

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

April 19, 2001
2:15 p.m.

MEMBERS PRESENT

Representative Pete Kott, Chair
Representative Brian Porter
Representative Carl Morgan
Representative Lesil McGuire
Representative Ethan Berkowitz
Representative Reggie Joule

MEMBERS ABSENT

Representative Vic Kohring

OTHER LEGISLATORS PRESENT

Senator Dave Donley

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 103(FIN)

"An Act relating to election campaigns and legislative ethics."

- MOVED HCS CSSB 103(RLS) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 103

SHORT TITLE: ELECTION CAMPAIGNS AND LEGISLATIVE ETHICS

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
02/20/01	0432	(S)	READ THE FIRST TIME - REFERRALS
02/20/01	0432	(S)	STA, JUD
02/22/01		(S)	STA AT 3:30 PM BELTZ 211
02/22/01		(S)	Heard & Held
02/22/01		(S)	MINUTE(STA)
02/27/01		(S)	STA AT 3:30 PM BELTZ 211
02/27/01		(S)	Moved CS(STA) Out of Committee
02/27/01		(S)	MINUTE(STA)
02/28/01	0534	(S)	STA RPT CS 2DP 3NR NEW TITLE

02/28/01	0534	(S)	DP: THERRIAULT, HALFORD; NR: PHILLIPS,
02/28/01	0534	(S)	PEARCE, DAVIS
02/28/01	0534	(S)	FN1: (ADM)
03/09/01		(S)	JUD AT 1:30 PM BELTZ 211
03/12/01		(S)	JUD AT 1:30 PM BELTZ 211
03/12/01		(S)	Moved CS(JUD) Out of Committee MINUTE(JUD)
03/13/01	0634	(S)	JUD RPT CS 2DP 1DNP 1NR NEW TITLE
03/13/01	0635	(S)	DP: TAYLOR, COWDERY; DNP: ELLIS
03/13/01	0635	(S)	NR: THERRIAULT
03/13/01	0635	(S)	FN1: (ADM)
03/13/01	0635	(S)	FIN REFERRAL ADDED AFTER JUD
03/22/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/22/01		(S)	MINUTE(FIN)
03/23/01	0783	(S)	FIN RPT CS 3DP 2NR NEW TITLE
03/23/01	0783	(S)	DP: DONLEY, KELLY, LEMAN;
03/23/01	0783	(S)	NR: HOFFMAN, OLSON
03/23/01	0783	(S)	FN2: (ADM)
03/23/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/23/01		(S)	MINUTE(FIN)
03/28/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203 MINUTE(RLS)
03/29/01	0858	(S)	RULES TO CALENDAR 2OR 3/29/01
03/29/01	0863	(S)	READ THE SECOND TIME
03/29/01	0863	(S)	FIN CS ADOPTED UNAN CONSENT
03/29/01	0863	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/29/01	0863	(S)	READ THE THIRD TIME CSSB 103(FIN)
03/29/01	0864	(S)	PASSED Y17 N2 A1
03/29/01	0867	(S)	TRANSMITTED TO (H)
03/29/01	0867	(S)	VERSION: CSSB 103(FIN)
03/30/01	0782	(H)	READ THE FIRST TIME - REFERRALS
03/30/01	0782	(H)	STA, JUD, FIN
04/03/01	0825	(H)	STA RPT 4DP 2DNP 1NR
04/03/01	0825	(H)	DP: WILSON, FATE, JAMES, COGHILL;
04/03/01	0826	(H)	DNP: CRAWFORD, HAYES; NR: STEVENS

