC offices do. Another segment was called "Gobbledy

Gook” which provided examples on how to make your information clear and not use a lot of legal ease. They also provided resourceful websites.

f. Publications

- i. Advisory Opinions and Public Decisions – the Ethics office is in the process of updating these, hopefully by the end of this month.
- ii. 2014 Standards of Conduct Handbook – distributed to all legislators, legislative staff and legislative agencies.

**6. ANNUAL BENEFIT AND LOAN REVIEW AND DISCUSSION:** Chair Thomas stated that there were changes to the list of state programs and state loans, which needed to be reviewed and approved by the committee. Chair Thomas invited Ms. Anderson to provide details to the committee.

Ms. Anderson provided background stating that each year, the Ethics office sends out letters to a list of state offices who have reportable state benefit or loan programs. The departments are asked to provide updates if there are any. Major updates are presented to the committee for review and approval. Once approved, the list is updated and inserted in the Ethics handbook. Participating in certain state benefit and loan programs, requires disclosure. The reason these state benefit and loans need to be disclosed is because they are awarded on a discretionary basis; there is no fixed criteria.

This year, there were four changes to the list of benefit & loan programs. The Department of Commerce, Community, and Economic Development added a new loan program under AIDEA (Alaska Industrial Development and Export Authority & Alaska Energy Authority), called the “Development Finance Program”. DCCED has indicated on the form that this program does not meet the requirements of having “fixed, objective eligibility standards.”

Senator Giessel motioned that the “Development Finance Program” under the DCCED under the AIDEA be added to the list of Alaska State Benefit and Loan Programs. There were no objections. Motion passed.

Ms. Anderson stated that DHSS (Department of Health and Social Services) removed the “Construction License” program as it no longer exists. A motion to remove this item from the Alaska State Benefit and Loan Program was made. There were no objections. Motion passed.

Ms. Anderson stated that DHSS also recommends deleting the “Health Facilities Operating License” and “Certificate of Need” program. Ms. Anderson stated that Assistant Commissioner Sana Efird was on teleconference calling in from Anchorage, as well as Jared Kosin, who is with DHSS, calling in from Juneau.

Ms. Efird introduced herself to the committee, stating that she was new to the position and as someone reviewing these programs with new and fresh eyes, she reviewed that programs to see if both programs did not meet one or more of the standards as outlined, and determined that both the “Certificate of Need” and

"Health Facilities Licensing and Certification" programs do meet the standards under AS 24.60.050, therefore should be removed from the list. The licensing and certification is strictly administered through regulation and regulatory requirement; it is created by the Social Security Act, Section 1864, so there is no discretion. There are specific regulations and guidelines that must be met by health care facilities that are reviewed. This is for their Medicaid and Medicare regulatory and state licensing requirement.

Representative Tuck asked why the programs were listed from the start.

Ms. Efird and Ms. Anderson both responded that they had this discussion and neither she nor Ms. Anderson had reasons why the programs were placed on this list. Ms. Efird stated that she did not have background information that made this determination.

Ms. Anderson stated that she did not have any specific information on any of the individual programs that were selected on this list other than a box that was checked yes or no beside the individual programs for inclusion. Ms. Anderson stated that it was a very intensive study at the time, from what she gathered, but again, did not have any documentation on the determination.

Representative Tuck commented that if it was an intensive study, he was certain that each individual programs was reviewed; he stated that he thought it was odd that if the programs are regulatory, there must have been some reasoning for someone receiving a certificate of need for purposes of disclosure, as well as the licensing and certification.

Ms. Anderson stated that these programs have been around since 1992. Since that time, programs have been deleted periodically from the list.

Senator Giessel commented on the forms dated 1995, that the Facilities Manager for the facility and licensing judged that there was minimal discretion in determining qualification and that it was generally available to members of the public, which meant that the program qualified. Chair and members concurred with Sen Giessel's statement.

Senator Giessel also noted that in the 1995, the manager of the "Certificate of Need" also qualified as it was subject to fixed, objective eligibility standards. Senator Giessel asked Ms. Anderson if it conflicted. Ms. Anderson explained that those are the two standards that the program "does not meet." Senator Giessel commented that it was stated in the negative and that it appears to be the judgment of a person back in 1995. She also commented that clearly regulations are promulgated probably yearly on a subject such as this, so with fresh eyes, as Ms. Efird stated, changes the interpretation.

Chair Thomas asked Ms. Efird if it was her position that with the health facilities operating license that is generally available to the public.

Ms. Efird replied that it is generally available to members of the public, it is subject to very fixed, objective eligibility standards, and there basically is no discretion in determining the qualification because it is all laid out in regulatory requirements.

Chair Thomas stated that if an individual or entity meets the requirements, they're going to get the operating license. Ms. Efird replied yes.

Representative Tuck asked Ms. Efird if these were new regulations to which they were referring, and if yes, asked how recent they were. Ms. Efird stated that she did not know if these were new regulations or exactly when new regulations were enacted, but that she would be able to find out.

Representative Tuck stated that the reason he is asking is because they have documentation that says at one time, these programs were meeting the criteria for why they needed to be disclosed. If the regulations haven't changed since these programs were added, he has reservations for removing them since there were people prior to Ms. Efird who felt these programs needed to be disclosed.

Senator Giessel stated that she was personally familiar with the "certificate of need" in that there were some negotiated rule making approximately 5 years ago, which is more recent than when the persons judged these programs were discretionary. Sen Giessel also stated that these are very tight requirements to receive the operating license or certificate of need. She applauded the Deputy Commissioner's scrutiny on this.

Member Turner noted that he, too, wondered if it was a misinterpretation of the person who signed off on it. It's possible that the person did not understand it as it is very confusing because it is stated in the negative.

Representative Tuck reiterated his reservations, due to the fact that originally it was heavily discussed and determined to add it to the list.

Ms. Anderson stated that there were hundreds of programs that received these forms from the Ethics office. Ms. Anderson stated that she did not mean to imply that these particular programs were hotly debated or discussed; rather the process was humongous and time consuming.

Representative Tuck asked the committee if they were making their decision based on the fact that due diligence may have not been done originally, and that regulations may have changed, but we don't know when if so, and that people before us may have misinterpreted the forms.

Member Turner motioned that the committee approve the deletion of the Department of Health and Social Services Health Facilities Operating License of the requirement from reporting on the Annual Benefit and Loan Review.

A roll call vote was taken: YEAS: Sen Giessel, Rep Tuck, Member Leask, Member Walker, Member Cook, Member Turner, Chair Thomas. NAYS: None. ABSENT: Sen Gardner, Rep Millett. Motion passed.

Senator Giessel motioned that the committee approve the deletion of the Department of Health and Social Services Health Facilities Certificate of Need of the requirement from reporting on the Annual Benefit and Loan Review. Motion passed unanimously. No objections.

**7. BUDGET:**

a. FY 14 Budget Update - Ms. Anderson stated that the budget report in the packet is current as of January 14, 2014. At this time, the committee has used 53.77% of their budget which runs through June 30, 2014.

