

ALASKA STATE LEGISLATURE
OMBUDSMAN SELECTION COMMITTEE

April 2, 2002
5:12 p.m.

MEMBERS PRESENT

Senator Randy Phillips, Co-Chair
Senator Ben Stevens
Senator Johnny Ellis
Representative Pete Kott, Co-Chair
Representative Lesil McGuire
Representative Ethan Berkowitz

MEMBERS ABSENT

None

COMMITTEE CALENDAR

Selection of an Ombudsman

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

Tamara Brandt Cook, Director
Division of Legal Services
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

Mr. Skiff Lobaugh
Human Resources Manager
Personnel Office
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182

ACTION NARRATIVE

TAPE 02-01, SIDE A
Number 001

CO-CHAIR RANDY PHILLIPS called the Ombudsman Selection Committee meeting to order at 5:12 p.m. All members were present. He asked

Ms. Cook to address the committee.

MS. TAMARA BRANDT COOK, Director of the Division of Legal Services, Legislative Affairs Agency, told members that AS 24.55.020 speaks to the appointment of an ombudsman, but it is incredibly sparse regarding the procedure to be used and says nothing about whether the application process is to be public or confidential. She said in general, the legislature has adopted policies that require personnel information to be kept confidential. However, the ombudsman is a special appointment. She explained that when the position was advertised, a notice was attached that said applications for the position of the ombudsman are a matter of public record and may be made available to the public upon written request to the Legislative Affairs Agency personnel office after the selection process has been completed.

MS. COOK explained the selection process contains two steps. First, the selection committee chooses a nominee. The nominee's name is then submitted to the full legislature for confirmation. The selection process is completed if the nominee is confirmed. At that point, the applications would be treated as public records. She noted that process has been used in the past for the ombudsman. She said that raises a question regarding the right of privacy of the individual and said she cannot recommend the committee release the applications at this point.

CO-CHAIR PHILLIPS asked at what point in time the applications can be made public.

MS. COOK said they could be released after the selection process is completed when the nominee is confirmed. She pointed out the identity of the nominee will become public when placed before the full legislature for confirmation. She told members that because this is a special type of committee and the application process is not covered by a personnel act, the committee could have drafted an application solicitation with different terms because no procedure is set by statute.

CO-CHAIR PHILLIPS said the committee wants to agree on about five applicants to interview. He asked Ms. Cook whether the discussions that lead to narrowing the pool to five should be confidential.

MS. COOK said that is a hazy question that the committee may decide either way on. She indicated the Uniform Rules apply to all legislative bodies, not just the standing, special and joint committees. The Uniform Rules require public meetings of all legislative bodies and set out some situations for which it is appropriate to go into executive session. One or two statutory provisions that attach to the Select Committee on Legislative

Ethics allow that committee to hold some of its hearings on a confidential basis and to hold its materials as confidential. But because this committee does not have that statutory umbrella over it, it falls under the Uniform Rules, which require meetings to be held in public unless it goes into executive session.

MS. COOK explained that one of the three reasons it is appropriate to go into executive session under the Uniform Rules is to discuss a matter that might damage or bring into question the reputation of a person. Normally, discussing applicants would not carry that sort of a burden, but it is possible. If the committee feels it is faced with the possibility of damaging an applicant's reputation during a free flowing discussion, it would be appropriate to go into executive session. She pointed out once a discussion starts, it is difficult to corral before a damaging remark might come out. She told members if the committee goes into executive session, all legislators could attend.

CO-CHAIR KOTT asked Ms. Cook to explain the other two reasons the committee could go into executive session. He asked if one was to discuss expending public monies and whether hiring an ombudsman would fall under that reason.

MS. COOK clarified that it applies to situations where knowledge of matters would have an immediate effect on a serious fiscal matter. That is used fairly regularly when the legislature is facing an emergency situation, often when it involves litigation against the legislature for a monetary claim. An executive session is not appropriate to discuss general expenditure questions in which public knowledge will not affect the state finances. She said her hunch is that committee members will be wrestling with the personal reputation matter.