04/03/01	0826	(H)	FN2: (ADM)
04/03/01		(H)	STA AT 8:00 AM CAPITOL 102
04/03/01		(H)	Moved Out of Committee
04/03/01		(H)	MINUTE(STA)
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	Moved HCS SB 103(JUD) Out of Committee MINUTE(JUD)
04/10/01	0926	(H)	JUD RPT HCS(JUD) NT 2DP 1DNP 2NR
04/10/01	0926	(H)	TITLE CHANGE PENDING HCR 15
04/10/01	0927	(H)	DP: MEYER, JAMES; DNP: BERKOWITZ;
04/10/01	0927	(H)	NR: COGHILL, ROKEBERG
04/10/01	0927	(H)	FN2: (ADM)
04/10/01		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/10/01		(H)	Heard & Held MINUTE(FIN)
04/11/01	0954	(H)	FIN RPT HCS(FIN) 6DP 1NR 1AM
04/11/01	0955	(H)	DP: WHITAKER, HARRIS, LANCASTER,
04/11/01	0955	(H)	HUDSON, MULDER, WILLIAMS; NR: CROFT;
04/11/01	0955	(H)	AM: DAVIES
04/11/01	0955	(H)	FN2: (ADM)
04/11/01	0963	(H)	RULES TO CALENDAR 4/11/01
04/11/01	0963	(H)	READ THE SECOND TIME
04/11/01	0964	(H)	FIN HCS ADOPTED UNAN CONSENT
04/11/01	0964	(H)	HELD IN SECOND READING
04/11/01		(H)	FIN AT 8:30 AM HOUSE FINANCE 519
04/11/01		(H)	Moved HCSSB 103(FIN) Out of Committee MINUTE(FIN)
04/12/01	0993	(H)	RETURNED TO RLS COMMITTEE
04/19/01		(H)	RLS AT 2:00 PM FAHRENKAMP 203

WITNESS REGISTER

JOE BALASH, Staff
to the Senate State Affairs Committee
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of SB
103, the Senate State Affairs Committee.

SENATOR DAVE DONLEY
Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801
POSITION STATEMENT: Testified on SB 103.

SUSIE BARNETT, Administrator
to the Select Committee on Legislative Ethics
Alaska State Legislature
PO Box 101468
Anchorage, Alaska 99510-1468
POSITION STATEMENT: Testified on the ethics provisions in SB
103.

BROOKE MILES, Assistant Director
Alaska Public Offices Commission
Department of Administration
2221 E Northern Lights, Room 128
Anchorage, Alaska 99508-4149
POSITION STATEMENT: Answered a question.

ACTION NARRATIVE

TAPE 01-7, SIDE A
Number 0001

CHAIR PETE KOTT called the House Rules Standing Committee meeting to order at 2:15 p.m. Representatives Kott, Porter, Morgan, McGuire, and Berkowitz were present at the call to order. Representative Joule arrived as the meeting was in progress. Senator Donley was also in attendance.

SB 103-ELECTION CAMPAIGNS AND LEGISLATIVE ETHICS

Number 0005

CHAIR KOTT announced that the only order of business before the committee would be CS FOR SENATE BILL NO. 103(FIN), "An Act relating to election campaigns and legislative ethics."

Number 0013

REPRESENTATIVE PORTER moved to adopt HCS CSSB 103, version Q, as the working document before the committee.

REPRESENTATIVE BERKOWITZ objected.

REPRESENTATIVE KOTT explained that [version Q] incorporates the recent court ruling into the [House] Judiciary Standing Committee version [version I]. Version Q also includes [new language] dealing with communications on page 7, lines 1-5. He said those are the significant changes. Copies of U.S. District Judge James Singleton's ruling were distributed to the committee.

REPRESENTATIVE BERKOWITZ withdrew his objection.

Therefore, version Q was before the committee.

Number 0064

JOE BALASH, Staff to the Senate State Affairs Committee, Alaska State Legislature, identified SB 103 as primarily a housekeeping measure. In large part, SB 103 takes into account administrative rulings and formal and informal advice provided by the Select Committee on Legislative Ethics and places those in the statutes. Therefore, everyone will be clear in regard to how the law works. This legislation primarily deals with the Alaska Public Offices Commission (APOC) and the Ethics statutes. He pointed out that under the election campaign statutes, [the legislation deals with] the issue of multiple groups controlled by a single candidate, contribution limits due to the Singleton decision, and an allowance for a candidate's contributor statement to be filed by the candidate on behalf of the contributor. The legislation also makes some modest increases on the amount of personal property that can be carried forward by the candidate. Furthermore, the legislation clarifies the definition of "contributions." Mr. Balash pointed out that the ethics portion of the legislation can be divided into the following two portions of the bill: the use of public assets and resources for nonlegislative purposes and the use of public assets for political purposes. The legislation makes allowances for a variety of things that, in most cases, were allowed due to decisions made by the Select Committee on Legislative Ethics. He specified that this legislation allows for the reasonable use of the Internet, photographs, transporting personal computers not owned by the state but used primarily for state business, and widens the window that legislators can use their office before and after session. There is also a section regarding gifts of transportation from one legislator to another.