Member Turner asked if there were unanticipated expenses with regards to the Ethics office's temporary move and if this would be added to the budget request. Ms. Anderson stated that there were a few extra expenses that were not budgeted, such as the \$200 cable installation to watch Gavel to Gavel and an increase in a monthly cable fee because Ethics is the only office who has cable in the temporary buildings. It went from \$20 to \$70 because Ethics is no longer part of a package. Also, Ethics now has a water cooler since there are no facilities in the building, such as a kitchen area; this costs about \$18 per month. Ms. Anderson stated that it was her understanding, and she has a request in to Representative Hawker, that some money had been set aside for the move and these expenses would be covered.

b. FY 15 Submitted Budget Update – There was no discussion.

**8. 2014 LEGISLATION UPDATE:** Chair Thomas stated that there were no pre-filed bills in the area of ethics. Chair Thomas asked Ms. Anderson to update members on HB 235 which was introduced by Representative Higgins.

Ms. Anderson stated that HB 235 would require APOC to maintain confidentiality of certain proceedings (i.e., a complaint), documents and other information. Ms. Anderson stated Joan Mize, APOC Juneau administrator, is present today and would be happy to answer any question. Ms. Anderson also stated there are confidentiality proceedings already in place in the Ethics statutes.

**9. DISCUSSION: ETHICS TRAINING on 1<sup>st</sup> Amendment Rights in relation to demonstrations at the Capitol—Recommended by Legislative Council on Aug 23, 2013:**

Ms. Anderson stated the August 23, 2013, Legislative Council meeting discussed 1<sup>st</sup> Amendment Rights. Ultimately the Council decided to have Ethics add to their Standards of Conduct Handbook a segment on First Amendment Rights relating to demonstrations at the Capitol, as well as adding the subject to ethics training at the January staff orientation.

Member Walker stated that he didn't think 1<sup>st</sup> Amendment Rights training fell into the committee's purview. First Amendment Rights are distinct from Ethics, although they may cross over; and it would be an enormous undertaking for Ethics to take this on. It's too broad of a subject. There are many cases on First Amendment Rights and he did not see how Ethics would even structure a training segment that would address it, even on a general level. Member Cook commented that the Ethics Committee's purview was clearly defined in the Legislative Ethics Act.

A motion was made by Member Walker to reject adding training on First Amendment Rights to the Ethics Training and Ethics Standard of Conduct Handbook.

A roll call vote was taken: YEAS: Member Leask, Member Walker, Member Cook, Member Turner, Sen Giessel, Chair Thomas, Rep Tuck. NAYS: None. ABSENT: Sen Gardner, Rep Millett. Motion passed.

Ms. Anderson recommended that a letter be sent to Representative Hawker, chair of Legislative Council. Ms. Anderson and Chair Thomas agreed that the committee should send a letter stating that the committee considered the request but did not feel that training on First Amendment Rights was under their jurisdiction and therefore would not be adding it to ethics training or the handbook.

Ms. Anderson stated for the record that a policy memo from Rep Hawker was sent out to all Legislative Agency Employees on interacting with demonstrators.

10. **DISCUSSION: ETHICS TRAINING for Independent Contractors or Consultants, pursuant to AS 24.60.155:**

Ms. Anderson announced that Doug Gardner, Director of Legislative Legal Services, was online to answer questions pertaining to this subject and invited Representative Johnson to join the committee regarding this topic.

Ms. Anderson provided background on this subject explaining that recently there have been inquiries from legislative agencies asking if independent contractors and consultants were required to take ethics training.

Ms. Anderson read aloud AS 24.60.990(a)(11), which defines "legislative employee". She also stated that AO 99-01 describes a TEST which determines if a contractor or consultant was considered a 'legislative employee' under the definition in the Act. Ms. Anderson related the three steps that were used to make the determination. Ms. Anderson also related AO 84-06 which defined "professional services contracts". AO 84-06 also notes some exceptions.

Ms. Anderson stated AO 96-06 addressed whether employees of a contractor who provided legal services to the Ethics Committee were required to comply with AS 24.60.134(c), which addresses prohibited conduct and other requirements of the Act; specifically, activity relating to partisan political activity, campaigning, fundraising and lobbying. It was determined by the committee that employees of

the contractor were not required because the company for which they worked has adopted policies and procedures that preserve the confidentiality of the files and documents of the committee; Therefore, only those employees of the company who have access to the documents and perform regular or substantial services for the committee are subject to the restrictions set out in AS 24.60.134.

Ms. Anderson stated a short clause regarding ethics compliance was in all contracts through 2003. A contractor called the LAA Administration office requesting clarification of what the clause meant and the Ethics office and LAA Accounting revised the language to be more descriptive.

In the packet of materials is the CONTRACT INFORMATION for FY 2013. The report reflects the number of contracts issued and the dollar ranges by department.

Ms. Anderson stated that while compiling the background information for today's packet, the bigger question is if the entire Ethics Act and not just ethics training applies to independent contractors and consultants. One big area would filing ethics disclosures.

Ms. Anderson stated that she contacted other states for comparison. See Item 10: Ethics training for Independent contractors or Consultants. Research: Other Government Entities, the last document in packet.) None of the entities contacted covered third party contractors.

Chair Thomas stated that depending on what the committee decides, there could be a significant impact on the committee and contractors, if contractors fall under the Ethics requirements.

Member Walker asked if the committee was stuck with what is already in statute for Independent Contractors which would require a legislative change or could the committee issue another advisory opinion clarifying the issue.

Member Cook commented that he felt the issue required a legislative fix. If the legislature wants the committee to start keeping track of contractors who are considered employees and to start requiring that they take ethics training and file disclosures, etc., the committee is going to need to hire more staff. Member Cook also suggested the committee submit more research to the Legislature that reflects we are the only state that has this requirement or this definition.

Member Leask commented that she thought it was unusual for contractors to be paid under the state payroll system versus a line item for "contractual services." (See AO 99-01 TEST, #1) Member Leask stated that she agreed with the opinions voiced by Members Walker and Cook, and that she was in favor of a legislative change over something that the committee could do right now.

Chair Thomas asked Pam Varni, Executive Director of Legislative Affairs Agency, to explain how contractors are currently paid and if they are paid through the state payroll system.

Ms. Varni stated that there are a couple of definitions in the "personnel" sections, such as salaried employees and temporary employees that are paid through the state payroll system. There are also some employees that have retired from the state and return to work for that state during session and they fill out a "personal services contract", which is saying 'please do not take the retirement deduction when you put me on payroll'. They are still paid through the payroll system but not receiving retirement benefits.

Ms. Varni also stated there's also the "professional services contract". Those are paid through our accounting section or through her office. Wen Ibesate, Administrative Officer, pays these contractors. These contractors receive 1099 Forms. She stated these contractors are not receiving any benefits and she does not consider them employees; rather they are considered "consultants." Ms. Varni stated that the definition, the way that it is now, has been troublesome over the years to different consultants, and stated she would like to see the committee come out with a different opinion and a legislative change that would clarify the definition. We don't want contractors to see requirement as troublesome to them or their companies.