CO-CHAIR KOTT asked how Ms. Cook "marries" up the idea that there is an expectation of confidentiality on the one side but no clear reason to go into executive session. He asked her how to get around the conflict if the committee speaks openly about an individual by name.

MS. COOK agreed the committee is faced with a conflict. She repeated the applicants were told their applications would not be made public. They were not told their names would be kept confidential in the course of a public meeting. She said she is not sure that the committee has promised applicants that they would not be discussed in general terms in a public meeting. If the committee gets into specific details and compares applicants in a way that might damage an applicant's reputation, she recommended the committee go into executive session. She said if members are concerned that might happen, the committee should probably go into executive session ahead of time.

CO-CHAIR KOTT maintained that if committee members intend to pare down the list to five nominees, he expects that there will be some discussion about qualifications for the purpose of choosing the most qualified. He asked if that would be justification to go into executive session.

MS. COOK said it would.

CO-CHAIR PHILLIPS noted that he was involved in the last two selections for the ombudsman, and if members wanted to ask certain questions of an applicant or discuss personalities, they would go into executive session. However, the initial interviews lasted 15 or 20 minutes each and were public. He said that so far, three committee members have selected nine names.

CO-CHAIR KOTT asked Ms. Cook what justification the committee would use to go into executive session to interview the candidates once it pares down the names to five.

MS. COOK said the answer is not clear-cut, but if the committee treats it as a personnel matter, legislative policy treats all personnel matters as confidential so the committee could exercise that discretion.

SENATOR ELLIS asked if House members have met and pared down the list of applicants.

CO-CHAIR KOTT said they have not. He noted that Representative Berkowitz was not present and wanted to get input from each member.

CO-CHAIR PHILLIPS told members that the three Senate members looked at all of the applications and individually selected their choices. They then got together and made a common list. He offered to provide those names at this time.

CO-CHAIR KOTT asked if the three Senate members met collectively.

SENATOR BEN STEVENS said they analyzed the applications individually and then met, at which time each Senator presented his top five applicants. He said that although they could have come up with 15 names, they had some common nominees so they have nine names.

CO-CHAIR KOTT said he thought the entire committee would go through that process, not the House and Senate separately.

SENATOR ELLIS explained that the Senate members were trying to expedite the procedure since the previous meetings were postponed.

CO-CHAIR PHILLIPS announced a brief at-ease at 5:30 p.m.

Upon reconvening, CO-CHAIR KOTT said the House members came up with nine names also.

CO-CHAIR PHILLIPS asked what Co-Chair Kott intended to do about the absence of Representative Berkowitz.

CO-CHAIR KOTT said that Representative Berkowitz was due momentarily and that his staff had arrived.

CO-CHAIR PHILLIPS provided the following names.

The three Senators unanimously agreed on two of the applicants: Suzan Armstrong and Maria Moya.

The following three names were supported by two of the Senators: Gwen Byington was supported by Senators Ellis and Phillips; Ruth Decamp was supported by Senators Stevens and Ellis; and Linda Lord Jenkins was supported by Senators Stevens and Phillips.

The following names were supported by one Senator: Shirley Dean was supported by Senator Ellis; Holly Hill was supported by Senator Stevens; Theda Pittman was supported by Senator Ellis; and Tom Nelson was supported by Senator Phillips.

CO-CHAIR KOTT noted that all three [Representatives] supported Linda Lord-Jenkins. He said that two Representatives supported Maria Moya, Peter Giannini, Gwen Byington, and Bridget Brice.

5:45 p.m.

REPRESENTATIVE BERKOWITZ arrived.

After further discussion, the committee eliminated the names of the nominees that were only supported by one committee member.

CO-CHAIR KOTT noted that Linda Lord Jenkins and Maria Moya have the support of five of six committee members. Gwen Byington and Suzan Armstrong have the support of three of six. Ruth Decamp and Peter Giannini have the support of two of six. The remaining candidates have the support of one member.

SENATOR ELLIS asked if the committee has decided to interview the top six vote-getters.

AN UNIDENTIFIED COMMITTEE MEMBER said that members agreed to interview five at the initial meeting but the list contains six names because of a tie.