CHAIR KOTT inquired as to the rationale behind the increase in property allowance from \$2,500 to \$5,000, which doesn't include computers and printers.

MR. BALASH explained that the \$2,500 amount was set a number of years ago and people may not have considered all the items, such as stationary and balloons that APOC considers to be property and what can and cannot be carried forward.

CHAIR KOTT remarked that Senate districts would have twice as many items to pass out during campaigns.

Number 0130

REPRESENTATIVE BERKOWITZ said that his biggest concern with the Singleton ruling and version Q is the \$5,000 allowance for the purpose of influencing the nomination or election of a candidate. Although he understood the court's ruling, he expressed concern with how large gifts could be cordoned off and how one could account for what works towards influencing the nomination or election of a candidate. For example, the Democratic Party has an executive director who isn't always working on campaigns and thus he inquired as to how one segregates the value of something generic from something that benefits a campaign.

MR. BALASH surmised that under APOC's regulatory powers, certain instances and forms would be established in order to determine what contributions are for what. Currently, the Republican Party's executive director's salary isn't divided up among all the Republican candidates statewide and then assessed against the party's contribution limit to candidates. Therefore, he wasn't sure how such an example would fit in regard to contribution limits and what is earmarked for specific candidates and campaigns.

REPRESENTATIVE BERKOWITZ posed an example in which someone does a \$100,000 advertising campaign to benefit the Democratic Party. Although the advertising campaign doesn't specifically mention any candidates by name, it clearly benefits everyone who is labeled a Democrat and thus would hurt those labeled Republican. This [soft money] is a problem.

MR. BALASH said that he wasn't sure if Representative Berkowitz was speaking of an advertising campaign that is "at the behest of or designed by or commissioned by the Republican Party or

Democratic Party" or whether he was speaking of an independent expenditure on the part of a corporation or union.

REPRESENTATIVE BERKOWITZ clarified that he was speaking in the context of Section 2, which refers to the contribution to a political party. He said, "There's nothing that would preclude someone from dropping \$100,000 on a political party and ... run ads saying how good you are and how bad the other guys are generically." Representative Berkowitz related his belief that the legislature has the ability to prevent such mischief within the constructs of the Singleton decision. He remarked that it seems peculiar that the rest of the country is trying to move away from soft money, yet "we" have this issue.

MR. BALASH pointed out that the rest of the country is also struggling with the right of individual organizations and individuals to speak at their own behest. He related his understanding of a Colorado case in which the supreme court has recently granted cert to address whether that is permissible and whether the state has a legitimate and compelling state interest to regulate that sort of activity in speech. He offered to provide the citation to the committee.

Number 0202

SENATOR DAVE DONLEY, Alaska State Legislature, noted that although he supported the proposed HCS, he does have one concern regarding poet account interest at the end of a term of a poet account. By returning to the existing statutory language, there is no fix for this problem. He explained that the statute says that only \$5,000 a year can be withdrawn from a poet account. Therefore, if a legislator has an interest-bearing poet account that has money in it at the end of two years or four years, there is no statutory authority to do anything with the money that remains in the account. He informed the committee that APOC has supported allowing a legislator to take out interest on a poet account also. Although this is minor, it is an accounting nightmare. Therefore, he asked if the committee would consider inserting the following language:

Page 4, line 1, after "\$5,000"

Insert "not including any interest paid on the account"

REPRESENTATIVE PORTER remarked that the language should read, "is limited to \$5,000 and accumulated interest".

SENATOR DONLEY indicated agreement with that language.

REPRESENTATIVE BERKOWITZ mentioned that those who have been legislators for a while and who put away \$5,000 early on could end up with some "real" money after a while.

SENATOR DONLEY explained that under the poet account, a legislator is only allowed \$5,000 per year of the legislator's term of office. Furthermore, the legislator is only allowed to withdraw \$5,000 a year. Therefore, the most interest that could accumulate would be about \$15,000 over a three year period, that is if the individual is a Senator. Even over that period, the legislator would have to withdraw \$5,000 a year and thus the amount [in interest] would decrease. Therefore, it would be interest on the average of that amount of money over the three years.