Representative Tuck stated that there are labor laws on the books that define what an employee is versus a contractor. Just because someone is salaried in the state of Alaska does not mean that they are exempt from overtime. Many times, employers misclassify and misuse some of the existing definitions. The fact that someone is temporary or salaried or hourly should prompt us to seek help from someone that specializes in Employment Labor Law. Representative Tuck stated that he did not think the Legislature should be exempt from the laws the legislature has imposed on employers.

Member Walker stated that he agreed with Rep Tuck, but what the committee is stuck with is the language that says that a legislative employee is an independent contractor. That broad language is what's troublesome here. As a committee, since we're controlled by statute, how do we get around language that already defines employee, and whether defining terms falls under our jurisdiction.

Chair Thomas asked the committee if that wasn't what happened in AO 99-01, where the test was laid out. Didn't the committee basically narrow the definition of an independent contractor with that test, whether or not that was appropriate, is another question, but at least at that time, they felt that they had some leeway.

Member Walker commented that the committee's contract investigators would be required to take ethics training because they meet the criteria. I don't think we want to open that door.

Chair Thomas stated that one of the options the committee has would be to look at revising the opinion. The committee at that time took the position to narrow the definition of independent contractor thus reducing the number of contractors required to comply with the Act.



Member Cook stated that in the final recommendation of AO 99-01, the committee said that the Legislature may wish to consider amending legislative procurement policies or related procurement code to include a disclosure requirement for those who contract with the Legislature regardless of contract type.

Chair Thomas invited Doug Gardner, Director of Legal Services, to weigh in on the discussion. Mr. Gardner stated his perspective comes from the fact that contracts the Legislature enters into need to be approved as to form by his office. In the course of the last three years and going into four, he does not know whether the volume of contracts is higher now or lower, but it seems very significant and robust right now. What concerns him about the current ethics language included in all contracts is that it pitches the responsibility of ethics coverage back to the contractor. The contract provision basically warns the contractor that they may be subject to the provisions of the Ethics Act. Mr. Gardner stated he was concerned when clients, a committee, or another legislative entity come to him with a concern like this--and I think Ms. Anderson has found herself in this same situation. We've collaborated trying to work through these issues. Contracts are not places for uncertainty. Contracts are places where we establish the rights and liabilities of both parties, and we tell people what we expect, and when Legal Services and the Ethics Administrator can't provide a straight answer on whether or not we think in a particular situation a person is covered, we're left in the situation where we can't call it a ball or a strike. He would like to be able to place language into a contract stating the contractor is either covered or not covered; take the ethics course, don't take the ethics course. He'd prefer not to include language that is general in nature. Presently, they continue to include the language at the direction and guidance of the Ethics Committee.

Mr. Gardner has some opinions about what he feels ought to happen but he's policy neutral and trying to maintain that stance. Although he agreed with Member Walker who said earlier that we're stuck with the language in AO 99-01. However, failure to comply is murky in that the Ethics Act section on violations does not have an applicable sanction for an independent contractor or consultant, short of a termination for a problem that occurred, or for misuse of a state asset or something. The Ethics Act doesn't seem to have a lot of detail or guidance as to what would happen if there was a violation. The other point he would make is that there have been some concerns from legislative entities attempting to enter into contracts that feel the pool of potential contractors has shrunk or been chilled by the uncertainty over this provision. It was described to him by a client that some of the more qualified people just didn't feel comfortable or weren't sure what their responsibilities were. In the cover page of Item 10, Ms. Anderson states the bigger question at the bottom of page 3 of 6; what is the independent contractor's responsibility? Is it limited to ethics training, the disclosures, etc. Presently, he did not believe that there was any following up on whether or not these contractors were complying with any of the bulleted items listed or even being advised on bullets 2, 3, 4, and 5.

In closing, Mr. Gardner stated that the other piece that makes it difficult for him is—according to Ms. Anderson’s research on other government entities—that we appear to be a distinct minority in terms of having a third party independent contractor covered by the Ethics Act. (Although a fifty-state survey hasn’t been done, that he’s aware of, and which might be something that the committee wants Legislative Research to do), there isn’t a lot of guidance for him (Legal Services) or Ms. Anderson in the context of trying to work through areas and voids that aren’t covered by the prior opinions of the Ethics Committee, which is always the case—we can’t reach out to case law or reach out to other examples. Because he is in a policy neutral position, this is as far as he can go.

Member Cook asked Mr. Gardner in reference to his statement that some contractors might simply step out of the pool, that if he thought that there might be others who actually run their costs up a bit because of this uncertainty. Mr. Gardner replied he would need to be careful on how he answered this question, and stated he wanted the committee to know that he did not deal with the contractors directly or the pool as it were. He gets this information through his clients. There was one discussion that occurred with a very significant contract where the contractor was very expensive and was bringing an extremely unique skill set to the Legislature and there was discussion between either internally with his staff or with the client, or possibly with Ms. Anderson about, he believed, the concept came up that if this particular person and all of these people behind them that are working on this project need to take this course, at a substantial billing rate, sitting and taking the ethics training, he agreed that it is affecting the dollar amount and the Legislature is paying for that. Although he did not think it was astronomical, he thought it to be probably significant, and in the thousands of dollars. Mr. Gardner stated that he did think it is a cost issue; his clients report that it is a deterrent issue. This is especially true with more sophisticated clients that are involved in a lot of different issues of legal services, in particular. He stated that there are concerns where these clients are working for others and they’re concerned about the law of unintended consequences and becoming entangled in an ethics responsibility and then backing into a problem later with some other conduct that they engage in on behalf of another client.

Member Walker asked Mr. Gardner if he recommended scrapping AO 99-01 or fixing it with tighter language, (until we get a legislative fix to this), and asked if he would he like to see an interim fix from the Ethics Committee until there’s a legislative fix.

Mr. Gardner replied that he felt it was a policy call and the legislature needed to address it. There might be some flexibility in AO 99-01. He also recommended consulting with Dan Wayne on their options. Presently, he did not foresee an interim fix.

Member Cook suggested considering Mr. Gardner’s offer of asking Legislative Research to do a nation-wide study on whether any other states do this. Ms. Anderson stated that Legislative Research is open to the committee. She also suggested using COGEL’s services where you can ask a question to all of the

COGEL members and after members reply, you receive all the information. She recommended trying COGEL first and then Legislative Research. Representative Johnson stated that NCSL has the capability with a phone call that is similar to COGEL's; you ask a question and they might have this type of information at their fingertips.

Representative Johnson addressed Mr. Gardner stating that after reading the definition of "professional services", hypothetically, if he had a company that has done research and testifies in front of a legislative body, if that would be considered representing the legislator in a policy related capacity. Mr. Gardner stated that he would think so.

