

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

January 23, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Johnny Ellis

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

Confirmation Hearing - Select Committee on Legislative Ethics
H. Conner Thomas
Bonnie L. Mehner
Arthur S. Robinson

WITNESS REGISTER

H. Conner Thomas
P.O. Box 865
Nome, AK 99762

Bonnie L. Mehner
3201 C Street #200
Anchorage, AK 99503

ACTION NARRATIVE

TAPE 02-01, SIDE A

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:35 p.m. Members present were Senator Donley, Senator Cowdery, Senator Ellis and Chairman Taylor. The order of business was Select Committee on Legislative Ethics Confirmation Hearings.

CHAIRMAN TAYLOR announced the first order of business would be the confirmation hearing of H. Conner Thomas on his appointment to the Ethics Committee. He thanked Mr. Conner on behalf of the committee for volunteering to serve. He asked him to give the

committee a brief resume or comments important in evaluating his appointment.

MR. H. CONNER THOMAS, Alaska Legislative Ethics Committee member, testifying via teleconference, said he had served on the Legislative Ethics Committee for one term. He had learned what his role was and the usefulness of the Ethics Committee. He is an attorney and has been practicing law in Nome since 1978, starting with Alaska Legal Services and the Public Defenders Office and he has been the Magistrate. In 1986 he went into private practice in a small general practice firm.

He found work on the Ethics Committee interesting and he felt it was a public service. He found the time commitment was not so great that it interfered with practicing law.

CHAIRMAN TAYLOR thanked him for his service over the last year. He asked if there were questions from the committee members. He asked Mr. Thomas if this committee had previously confirmed him.

MR. THOMAS answered yes, for the first service.

SENATOR DONLEY asked if he had reviewed some of the changes in the ethics law that passed with SB 103 (Election Campaigns and Legislative Ethics).

MR. THOMAS answered that he was aware of the changes but had not reviewed them in depth.

SENATOR DONLEY said there were a couple of changes that seemed specifically directed at decisions of the Ethics Committee. The Ethics Committee might have felt constrained by the way the statute was written causing them to do something with which they might not have even agreed with.

He gave an example of an ethics opinion that said it would be improper to use state resources to ship computers that legislators had bought with their own resources but were using in their office for state business. That was one of the provisions in SB 103 that was directly overturned. He didn't understand that decision because for a long time it was very hard to get equipment out of the leadership in the legislature. Legislators would buy equipment with their own funds or campaign funds. The opinion that it wasn't appropriate for the state to pay to bring those computers down so people could use them for state business did not make sense to him. He said the Ethics Committee got a little carried away. He thought maybe they felt constrained by the way the specific statute was written but the result didn't

seem to make common sense. He hoped some of those problems had been fixed in SB 103.

MR. THOMAS didn't think he could comment on that particular opinion because he was not a part of that group at the time that particular decision was rendered. He said, based on his experience on the committee, people do spend quite a bit of time looking at the real impact of what the decision is going to be. They are constrained to a large extent by the language in the statute and it may be that was the reasoning of the committee that it did not fit with the language. He said even though something may have a common sense outcome if it is contrary to the clear statutory language then he did not think the committee had a lot of choice. Hopefully it comes back to where it has in this case, for the Legislature to make the decision about whether it should be modified. He understood that any individual given set of facts might result in an odd result at times.

SENATOR DONLEY said one of the big challenges of ethics laws is to craft them in such a way that it applies reasonably to the vast majority of circumstances.

CHAIRMAN TAYLOR said that Mr. Thomas was constrained, just as Senator Donley, himself and any lawyer that serves in public office, to reveal in your APOC (Alaska Public Offices Commission) disclosure:

- A list of all clients from whom you receive more than \$1000.
- To provide a separate listing of any client on whose behalf you may have contacted a state agency.
- To list what that agency is.

He asked Mr. Thomas to give his opinion as to the inherent conflict that exists between the legal canons of ethics that lawyers are sworn to uphold and carry out, and the requirements of that disclosure.

MR. THOMAS answered that he felt the problem a lot of people have with that is when someone comes into your office they expect you to keep the matter confidential unless you end up in court. A lot of situations they deal with don't go to court. Some people are unhappy with the fact that their names appear in a list as having consulted with an attorney. That is a conflict as he sees it and understands some people have a very strong feeling that they shouldn't have to disclose that and in fact refuse to serve on this committee or others as a result of that. That is the conflict. He said he had given it quite a bit of thought and thinks it is appropriate because of the possibility of a

significant financial connection that may influence a decision one way or the other. He said he definitely understood the conflict.

CHAIRMAN TAYLOR said he wasn't arguing whether or not it was appropriate. He shared the concerns about misuse of office by those who might fail to disclose such a conflict. He asked if he also report the clients of his associates within the firm.

MR. THOMAS said that was correct.

CHAIRMAN TAYLOR recounted a personal situation where for some years he maintained a law practice in Petersburg with an associate and in Wrangell with a couple of associates. He had submitted the required lists to APOC. A newspaper published all those contacts between his offices and state agencies in the newspaper with the clients' names and what agency had been contacted. He received a phone call from a family in Petersburg because that was how their seven-year-old daughter found out she was adopted, by reading it in the newspaper.