REPRESENTATIVE BERKOWITZ inquired as to what would happen if the legislator had no use for it and no money was withdrawn.

SENATOR DONLEY pointed out that if the money isn't withdrawn, there is a provision for redistribution of the money in the same fashion as the excesses from campaign finance.

CHAIR KOTT related his belief that the money has to be extracted from the reserve account on an annual basis. However, the entire amount doesn't have to be expended in any year. He posed an example in which a legislator withdrew \$5,000 in the first year, which can be done if the legislator has \$10,000 in the reserve account. If the legislator withdrew \$10,000 and nothing was used the first year, then that legislator could transfer the \$5,000 from the first year into the second year and thus the legislator would have \$10,000. The legislator could spend \$2,000 of that \$10,000, which would leave \$8,000 at the end of the second year. The legislator would know that if he/she were reelected, then the legislator would be able to roll that \$8,000 into the next year's poet operational account. If the legislator was not elected, then the money would have to be dispersed to the various entities provided for. He pointed out that when the legislator takes funds from the reserve account, the operational account, there is a tax liability.

Number 0261

REPRESENTATIVE BERKOWITZ referred to \$5,000 rather than \$10,000, which Chair Kott used in his example. Representative Berkowitz

remarked that if the \$5,000 is not withdrawn, the interest would amount to a considerable amount of money.

CHAIR KOTT interjected that it must be taken out of the reserve account.

REPRESENTATIVE PORTER pointed out that interest accumulates now and thus the only thing this would do is allow the legislator to spend it rather than leaving it in the account until it is distributed to charities, the party, et cetera.

CHAIR KOTT related his belief that it seems appropriate because when that \$5,000 is withdrawn it could be moved into an interest-bearing checking account. Therefore, a bit more than \$5,000 would be available to spend.

SENATOR DONLEY highlighted the fact that this is poet money, the use of which is severely restricted. This money can only be used for governmental functions, office functions, or legislative functions.

Number 0285

SUSIE BARNETT, Administrator to the Select Committee on Legislative Ethics, Alaska State Legislature, said that she has the House Finance Committee version, version K, before her. Therefore, she didn't know whether anything regarding the ethics provisions were changed in version Q.

CHAIR KOTT answered that he believes that the two ethics provisions are in the same form as they were in the House Finance Committee version.

MS. BARNETT reiterated her comment to the House Finance Committee as follows: "I think that the changes made in the House were positive and I also compliment you folks on not over amending the Ethics Code."

CHAIR KOTT recalled that most of the language included in SB 103 that relates to the Ethics Code is from past advisory opinions from the Select Committee on Legislative Ethics.

MS. BARNETT agreed that is the case with several ethics-related portions of the bill. For example, the language dealing with the constitutional amendment came from an advisory opinion. However, several are based on informal advice, which the Select Committee on Legislative Ethics has been asked to review but

have not been asked to provide a formal opinion. Ms. Barnett pointed out that the new portion to the Ethics Code is located in the section concerning the gift of transportation from a legislator to another legislator. The Select Committee on Legislative Ethics hasn't dealt with that formally. Informally, Ms. Barnett noted that she has advised that such gifts remain under the \$250 cap or ensure that the travel had a legislative purpose. Under this [legislation], it would exempt any of those sorts of requirements and does not require disclosure.

CHAIR KOTT, upon no one wanting to testify on SB 103, closed the public testimony on SB 103. He reminded committee members of Senator Donley's earlier recommendation.

Number 0333

REPRESENTATIVE PORTER moved that the committee adopt the following conceptual amendment, Amendment 1:

Page 4, line 1, after "\$5,000"
Insert "plus any accumulated interest"

There being no objection, Amendment 1 was adopted.

Number 0342

REPRESENTATIVE BERKOWITZ moved that the committee adopt the following amendment, Amendment 1:

Page 2, line 5, after "candidate"
Insert "or candidates"

There being no objection, Amendment 2 was adopted.

Number 0355

REPRESENTATIVE BERKOWITZ moved that the committee adopt the following amendment, Amendment 3: Page 6, delete sub-subparagraph (iii), lines 3-6.

REPRESENTATIVE PORTER objected.

REPRESENTATIVE BERKOWITZ inquired as to how "slate of candidates" would be defined. He asked if that would include the entire statewide slate, areawide slate, senate-wide slate, et cetera.