Representative Johnson asked Mr. Gardner that with regards to everything that they have been doing with the oil and gas and the pipeline over the last six years if all of those consultants that testified in front of the committee would fall under this Ethics Act. Mr. Gardner replied that that would be a significant likelihood. Under the current statute, those are the contractors who fall under the Legislative Ethics Act.

Member Cook stated that many of those consultants come from outside of Alaska or are headquartered outside of Alaska and asked how this would be enforced, such as attending training. Members discussed the online training option. Ms. Anderson stated that a user name and password was required for online training. Prior to today's meeting, she said she spoke to Tim Powers, Media Services, who monitors the Ethics website. He said we could assign an individual user name and password for contractors. The Ethics office and whoever takes the training receives an email confirmation on completion of training.

Representative Johnson stated that they have consultants who have hundreds of people working on contract, if not thousands. There have been some huge issues for which we've hired consultants. If we start requiring hundreds of people to take ethic training at a rate that Mr. Gardner wouldn't quote, we've escalated the cost of the contract by thousands of dollars, for just sitting in front of the computer. He suggested involving Legislative Council, the Rules Chair to draft legislation and have it introduced to fix this. This is not something that can be tabled.

Representative Tuck stated that they need to make sure the statute doesn't create a loophole where a legislative office hires an independent contractor to avoid having to report anything ethically.

Chair Thomas agreed that the committee needed to do something to move this forward, but a legislative fix is one option that is not available to the committee. The suggestion that was made to request an opinion from our legal counsel to narrow the definition of "independent contractor" along with requesting the research on other states would be his option.

Senator Giessel read aloud AS 24.60.134(c). She stated she shared some of the same concerns as expressed by Representative Tuck, in that she does not want to create a loophole. Alaska is very small when it comes to people and it's possible to hire a consultant who does have political influence and in that instance the contractor would be required to take the ethics training. Under AS 24.60.134(c), however, the committee has an option to provide exemptions. When we're talking about an oil and gas consultant, they have a vast number of staff behind one or two main people. The one or two people should be required to complete training and staff behind the scenes should be exempt.

Ms. Anderson pointed out the fact that this particular part in statute only applies to contractors (legal services) to the Ethics Committee, however, it may certainly be useful to what we're working on.

Member Walker stated that Ethics has never required contractors to complete ethics training in the past and asked the committee what the next step should be; more specifically, will the committee start requiring this of them? According to the statute, they are required.

Ms. Leask asked if anyone else had concerns besides Ethics. Ms. Anderson replied that concerns have developed in the last couple of months. In the past she has only received one or two calls from contractors since she's worked for Ethics. She referred them to the existing clause in the contract as there has not been any other guidance in which to refer them. The one caller was a sole person. It's only been recently that she and Mr. Gardner were faced with the issue after receiving some concerns from agencies within the Legislature.

Ms. Leask asked when the definition was put into statute. Ms. Anderson replied since 2001; however, during the 2012 Legislative Session, there were several changes. Statutory language was deleted for the following positions: Security, Messenger, Maintenance, and Print Shop employees. Also, language was added to exclude employees who perform functions incidental to the legislature. Further, the term Supply was changed to Procurement Officer. Nothing was added or changed relating to the term "independent contractor."

Member Turner asked Mr. Gardner if the committee could legally set aside AO 99-01 until further research or a legislative fix could be made. Mr. Gardner stated the committee can always reconsider, withdraw, or modify previous opinions. He stated that for the record, he did not want the committee to create some type of vacuum inconsistent with the statute. He stated that it would help his office to get some clarity and referred the committee to Mr. Wayne who has more experience with the committee's practices and procedures. Mr. Gardner stated he had one additional comment, stating that the real struggle here may be in implementing the requirements of the contractor because contractors, (as the ones described by Rep. Johnson), want all their obligations to be nailed down in their contracts. Contractors are required to follow certain federal and state laws, such as the law on human trafficking, but when it comes to *detailed, Alaska-specific* things, if the fix were a statutory fix, whether the ethics statute would direct that in legislative

contracts, that there be provisions in the contract that require certain types of behavior, with the result being the person's termination from the contract if they don't do those things. Deal with it as a contract matter, if you want to reach out and address the contract and not risk the loop hole that Rep Tuck and Sen Giessel mentioned, and try and create a situation where there are standards of conduct that are narrower, that are important, but more enforceable through the contract, we have termination provisions in the contract. If someone isn't complying, or doing something inappropriate, the committee or whoever supervises the contract can terminate the person or contractor. Maybe the idea of trying to do that in statute and reaching all the way to the contract is what's causing the problem here. Contractors look at the contract and see what their responsibilities are, that's how they price their job, and that's how they conduct themselves. Maybe there's a way to address this in the statute that requires the agency and the rest of the legislative agencies to include some language in the contract that has a checklist of things that are required but maybe isn't quite as extensive as all of the bullets on page 3 of Ms. Anderson's summary. Language that's more tailored to a contractor, but may be a policy call. Maybe this can be dealt with in a contract required through a statute.

Representative Tuck asked Ms. Varni if the definition of legislative employee in AS 24.60.990(a)(11) was the reason why we pay our independent contractors through payroll. He wanted to know why they are not paid through a separate fund. Ms. Varni replied that we do not pay any of our contractors through the state payroll system. The only reference to a contract is a Personal Services contract and that is to exclude the retirement deduction. All of the contractors, whether it's a services contract, someone snow plowing, a construction contract, someone doing policy or legal services, those are professional service contracts or services contracts and paid through our accounting services system through the state-wide Department of Administration.

Representative Tuck stated that this was one of the criteria for the TEST is whether or not the contractor will be paid through the state payroll system. That is a major criteria, because if they meet that question, then several other ones kicks in. He suggested clarifying this administratively.

Member Cook stated that it was his belief that the purpose of that question was to bring in those who are under the personal services contract, who are essentially like an employee except they're not taking the deductions. That person should still probably be considered an employee, but the rest probably should not.

Representative Johnson asked if there was an action being required of the committee on this matter and if the committee has time to do more deliberating and time to take it through the legislative process. If the committee does not have to take action on the matter immediately, his concern is that when it comes time, he suggested that it be retroactive to avoid possible ethics complaints.

The question was presented to Mr. Gardner as to whether or not there would be any immediate issues that would be impacted if the committee did not make any

decisions today. Mr. Gardner replied no. The issue has been on-going. He stated that he felt that the Legislature needed to balance policy considerations and provide something crisp we can use. However, as a practical matter, a lot of the contracts for this remaining legislative session we've got under our belt. People are going to struggle with or deal with this issue on a case-by-case basis. The volume of additional contracts will be low from here on out.