CHAIRMAN TAYLOR said his office didn't see a new client for about three months. His associate decided that he could not live under that sort of a constraint and practice law meaningfully so that office was closed. He said the conflict he was referring to was that his associate had to have his name published, the client's name published and the fact that he had been required by the law to contact the Department of Health and Social Services at that time to get confirmation that he could move forward with an adoption.

Chairman Taylor said he raised the point because these things do have an effect though he still believed in the appropriateness. He explained how people in the legislature, calling themselves consultants made hundreds of thousands of dollars a year working for various interests. When asked by the press what they did for those dollars they said they secured permits for them through state agencies. He didn't think it was an appropriate action and out of it came laws like those being discussed. It troubled him and he was glad to hear that Mr. Thomas had thought about it too, as it involves professionals who choose to volunteer for public service and it has a chilling impact upon candidates. He specified those who practice law because he thought he is the only legislator who maintains an active practice of law. He wanted Mr. Thomas to understand the basis and reason of his question and appreciated his candor and the thoughtfulness of his answer.

MR. THOMAS said initially he couldn't believe they were asking those questions, that it wasn't appropriate or right, but after going through the statutes he determined it was exactly what they were asking. He said his position did change after thinking about it.

CHAIRMAN TAYLOR said the privilege is actually a privilege that belongs to the client. He said many firms have been faced with each client having to sign a piece of paper as they became a client of the firm volunteering that those matters they were discussing with that attorney could be made public through this process. He asked if he did that in his firm.

MR. THOMAS answered that they don't and he wouldn't release the matters that were actually discussed. All that is released is the name of persons who had paid his firm over \$1000.

CHAIRMAN TAYLOR said he thought that if you have contact with a state agency you had to disclose that.

MR. THOMAS said he did not have that type of practice.

CHAIRMAN TAYLOR said he didn't think he did either, in a whole year his firm had about five things, but attorneys do end up making contact with state agencies at times and it was something to think about. He said he would appreciate, in the future, Mr. Thomas's comments and thoughts on that. He asked for any further questions. Hearing none, he thanked Mr. Thomas for his service and his willingness to serve in the future.

SENATOR COWDERY made a motion to accept H. Conner Thomas to be appointed to the board of the Select Committee on Legislative Ethics and asked for unanimous consent.

CHAIRMAN TAYLOR said there being no objection the letter approving Mr. H. Conner Thomas to the Select Committee on Legislative Ethics would be sent to the full Legislature for consideration.

CHAIRMAN TAYLOR announced Bonnie L. Mehner as the next person for consideration. He asked Ms. Mehner to present her background for the committee's information.

MS. MEHNER, testifying via teleconference, informed them that she was a 40 year resident of Alaska and had been practicing real estate in Anchorage for the past 27 years. She serves as Chair of the Alaska Community Foundation, Trustee on Alaska Pacific University's Board, and was appointed by Justice Fabe in May to

fill out the term of another attorney who removed himself from the committee for many of the points discussed with Mr. Thomas. She had attended several committee meetings and found the discussion of ethics in detail very interesting. She did not feel it was an overwhelming time commitment and it is something she would be able to do.

CHAIRMAN TAYLOR thanked her for her service and her willingness to serve in the future. There were no questions for Ms. Mehner.

SENATOR COWDERY made a motion to accept Bonnie Mehner to be appointed to the board of Select Committee on Legislative Ethics.

CHAIRMAN TAYLOR said there being no objection the letter approving Bonnie L. Mehner to the Select Committee on Legislative Ethics would be sent to the full Legislature for consideration.

CHAIRMAN TAYLOR called for Arthur S. Robinson. He was not available via teleconference.

CHAIRMAN TAYLOR announced they would try to run committee hearings three times per week but with everyone's busy schedules it appeared that Fridays might be difficult. They would try to do most of their work on Mondays and Wednesdays.

SENATOR ELLIS asked what sort of issues and types of legislation did he expect to be the major focus of his committee this year.

CHAIRMAN TAYLOR answered that he did not have an agenda. Some things left over from last year are, liability immunity, which would be coming from the House, equine immunity and some insurance bills. He said Senator Wilken wanted them to consider one on domestic law, whether or not couples could get legal or binding separation as opposed to a divorce. He felt it was a topic worth discussion and they should decide if they wanted to move forward on that but he did not have an opinion on it. He asked if Senator Ellis had some in mind.

SENATOR ELLIS said he had none at that time but would look at the list.

SENATOR COWDERY said he was looking at some legislation on DWI issues and mandatory insurance issues.

CHAIRMAN TAYLOR said they still had one DWI bill on forfeiture of license. He thought the Governor and Senator Ward had each introduced one.

SENATOR COWDERY said he had been talking to Anchorage Police Officers. He explained that currently if someone is pulled over and suspected of DWI and if they refuse the Breathalyzer it is sort of an admission. However the paperwork involved for the officer takes about 4 hours during which he is off the street. This is required to make sure it holds. Senator Cowdery said he was researching other states to see how they do it. He wants officers spending more time on the streets and less time doing the paperwork, which is often overtime.

CHAIRMAN TAYLOR said when he was a judge when someone walked through the door with the complaint and all the police paperwork was already done it took a minimum of 37 different pages just to process them through the court system. He thought it was overwhelming and there should have been an easier way but much of it is due to how they drew the regulations and set up the administrative procedures.

SENATOR COWDERY said he had some patrol officers contact him and was working with them to see how other states have done things that sped up the process and put the police back on the street.

CHAIRMAN TAYLOR adjourned the meeting at 1:58