REPRESENTATIVE PORTER pointed out that is left to the party. He noted that in Anchorage the Republican Women's Club does this.

REPRESENTATIVE BERKOWITZ mentioned "comparison piece" advertisements, which can twist the most innocuous position. He felt that [sub-subparagraph (iii)] allows for a circumvention of the limits of gift to an individual candidate. He related his belief that [the legislature] shouldn't allow for more hard money contributions.

A roll call vote was taken. Representative Berkowitz voted for Amendment 3. Representatives Porter, McGuire, Morgan, Joule, and Kott voted against Amendment 3. Therefore, Amendment 3 failed to be adopted by a vote of 1-5.

Number 0396

REPRESENTATIVE BERKOWITZ moved that the committee adopt the following amendment, Amendment 4:

Page 7, lines 2 and 4,
Delete "and their families"

REPRESENTATIVE BERKOWITZ explained that under the current language, the Alaska Conservation of Voters could mail letters to all its members and their relatives, which he didn't believe was the intention.

SENATOR DONLEY related his belief that this particular language comes from the federal statutes. Under the federal election law this is protected free speech and not considered a campaign contribution. This falls under the First Amendment right of association and political free speech. Senator Donley felt that it would be fine to limit it to the employees or actual members of an organization. However, the intent with [this language] was that if an organization mailed information to the [member's] household, someone else in the household may open it up.

CHAIR KOTT asked if there was objection to Amendment 4. There being no objection, Amendment 4 was adopted.

Number 0426

REPRESENTATIVE BERKOWITZ referred to page 9, subparagraph (G), which deals with the "incidental use of governmental resources by a legislator or legislative employee to support or oppose a proposed amendment to the state or federal constitution".

Representative Berkowitz expressed his belief that legislators shouldn't be involved with a proposed constitutional amendment once that has passed the legislature. He specified, "There is a line of demarcation after a vote has been taken in this body where ... the resolution ceases to be within our control and then becomes part of ... public political domain." This line shouldn't be blurred.

REPRESENTATIVE PORTER said that although he understood the reasoning, practicality is probably the reason this language is included. He highlighted the difficulty in an elected official not being able to relate their opinion on these matters when asked. Therefore, practically speaking, Representative Porter didn't believe there was a way to avoid this.

REPRESENTATIVE BERKOWITZ asked if there was anything currently that would preclude a legislator from answering constituent questions regarding his/her opinion of a state or federal constitutional issue.

MS. BARNETT answered no, as long as the legislator doesn't advocate one way or the other. An advocacy role would be problematic.

Number 0448

REPRESENTATIVE JOULE asked whether a legislator's inability to take a position would be tantamount to limiting his/her free speech. He asked whether it would be a violation if a legislator stated the position he/she, as an individual, would take on a certain issue. Technically, would it be a violation if a legislator took out an advertisement that specified how that legislator would vote on a particular amendment.

MS. BARNETT informed the committee that in March 1998 the Select Committee on Legislative Ethics addressed this question. The Select Committee on Legislative Ethics concluded that under the Ethics Code a legislator or legislative employee may engage in activity in support or opposition to a proposed amendment to the state constitution and may use governmental resources, including paid staff time, to support or oppose the proposed amendment. However, it was noted that state facilities may not be used by legislators or legislative employees for activities relating to contributions. Furthermore, a legislative employee may not, on government time, solicit, accept, or receive contributions in support of or opposition to a proposed constitutional amendment.

CHAIR KOTT related his understanding then that the Select Committee on Legislative Ethics has already reviewed this section being discussed and have rendered an opinion that substantiates or supports this section.

MS. BARNETT agreed.

CHAIR KOTT pointed out that the language in version Q further restricts this by referring to incidental use.

REPRESENTATIVE PORTER agreed that this language seems to be more restrictive than the opinion of the Select Committee on Legislative Ethics.

REPRESENTATIVE BERKOWITZ withdrew Amendment 5.

CHAIR KOTT offered the following conceptual amendment, Amendment 6, that would be inserted around page 3, line 15. Amendment 6 attempts to address a problem that only occurs once every ten years when there is reapportionment. This would address only those Senators who have the opportunity "to put the maximum amount carry over from their campaign, excess monies into their reserve account," he said. Since many of those Senators would likely be truncated after two years and since they can only access a certain amount after one year, there is the likelihood that half of what they transferred into the reserve account could not be accessed.