Representative Johnson asked Mr. Gardner if the fix he recommended was addressing it through a procurement code and then include it in the contract language. Mr. Gardner replied that the Ethics Act could be modified to require a provision that addresses independent contractors and it could specifically say that any contracts entered into by the Legislative Branch require as a term and condition of the contract the following five things (for example only) and identify what those items are. Although he did not know who would enforce them, whether it would be the Ethics Committee or Legislative Council. Should Legislative Council require a procurement procedure to include the following five things, which would give the Ethics Committee the option to deal or not deal with independent contractors or consultants. As a procurement matter, we've made it a terminable condition that if a certain thing happens, maybe removing it from the committee and all of the problems that it's created would be a potential fix. Mr. Gardner interjected that he wanted to reiterate the fact that he was not advocating here, but simply responding to scenarios presented to him, and that he, too, wanted clarity to this issue.

Representative Johnson thanked Mr. Gardner for answering his questions and acknowledged Mr. Gardner's last statement, additionally asking Mr. Gardner if this was something that could be done through policy of Legislative Council. Mr. Gardner replied that Legislative Council could make changes to the procurement procedures at any point in time. In fact, Leg Council recently changed procurement procedures at its November meeting. This office has typically drafted procurement procedure changes for Leg Council.

Representative Johnson asked Mr. Gardner if Leg Council changed procurement policy would that override the statute that the committee is following. Mr. Gardner stated no, but stated it was a reasonable question. The procurement procedures, if changed, would be a partial fix, in that it would take out the ethics piece. Either way, the statute still needs to be fixed.

Ms. Leask asked if there was a standard definition of a Legislative Employee in state law as a whole, not just in the Ethics statute, and if there is, she asked if they differed. Ms. Anderson replied yes, there is one on the Executive level, which covers state employees. Each branch, Executive, Legislative, and Judicial has their own definition and they were substantially different from each other.

Member Cook verified that that was found under the research that Joyce had started and that they would be delving into more, as agreed to earlier—which was to see how other jurisdictions defined Legislative Employee.

Ms. Anderson stated that in her research, our statutes have definitions for public officer and public employee Title 39. When she spoke to Dave Jones action Executive Branch ethics attorney, he said that Title 36 addresses state contracts, but nothing under 36 mentions that state contracts fall under the definition of Employee.

Chair Thomas invited Mr. Wayne to the discussion. Mr. Wayne stated the issue has been covered very well by Ms. Varni and Mr. Gardner. He stated he agreed with Mr. Gardner statement that it would be difficult for the committee get around the fact that the statute requires independent contractors to be covered as legislative employees. He stated that he reviewed the old decision in 1999, and saw that these issues were wrestled with back then, and thought deleting the third portion of the TEST where it requires application of the independent contractor would provide some clarification; however, he didn't think we could do that. What came to mind when Mr. Gardner was talking about a procurement code change that would require a certain code of conduct and the Legislature deleting independent contractor from the definition that required certain contractors take Legislative Ethics Training, this would make Legislative Council responsible for determining whether or not the training was completed.

Mr. Wayne stated that as far as compliance with other parts of the code, that might be more work for the council and more difficult for the council to determine whether or not other parts of the code had been complied with, but requiring them to watch a video or show up at a training seems like something that can easily be added to the check list of things Mr. Gardner was talking about. All of that would still require a change to the definition of legislative employee.

Chair Thomas stated that as of today, if the person that falls under the definition of a legislative employee and is an independent contractor, they're subject to the entire Ethics requirements. The committee could not limit it to (for example) just the online video. (Mr. Wayne stated yes.) Chair Thomas stated that it appears to him what happened in AO 99-01 is that the focus of the opinion did not define legislative employee but instead defined independent contractor or consultant. He suggested that one of the things they could do to move forward is to look again at the decision and see whether or not there is a different way those two terms could be defined based on the research already done.

Mr. Wayne stated there might be some room for adjustment because those terms aren't defined in the Legislative Ethics Act. However, because they're not defined, the committee might be in the situation where if it adopts a definition, the definition would have to be based on common usage and understanding. When looking at dictionaries for clarification, we might run into some limits as to how far you can go.

Ms. Leask suggested that in our research going forward, it would be helpful if there was discussion on the financial implications of making sure all contractors have received ethics training, how the Ethics office is going to monitor the training, and the follow up required by staff to assure compliance. In other words, how much staff time and additional expense would be required to accomplish this task.

Chair asked members for helpful suggestions. He stated it was reasonable that they request a review of the AO 99-01 regarding the definition of independent contractor/consultant, obtain additional research, and maybe suggest a legislative change. Who falls under the definition of independent contractor/consultant is what needs to be tackled.

Member Cook motioned that the committee request additional research through Legislative Research, COGEL, and NCSL to determine if any other entities have a similar definition. He suggested we also keep on our agenda the goal of requesting and recommending a legislative change. We could work with our legal counsel and perhaps Legislative Council. Representative Tuck asked Member Cook if he would be willing to allow other organizations that might be able to help us so as to not limit our resources. Member Cook agreed to include other resources if there were other organizations that the members had in mind to do the research.

Member Walker again referred to AO 99-01. Member Cook stated that if Mr. Wayne is going draft some language, he will probably take into account AO 99-01. He stated that Mr. Wayne already said that fixing AO 99-01 isn't going to get them around the problem. Legislation would be the best option to solve the problem. Mr. Wayne added that whatever opinion the committee might pursue it is very likely the committee would have to address the terms "independent contractor" / "consultant" as they are noted in the current definition of legislative employee.

A roll call vote was taken: YEAS: Sen Giessel, Sen Gardner, Rep Johnson, Member Leask, Member Walker, Member Turner, Rep Tuck, Member Cook, Chair Thomas. NAYS: None. ABSENT: Rep Millett. Motion passed.

11. **OTHER BUSINESS:** None.

12. **ADJOURN:** Senator Giessel motioned to adjourn the meeting at 10:55 am. No objection.



# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from May 29, 2014 FULL COMMITTEE MEETING Anchorage LIO, Conference Room 105

1. **CALL THE MEETING TO ORDER:** Committee Chair Gary Turner called the meeting to order at 8:33 a.m. Members present: Senator Anna Fairclough, Senator Berta Gardner, Representative Andy Josephson, Janie Leask, H. Conner Thomas, Dennis "Skip" Cook. Staff present: Joyce Anderson. Teleconference: Dan Wayne, LAA Legal. Representative Charisse Millett (joined the meeting at 10:40 a.m.). Absent: Herman G. Walker, Jr.
2. **APPROVAL OF AGENDA:** Member Thomas motioned to approve. No objections. Motion passed.
3. **APPROVAL OF MINUTES:**
  - a. **October 28, 2013 Full Committee** – Minutes incomplete. Ms. Anderson stated they will be completed by the time of the next committee meeting.
  - b. **January 23, 2014 Full Committee** – Minutes incomplete. Ms. Anderson stated they will be completed by the time of the next committee meeting.
  - c. **January 23, 2014 Senate Subcommittee** – Senator Gardner motioned to approve. No objections. Motion passed.
  - d. **January 23, 2014 House Subcommittee** – Member Cook motioned to approve. No objections. Motion passed.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
  - a. **Informal Advice Staff Report** – Ms. Anderson stated that the Ethics office has been extremely busy since the ending of last year and beginning of this year with disclosures, committee meetings, and various other issues; therefore, the staff report is not up to date but is a work in progress.