REPRESENTATIVE BERKOWITZ noted that he only voted for three candidates so far and would like to add his support to Bridget Brice. He said he would cast his last vote for Theda Pittman.

CO-CHAIR KOTT said the next question is whether to interview the bottom four vote getters or to pick one of them.

SENATOR ELLIS moved to interview all eight of the top vote getters.

SENATOR STEVENS said he did not want to vote between the bottom four vote getters without a chance to carefully review the applications.

CO-CHAIR KOTT asked if the committee would be paying the applicants' transportation costs for the interviews. He suggested providing them with constituent airfares to lower the cost.

REPRESENTATIVE LESIL McGUIRE stated for the record that she is opposed to paying transportation costs as all applicants do not have the consensus of all committee members. She then clarified that she would be in favor of paying transportation costs for the top six candidates.

CO-CHAIR KOTT pointed out that the four candidates at the bottom of the list have the same number of votes.

CO-CHAIR PHILLIPS suggested the committee decide whether to bring all eight candidates to Juneau or to bring fewer.

SENATOR STEVENS repeated his opposition to having to vote between the four bottom vote getters without having another chance to review their resumes.

CO-CHAIR KOTT agreed and said this is the area where the committee may run into problems comparing qualifications.

REPRESENTATIVE McGUIRE suggested going into executive session.

CO-CHAIR KOTT said that is possible if the committee wants to take four hours at this time, which he would rather not.

CO-CHAIR PHILLIPS suggested voting on whether to pay transportation costs for all eight candidates first.

SENATOR ELLIS repeated his motion that committee members interview the eight people listed as the top vote getters.

CO-CHAIR PHILLIPS said the motion carried, 4 to 2. He noted the committee would look into getting the best airfare possible.

CO-CHAIR KOTT suggested setting up the interviews in advance to coincide with the airfare restrictions.

CO-CHAIR PHILLIPS announced the committee would interview Jenkins, Moya, Giannini, Byington, Armstrong, Brice, Decamp, and Pittman. He asked Skiff Lobaugh to contact the candidates to set up travel arrangements or a teleconference interview.

MR. LOBAUGH, Human Resources Manager, Personnel Office, Legislative Affairs Agency, asked committee members to find a common date on which to interview candidates.

SENATOR STEVENS suggested setting up the interviews on two half-days.

CO-CHAIR PHILLIPS agreed and directed Mr. Lobaugh to schedule four interviews on each of two days. He suggested setting up the interviews from 4:00 to 7:00 p.m. and to try to arrange travel so that candidates could travel to and from Juneau on the same day.

TAPE 02-1, SIDE B

MS. COOK suggested determining whether the interviews will be held publicly or privately before candidates are contacted.

CO-CHAIR KOTT suggested holding the interviews privately. He expressed concern that the first candidates to be interviewed would be placed at a disadvantage if all other candidates could listen to the questions and answers.

REPRESENTATIVE BERKOWITZ asked Ms. Cook to describe the standard procedure.

MS. COOK said there is none, which is why she suggested candidates be informed ahead of time whether the interviews would be held in private.

CO-CHAIR PHILLIPS asked Ms. Cook if she suggests doing the interviews in private.

MS. COOK said she believes that would be appropriate and that the notice of the meeting should indicate that the committee would be holding an executive session for the purpose of conducting interviews.

CO-CHAIR KOTT moved to conduct the interviews during an executive session in the conference room in the Terry Miller Legislative Office Building. There being no objection, the motion carried. He then asked members to provide a set of interview questions so that everyone is working from the same "sheet of music."

MR. LOBAUGH informed committee members that Personnel Office received 78 qualified applications for the position.

CO-CHAIR PHILLIPS stated that the advertisements were placed on two separate occasions.

CO-CHAIR KOTT clarified that the advertisement was run a second time because it was not clear in the first advertisement that the position could be located in either Anchorage or Juneau. The applicant pool increased from 13 to 78 after the second advertisement.

There being no further business to come before the committee, CO-CHAIR PHILLIPS adjourned the meeting at 6:10 p.m.