Number 0491

REPRESENTATIVE PORTER moved that the committee adopt the aforementioned conceptual amendment, Amendment 6. There being no objection, Amendment 6 was adopted.

SENATOR DONLEY mentioned that he wasn't aware of what the House Judiciary Standing Committee had done with the constitutional amendment issue. He inquired as to the meaning of "incidental," which he believes to be problematic. He explained that it would be difficult to say that all the work answering inquiries regarding a constitutional amendment that the legislator sponsored was incidental. Furthermore, Senator Donley suggested that it was a lot of work and thus wasn't incidental.

REPRESENTATIVE BERKOWITZ informed the committee that the language was the result of an amendment by Representative Ogan. The discussion in the House Judiciary Standing Committee revolved around the potential for abuse of the privilege through

phone banking out of the legislator's office or performing many mailings out of the legislator's office. It was felt that a restriction to incidental clearly applied to responses to inquiry as opposed to a more proactive lobbying effort on behalf of or opposed to a constitutional amendment.

REPRESENTATIVE PORTER asked if the House Judiciary Standing Committee discussion addressed the possibility of a legislator being the sponsor of the constitutional amendment.

REPRESENTATIVE BERKOWITZ recalled that it was to some extent. He recalled that the House Judiciary Standing Committee felt that responding to inquires was distinct to proactive involvement, such as mailings requesting a certain vote or establishing a phone bank that might target wavering voters.

SENATOR DONLEY stated his preference for specifying that a phone bank can't be utilized rather than using the vague language of incidental. He remarked that it would be difficult for him to characterize the preparation of a voter's guide statement as incidental. However, he felt that the voter's guide statement is an important and appropriate constitutional function for the sponsor of these proposals.

REPRESENTATIVE BERKOWITZ pointed out that even the preparation of a voter's guide statement would be an incidental use of state resources because it incurs a relatively small cost to the state.

SENATOR DONLEY related his understanding of the Select Committee on Legislative Ethics' view that considers the cost of staff time, which would not be incidental.

Number 0540

MS. BARNETT clarified that she hasn't run that change by the full Select Committee on Legislative Ethics, although she felt that it probably was a good change because it was compromise language from the House Judiciary Standing Committee. She mentioned that the word incidental is no more challenging for the Select Committee on Legislative Ethics than minimal or nominal or other words that are in the Ethics Code.

MR. BALASH informed the committee that during the House Judiciary Standing Committee discussion there was an additional section in SB 103, which was an APOC section regarding campaigns. He pointed out that there is a ban on monies, monies

being used to influence the outcome of a ballot proposition, held by state entities, including the legislature. He pointed out that there was a section [in the House Judiciary Standing Committee version] that created an exception. He explained, "If it's permitted under this particular citation in the Ethics Code, then it can be used." At that point, there was genuine concern that a loophole was being created. There was concern that monies being held by the Legislative Affairs Agency (LAA) in expense accounts and phone bills would then be used to pay for an active campaign, which was not the intent. Therefore, the word incidental was inserted in subparagraph (G) in the Ethics Code. He continued:

However, when we go to [the House] Finance Committee, after discussions with APOC, the decision and testimony from APOC at the time was that if we remove this section in the APOC Code ... and that we retained the exception in the Ethics Code that responding, advocating, and opposing constitutional amendments in the course of your duties -- it's allowable under the Ethics Code therefore it's allowable and not considered a contribution on the part of a campaign effort for or against an amendment.

Mr. Balash explained that when the APOC language was taken out, the compromise word "incidental" was not taken out. He clarified that the compromise that was necessary in the House Judiciary Standing Committee is no longer necessary. However, with or without "incidental", he believes that if a legislator crossed a threshold beyond responding in the normal course of their day-to-day legislative duties, that would cross the line in terms of what is interpreted as a campaign contribution. This is the same line that could be crossed during a [legislator's] candidacy.

SENATOR DONLEY surmised that what everyone is attempting to address is reasonable use. For example, he felt that everyone would agree that setting up a phone bank would be unreasonable. He said he wasn't sure that "incidental" is the appropriate word.