- b. Ethics Disclosures – Ms. Anderson referred members to the report in today's packet, noting that there were 252 disclosures filed between Jan 1 and Mar 31, 2014; of that number, 113 were filed by legislators and 139 filed by legislative staff. The largest number of disclosures filed was "Memberships on a Board of Directors", which was 107; followed by "Close Economic Associations", which were 97. Ms. Anderson referred members to the report on "late disclosures", which is a Rules of Procedures requirement.
  - c. Ethics Legislation Update-28<sup>th</sup> Legislature – Ms. Anderson reported there were no updates to the Ethics Act through ethics legislation for the 2013/2014 Legislature. There was a change, however, in the Revisor's Bill legislation. The term 'adoptive' was changed to 'adopted' in all state statutes. That term is used in the definition section of the Ethics statute.
6. **BUDGET - FY 14 Update:** Ms. Anderson stated that FY 14 ends on June 30, 2014; there is a balance of roughly \$62,000, which will cover staff payroll, contracts, and travel expenses incurred for today's meeting and possible travel expenses related to her job position search.

Chair Turner asked if the balance can be carried forward. Ms. Anderson answered stating left over money cannot be carried over and is returned to the general fund.

Ms. Anderson provided an update on the FY 15 Budget. The operating budget was approved and signed by the Governor. Ms. Anderson had contacted Executive Director Pam Varni for an explanation as to why the increase for Personal Services in our budget was declined. Ms. Varni provided a written response stating that Personal Services cost increases were requested by Ethics, the Ombudsman's Office, and Office of Victims' Rights, but none was approved. Ms. Varni stated that with the Ethics Administrators' position becoming vacant, there is a possibility that the new hire will not have the same pay range, which could become a cost savings. Each year, Legislative Affairs Accounting Department contacts Ms. Anderson and asks if Ethics will be lapsing any money. Ms. Anderson reviews and provides LAA with projected costs. At the time she projected a lapse of \$5,000 she had not considered retiring. The Agency Request amount and what the Governor approved was less than what was requested.

7. **ADMINISTRATOR POSITION UPDATE** – Chair Turner invited Member Leask to provide the committee an update. Member Leask stated that the Administrator Subcommittee, which consists of Gary Turner, Joyce Anderson, and herself, received 29 job applicants, which were scored on a set of minimum requirements. Of the 29 applicants, sixteen were selected. Out of the sixteen, six were selected for a phone interview, three of which the subcommittee will be doing tomorrow, and three more on June 4, 2014. After the phone interviews, they will narrow the list down to the top three to five which come in for in-person interview. The subcommittee will make a recommendation to the Full Committee, which will meet in executive session to select the individual. Member Leask

stated the subcommittee has been impressed with the number of people interested in the position as well as the qualifications and experience of the applicants.

Member Thomas asked how the position was advertised.

Member Leask deferred the question to Ms. Anderson. Ms. Anderson stated that two-week ads were placed in the Fairbanks Daily News Miner, Juneau Empire, and Anchorage Daily News. A notice was also sent to legislators and agencies of the legislature with a request to post the notice and forward on to their mailing lists. It was also posted on Workplace Alaska, which is where all state jobs are posted. The job was posted for two weeks, from May 1-15, 2014. The deadline to apply was 5:00 p.m. May 15. The cost of placing the ads in the various newspapers varied depending on the number of lines in the ad. The Fairbanks Daily News Miner had a promotion going on which cut down the cost of advertising and allowed us to have a larger, quarter page ad.

Chair Turner then discussed placing Ms. Anderson on contract for a one year period to provide for a smooth transition between administrators. Committee members agreed and stated the job was not one that a person could learn after a couple of months due to the complexity and cyclical nature of the work performed. They also suggested that Ms. Anderson be present at legislator and staff ethics training in Juneau in January of 2015. Ms. Anderson agreed to the suggestion.

Chair Turner suggested the hourly rate should be the same as she is currently receiving. The proposed contract was for \$10,000. Sen Fairclough stated the contract should be increased to \$25,000 as \$10,000 would barely cover the time period of one half year. There was no opposition. Members asked Ms. Anderson if she was willing to go on contract for the one year period. She responded yes.

A motion to approve Ms. Anderson's contract as amended was made by Member Cook and seconded by Member Leask. A roll call vote was taken: YEAS: Janie Leask, Senator Berta Gardner, Dennis "Skip" Cook, Senator Anna Fairclough, Chair Gary Turner, H. Conner Thomas, Representative Andy Josephson; NAYS: None. ABSENT: Representative Charisse Millett; Herman G. Walker, Jr. Motion passed.

## **8. ADVISORY OPINION 14-01**

**Member Thomas made a motion at 9:00 a.m. to go into \*\*EXECUTIVE SESSION\*\* to discuss a matter which is confidential by law under AS 24.60.160(b).**

**Committee members did not object to Ms. Anderson, Administrator, and Dan Wayne, LAA Legal Counsel, attending the executive session.**

**Senator Gardner made a motion at 9:40 a.m. to go back into public session. Meeting returned to OPEN SESSION and called to order by Committee Chair Gary Turner.**

Member Thomas made a motion to approve Advisory Opinion 14-01 as modified. Roll call vote was taken: YEAS: Senator Anna Fairclough, Senator Berta Gardner, Representative Andy Josephson, Janie Leask, H. Conner Thomas, Dennis "Skip" Cook. NAYS: None. ABSENT: Herman G. Walker, Jr., and Representative Charisse Millett

Ms. Anderson reminded the committee that all advisory opinions once approved by the committee are public information. AO 14-01 will be noticed in the next ethics newsletter, THE ADVSIOR.

**Committee took a five minute at ease and returned at 9:50 a.m.**

**9. ADVISORY OPINION 89-06 – Travel/ Hospitality: Recommend rescinding the opinion**

***NOTE: The recording for the meeting is no longer available at this point of the discussion. Ms. Anderson's notes are presented below.***

Mr. Wayne explained the law has not changed significantly but the interpretation by the Committee has changed over the course of twenty-five years. In 1989, the committee determined a gift of travel/hospitality for attending a partisan political meeting [the 1988 biennial convention of the state Democratic Party] was a gift "primarily for the purpose of obtaining information on matters of legislative concern" and required a disclosure.

Since that time, the committee has determined state resources cannot be used for any activities that are "for involvement in or support of or opposition to partisan political activity" or for the purpose of political fundraising or campaigning." AS 24.60.030(a)(2) and (a)(5).

Mr. Wayne did not recommend rescinding the opinion but preferred placing a note in the opinion database stating the opinion was decided under prior law and should not be relied upon. He also stated AO 89-06 could not be edited. Ms. Anderson commented that her preference would be to rescind the opinion rather than include a note about inapplicability. Her concern was that a person covered under the Act would try to determine which sections applied and rely on that interpretation and proceed with an action.

There was considerable discussion by committee members regarding the proper course of action to take. Senator Fairclough made a motion to rescind AO 89-06 with an explanation. She suggested the following: The committee determined a "matter of legislative concern" does not include attending a political party convention. Mr. Wayne stated such a statement was limiting and did not include all the possibilities that may fall under the category of "partisan political activity." Senator Fairclough rescinded her motion.

After further discussion, Senator Fairclough made a motion to rescind AO 89-06 with a note stating the opinion was decided under previous law and should not be relied upon along with a reference to refer to current Alaska statutes. Member Leask seconded the motion.

A roll call vote was taken: YEAS: Representative Andy Josephson, Chair Gary Turner, Senator Berta Gardner, Senator Anna Fairclough, Janie Leask, Dennis "Skip" Cook, H. Conner Thomas, and Representative Charisse Millett. NAYS: None. ABSENT: Herman G. Walker, Jr. Motion passed.

**10. RULES OF PROCEDURE – Suggested revisions and updates.**

Chair Turner explained that the committee's Rules of Procedure are updated periodically for clarification reasons, new procedures, or statutory changes. Chair Turner asked Ms. Anderson to explain the suggested changes. The recommendations are based on statutory changes as well as a review of internal procedures and policies by staff.

- a. SECTION 10 Advisory Opinions – Ms. Anderson recommended adding a subsection to address confidentiality when off-site communication is required during an Executive Session. She read aloud Section 10(b)(3).

Committee members reviewed the recommended addition and had no changes to the language as stated. Member Thomas made a motion to approve the changes to Section 10 as stated. Motion approved unanimously.

- b. SECTION 11 Disclosures – Ms. Anderson recommended several changes to this section to clarify the process of reviewing disclosures, assessing late disclosure fines, and late letters. Chair Turner suggested one motion be made to approve all the changes recommended for Section 11.

Section 11(a) Forms – Ms. Anderson stated the section clarifies that the committee approves all disclosure forms. Language was deleted that referred to obtaining additional disclosure information and a new section was created – see Section 11(b).

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(b) Review of Disclosures – Ms. Anderson added a new section stating that committee staff is authorized to request additional information on disclosures for purposes of clarification and compliance with the Act. Previous language authorized just the "committee."

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(e) Review of Confidential Disclosures and a Request to Refrain from Making a Disclosure – Ms. Anderson updated the section to include the

process to refrain from making a disclosure under AS 24.60.105(d) and added language to define the process when the committee chair and administrator are unable to determine if the disclosure meets statutory requirements.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(g) Late Disclosures – Ms. Anderson stated the section was divided into subsections to provide better clarity with one addressing “Late Disclosures” and one defining “Late Disclosure Fines.” This subsection defines the difference between a first late disclosure and a subsequent late disclosure. New language addresses the fact that a break in service does not invalidate a first late disclosure.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(h) Late Disclosure Fines – Ms. Anderson stated a new section was added stating the three types of fines pursuant to AS 24.60.260(c) along with language making it clear the committee chair and administrator have the authority to impose fines.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(i) Requirements After Leaving Office or Employment with the Legislature – Ms. Anderson stated a timeframe for notifying outgoing legislators was added and will be “within 20 days” after leaving office; language was added that makes it clear the Legislative Personnel Office or other hiring agency is responsible for notifying employees leaving legislative employment; language was added to clarify that both employees terminating employment and those going on lay-off status should receive the letter; and language was added stipulating the Ethics Office will update the letter annually.

Committee members discussed the recommendations. The 20 day recommendation was changed to 30 days to give Ethics staff sufficient time to send out the notification.

Member Thomas made a motion to approve the changes as recommended to the entire Section 11 with the one revision to Section 11(i) which resulted in changing the time frame from 20 days to 30 days. Motion approved unanimously.

11. **INDEPENDENT CONTRACTORS AND CONSULTANTS**—Legislative Employee pursuant to AS 24.60.990(a)(11). This item is a continuation from the January 23, 2014, meeting. Chair Turner reminded the committee the discussion relates to whether an independent contractor and consultant is required to complete ethics training and comply with the requirements of the Act; i.e., restrictions, disclosures, etc. The committee had previously determined there were two

options that needed further discussion and research.

Chair Turner explained that one option was to change the definition of “legislative employee” under AS 24.60.990 through a statutory change which would limit certain sections of the Act as applicable to independent contractors and consultants. The other alternative was to issue an advisory opinion that further defined independent contractors and consultants under the current statutory definition of legislative employee.

Ms. Anderson presented a brief overview of the subject. LAA Research was asked to research at least 25 governmental bodies and ask the following questions:

- Are independent contractors/consultants considered an employee for purposes of ethics compliance?
- Are independent contractors/consultants covered under separate statutory language for purposes of ethics compliance?
  - If yes, what statutory ethics requirements apply?
  - If only certain contractors/consultants are covered, what detailed criteria are used to make that determination?

A copy of the condensed research was included in the members’ packet. Ms. Anderson went over each of the categories.

- 7 entities did not include independent contractors and/or consultants in the definition of employee.
- 3 entities covered contractors under ethics laws with no separate distinction or qualification.
- 3 entities covered contractors if they performed a “government function.”
- 2 entities covered contractors if they were subject to the control of the employer.
- 10 entities offered a variety of specific variables that either included or did not include contractors and/or consultants under specific ethics laws or ethics laws in general.

Discussion by committee members revolved around not only the differences between the 25 states highlighted in the study but what is currently in place in our statute.

Senator Fairclough pointed out that we need consistency with contract language regarding ethics compliance. The current statement does not adequately explain what is required of a contractor. She suggested we take a 360 degree look at the issue.

The committee determined the best course of action would be to have a statutory change. Areas to consider would be clarifying the definition of “legislative employee” or defining “independent contractor” and “consultant” or limiting the Act’s applicability by creating a separate statutory section similar to statutory language defining ethics compliance for legislative interns and volunteers.

Senator Fairclough made a motion to pursue a statutory change that would address independent contractors and consultants in relation to compliance with the Legislative Ethics Act.

A roll call vote was taken: YEAS: Representative Andy Josephson, Chair Gary Turner, Senator Berta Gardner, Senator Anna Fairclough, Janie Leask, Dennis "Skip" Cook, H. Conner Thomas and Representative Charisse Millett. NAYS: None. ABSENT: Herman G. Walker, Jr.. Motion passed.

After considerable discussion, the committee decided to establish a Contract Subcommittee to look at the issue. Representative Millet and Sen Gardner volunteered to be co-chairs with Rep Josephson and Member Thomas serving as well. Representative Tuck, an alternate committee member, will be asked if he would like to serve on the subcommittee since he was a member of the Ethics Committee during the majority of the discussion on this subject.

Chair Turner suggested the subcommittee meet two to three times over the summer. He also noted any member of the committee is welcome to attend the Contract Subcommittee meetings. The subcommittee was tasked with making recommendations for a statutory change that would preserve the integrity of the legislative process and avoid conflicts of interest or even appearances of conflicts of interest for those on contract with the legislature. Ethics office staff will be available to attend the meetings and obtain additional information if needed. The subcommittee was also tasked with making a recommendation as to how the committee should proceed with proposing legislation, obtaining a sponsor, and subsequently moving the bill through the legislator. Many committee members believed the best way to proceed would be to work with the House Rules Chair.