BROOKE MILES, Assistant Director, Alaska Public Offices Commission, in response to Chair Kott, said that she had no comment on this particular section since it is in the ethics statute.

REPRESENTATIVE PORTER indicated his agreement with Senator Donley. However, he indicated that what is considered reasonable under one fact situation may not be considered reasonable under another.

TAPE 01-7, SIDE B

REPRESENTATIVE PORTER said that he believes the word "reasonable" is a better individual approach than "incidental" because these incidents are reviewed on an individual basis by the Select Committee on Legislative Ethics.

Number 0586

REPRESENTATIVE PORTER moved the following amendment, Amendment 6:

Page 9, subparagraph (G),
Delete "incidental"
Insert "reasonable"

REPRESENTATIVE BERKOWITZ objected. He related his understanding that "we're" interpreting "reasonable." Therefore, perhaps there should be language that specifies that the reference is to reactive versus proactive use of state funds for active campaigning.

REPRESENTATIVE PORTER said that he wouldn't say that in every situation. For example, if a legislator sponsored a constitutional amendment on changing the constitutional provision for the establishment of the redistricting committee and an executive committee of a Parent Teacher Association (PTA) didn't like the amendment, would the legislator be considered proactive if the legislator called the members of that PTA executive committee to offer explanation. Although he indicated agreement that such action could be considered proactive, he didn't think it should be precluded.

REPRESENTATIVE BERKOWITZ related his belief that it shouldn't be precluded when [the explanation] is not financed by the state because once the resolution leaves the legislature, then it's no longer the legislature's. If a legislator or the organization pays for the phone calls related to [sponsoring] the constitutional amendment or if the legislator or staff volunteers time on these amendments, Representative Berkowitz felt that such action would be acceptable and normal. However,

he did believe that the legislature "should let go" once the vote is taken.

REPRESENTATIVE PORTER specified that [the legislature] should let go after the vote of the people. A constitutional amendment process doesn't end until the people have voted and thus he didn't see the need to hinder a person by not allowing them to use their own office to support their own legislation [constitutional amendment].

CHAIR KOTT agreed with Representative Porter. If a legislator is a sponsor of a resolution that was going before the voters and is approved, he asked if that legislator would be restricted from using the legislator's staff to include an announcement regarding the passage of it in the legislator's end of the session newsletter. He mentioned that the legislator could use his office allowance to pay for the newsletter. He said that would be proactive.

REPRESENTATIVE BERKOWITZ said that is why he believes that "incidental" or "minimal" is preferable to "reasonable."

Number 0536

CHAIR KOTT mentioned the possibility of removing the word "incidental" entirely, which would fall within the scope of the opinion rendered by the Select Committee on Legislative Ethics.

REPRESENTATIVE BERKOWITZ mentioned the possibility of removing the section [subparagraph (G)] entirely.

MR. BALASH pointed out that in the past when language has been put in and subsequently removed, it has impacted Ms. Barnett's way of thinking and perhaps the Select Committee on Ethics way of thinking. Therefore, he assumed that it would impact the way in which the Select Committee on Legislative Ethics views that opinion.

CHAIR KOTT recalled the legislature's efforts in previous years to include opinions from the Select Committee on Legislative Ethics in statute in order to avoid different opinions from a future Select Committee on Legislative Ethics.

REPRESENTATIVE PORTER renewed the motion to adopt conceptual Amendment 6, which reads as follows:

Page 9, line 31,

Delete "incidental"
Insert "reasonable"

REPRESENTATIVE PORTER concluded by saying that use of the word "reasonable" would more accurately reflect the advisory opinion from the Select Committee on Legislative Ethics.

REPRESENTATIVE BERKOWITZ objected.

Number 0500

A roll call vote was taken. Representatives Porter, McGuire, Morgan, and Kott voted for Amendment 6. Representatives Joule and Berkowitz voted against Amendment 6. Therefore, Amendment 6 was adopted with a vote of 4-2.

SENATOR DONLEY recommended that the committee request Kathryn Kurtz, Attorney, Legislative Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, review the committee's amendments in order to verify that they comply with the federal decision.

CHAIR KOTT indicated agreement.

Number 0497

REPRESENTATIVE MCGUIRE moved to report HCS CSSB 103(RLS), version Q, as amended out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS CSSB 103(RLS) was reported from the House Rules Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 3:15 p.m.