12. **OTHER BUSINESS:** None.

13. **ADJOURN:** Senator Gardner motioned to adjourn the meeting at 11:35 a.m. No objection.



# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from May 29, 2014 EXECUTIVE SESSION Ethics Office, 425 G Street, Suite 711, Anchorage, AK

#### SENATE SUBCOMMITTEE MEETING

1. **CALL THE MEETING TO ORDER:** Senate Subcommittee Chair H. Conner Thomas called the meeting to order at 3:00 p.m. Members present: Senator Berta Gardner, Senator Anna Fairclough (alternate for Senator Cathy Giessel), Dennis "Skip" Cook, Janie Leask, Gary J. Turner, Herman G. Walker, Jr., and H. Conner Thomas, Chair. Staff present: Joyce Anderson, Administrator.
2. **APPROVAL OF AGENDA** – Member Turner made a motion to approve the agenda. No objection.
3. **PUBLIC COMMENT:** None.
4. **Motion to go into EXECUTIVE SESSION:** Member Cook made a motion to go into Executive Session to discuss matters, which by law must remain confidential. No objection. The room was secured.
5. **EXECUTIVE SESSION:** Member Turner made a motion to go back into Public Session at 3:55 p.m. No objection.
6. **PUBLIC SESSION:** No business.
7. **ADJOURN:** Member Turner made a motion to adjourn the meeting at 3:59 p.m. No objection.

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### MINUTES from May 29, 2014 EXECUTIVE SESSION Ethics Office, 425 G Street, Suite 711, Anchorage, AK

#### HOUSE SUBCOMMITTEE MEETING

1. **CALL THE MEETING TO ORDER:** House Subcommittee Chair Gary J. Turner called the meeting to order at Noon. Members present: Representative Andy Josephson, Representative Charisse Millett, Dennis "Skip" Cook, Janie Leask, H. Conner Thomas, and Gary J. Turner, Chair. Absent: Herman G. Walker, Jr. Staff present: Joyce Anderson, Administrator.
2. **APPROVAL OF AGENDA** – Member Cook made a motion to approve the agenda. No objection.
3. **PUBLIC COMMENT:** None.
4. **Motion to go into EXECUTIVE SESSION:** Representative Millett made a motion to go into Executive Session to discuss matters, which by law must remain confidential. No objection. The room was secured.
5. **EXECUTIVE SESSION:** Representative Millett made a motion to go back into Public Session at 1:30 p.m. No objection.
6. **PUBLIC SESSION:** No business.
7. **ADJOURN:** Member Thomas made a motion to adjourn the meeting at 1:35 p.m. No objection.

# Alaska State Legislature

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### MINUTES from June 19, 2014 EXECUTIVE SESSION Anchorage LIO, 733 West 4<sup>th</sup> Avenue

#### FULL COMMITTEE MEETING

1. **CALL THE MEETING TO ORDER:** Chair Gary J. Turner called the meeting to order at 1:08 p.m. Members present: Senator Berta Gardner, Senator Cathy Giessel, Representative Andy Josephson, Dennis "Skip" Cook, Janie Leask, H. Conner Thomas, Herman G. Walker, Jr., and Gary J. Turner, Chair. Absent: Representative Charisse Millett. Staff present: Joyce Anderson, Administrator.
2. **APPROVAL OF AGENDA** – Member Leask made a motion to approve the agenda. No objection.
3. **PUBLIC COMMENT:** None.
4. **Motion to go into EXECUTIVE SESSION:** Member Leask made a motion to go into Executive Session to discuss matters, which by law must remain confidential. No objection. The room was secured.
5. **EXECUTIVE SESSION:** Senator Gardner made a motion to go back into Public Session at 1:34 p.m. No objection.
6. **PUBLIC SESSION:** No business. Chair Turner thanked Member Leask for her work and leadership as chair of the Administrator Subcommittee.
7. **ADJOURN:** Member Leask made a motion to adjourn the meeting at 1:37 p.m. No objection.

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from September 25, 2014 EXECUTIVE SESSION Ethics Office, 425 G Street, Suite 711, Anchorage, AK

#### FULL COMMITTEE MEETING

1. **CALL THE MEETING TO ORDER:** Chair Gary J. Turner called the meeting to order at 10:18 a.m. Members present in person: Senator Berta Gardner, Senator Cathy Giessel, Representative Andy Josephson, Dennis "Skip" Cook, and Herman G. Walker, Jr., Members present via teleconference: Chair Gary J. Turner, Janie Leask and Representative Charisse Millett. Staff present: Joyce Anderson, Administrator.
2. **APPROVAL OF AGENDA** – Member Cook made a motion to approve the agenda as amended. Item added: Contractor Subcommittee update by Senator Gardner. No objection.
3. **PUBLIC COMMENT:** None.
4. **CONTRACTOR SUBCOMMITTEE:** Senator Gardner reported her office has requested NCSL to conduct research to see what is in place in other states regarding contractors and consultants and ethics compliance. She will have a report for the October 28<sup>th</sup> committee meeting.
5. **CONTRACT – Outside Legal Counsel with Brent Cole** – Ms. Anderson reported that Brent Cole has been on contract with the committee since 2001. He has agreed to another one year contract for FY 15. His rates will remain the same at \$175 per hour for attorney services and \$75 per hour for legal assistant services. The contract remains at an amount not to exceed \$10,000.

Member Leask made a motion to approve a FY 15 legal services contract with Brent Cole to provide legal advice to the Ethics Committee for a rate of \$175 per hour for services of attorneys Brent Cole and Patrick Bergt and a rate of \$75 per

hour for work performed by legal assistants [for an amount not exceed \$10,000]. Roll call vote taken: YEAS – Senator Giessel, Senator Gardner, Representative Josephson, Representative Millett, Members Cook, Leask, Thomas, Walker, and Chair Turner.

6. **Motion to go into EXECUTIVE SESSION:** Representative Millett made a motion at 10:23 a.m. to go into Executive Session to discuss matters which by law could prejudice the reputation and character of a person and must remain confidential. No objection. The room was secured.
7. **EXECUTIVE SESSION:** Member Leask made a motion to go back into Public Session at 11:35 a.m. No objection.
8. **PUBLIC SESSION:** Senator Giessel made a motion stating the Ethics Committee will consider the experience and qualifications of the successful candidate for the Administrator position when determining the appropriate Range and Step for salary purposes. The position was noticed as a Range 20 to 22. Roll call vote taken: YEAS – Senator Giessel, Senator Gardner, Representative Josephson, Representative Millett, Members Cook, Leask, Thomas, Walker, and Chair Turner. Motion passed.
9. **ADJOURN:** Member Leask made a motion to adjourn the meeting at 11:38 a.m. No objection.