

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

January 20, 2005

8:01 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Bob Lynn
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW(S): DEPARTMENT OF ADMINISTRATION, ALASKA PUBLIC OFFICES
COMMISSION (APOC)

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

BROOKE MILES, Executive Director
Alaska Public Offices Commission (APOC)
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Presented an overview of APOC.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at [8:01:55 AM](#). Representatives Elkins, Gatto, Ramras, Gardner, and Seaton were present at the call to order. Representatives Lynn and Gruenberg arrived as the meeting was in progress.

OVERVIEW(S)

DEPARTMENT OF ADMINISTRATION, ALASKA PUBLIC OFFICES COMMISSION

8:02:59 AM

CHAIR SEATON announced that the only order of business was the overview regarding the Alaska Public Offices Commission (APOC).

8:03:29 AM

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), said she thinks the agency is unique, because the legislature interacts with it. She said she would provide a brief overview, including a history of APOC and summary of the activities during the calendar year 2004.

8:05:02 AM

CHAIR SEATON asked Ms. Miles to address the computer recording system that candidates use to record their campaign funds. He asked if APOC has plans to change the system and make it more user friendly.

[Chair Seaton turned the gavel over to Acting Chair Gatto.]

8:06:26 AM

MS. MILES responded that the action of the legislature last year in removing the ability of the commission to mandate electronic filing, compounded with the loss of \$100,000 and a loss of 20 percent of the staff, was a blow to her and to the agency. However, because of problems with the old system, the agency did receive funding for a new system. She said the old electronic filing system (ELF) is almost obsolete.

8:07:53 AM

MS. MILES told the committee that the new system is web-based, and she emphasized that it is user friendly. She stated her belief that the system is a lot better. She offered examples.

8:09:15 AM

CHAIR SEATON suggested the House State Affairs Standing Committee would be willing to test the new system.

[8:10:19 AM](#)

REPRESENTATIVE LYNN said he supports electronic filing. He said his own personal checking account allows him to bank online. He suggested that candidates have an online bank account in which they could deposit contributions, and he stressed the importance of having a password to use for such accounts.

[8:12:33 AM](#)

MS. MILES said she thinks continual, real-time reporting is something that may evolve from electronic filing, and the commission would support that idea.

[8:13:23 AM](#)

REPRESENTATIVE GATTO mentioned TurboTax and Quicken [computer software]. He related two instances where a bank made a mistake. He requested that APOC get something that is so intuitive that it won't let a person continue if he/she has made a mistake. He mentioned a "dichotomous key" - a system that creates questions with easy answers.

[8:17:15 AM](#)

MS. MILES indicated that the new system will allow a person to use Quicken, or other software programs. Returning to Representative Lynn's comments about passwords, she said people will be able to read the new system on the Internet without a password, but those [candidates] filing will have protected space behind a firewall.

[8:19:21 AM](#)

MS. MILES said the APOC is a quasi-judicial regulatory agency responsible for administering the following four disclosure laws: AS 15.13 - the campaign disclosure law; AS 24.45 - the regulation of lobbying law; AS 39.50 - the public official disclosure law; and AS 24.60.200 - the section of the legislative ethics law which requires annual financial disclosure by legislators and legislative directors. Ms. Miles offered details regarding each law.

[8:21:22 AM](#)

REPRESENTATIVE GRUENBERG noted that administrative law judges were created last year. He asked if they are required to file.

8:21:56 AM

MS. MILES answered no, because the enabling legislation did not include that requirement. In response to a follow-up question, she said she believes that the function of the individual who acts as the chief administrator law judge should be required to report. In regard to the other judges, she said she has no opinion as to whether or not they should be required to file, although she said there would be little harm in it. With respect to people employed by the State of Alaska, she said their sources of income and indebtedness are generally straightforward. She noted that all of the investment officers who work at the Department of Revenue file the statements.

8:23:38 AM

REPRESENTATIVE GRUENBERG mentioned blind trusts. He asked Ms. Miles if she has any feeling as to whether the blind trust statutes and other related statutes need to be reworked.

MS. MILES said she doesn't know, but would look into it.

8:24:28 AM

MS. MILES, in response to a request for clarification from Representative Gatto, confirmed that she administers the law and her opinions about who should be checked and who shouldn't are "no different than the opinion of any citizen."

8:24:47 AM

MS. MILES noted that AS 24.60 has basically the same requirements as AS 39.50, except that legislators must report their gift activity to the legislative ethics committee. Financial disclosure is required from elected municipal officials in more municipalities than do campaign disclosures.

8:26:31 AM

MS. MILES, in response to a question from Representative Gatto, said the lobbying law would allow a lobbyist to give a gift to a public official, but it requires that gift be reported. She stated her belief that most of the laws would say that gifts of transportation are gifts, but may vary regarding when a gift must be limited or reported.

[8:28:49 AM](#)

MS. MILES, in response to a question from Representative Gruenberg, said there is always coordination between herself and the coordinator of the Legislative Ethics Committee and they are happy to compare what's not working and take suggestions on how to make the two laws more synonymous.

[8:30:44 AM](#)

MS. MILES said the agency is always looking for ways to streamline the filing process. When a report is substantially complete, the staff will not audit someone. If a complaint was filed over missing information, Ms. Miles explained, APOC would do its best to get the missing information from the filer.

[8:33:55 AM](#)

MS. MILES stated that all of the reports filed with APOC and the financial disclosures from municipalities that are housed with municipal clerks are public record. The staff of APOC spends considerable time making reports available to the public.

[8:34:40 AM](#)

MS. MILES turned to the history of APOC. She said the result of the occurrence of Watergate in the 1970s was that concerned citizens nationwide sought laws to make politicians more accountable. In 1974, two citizen petitions were scheduled for the ballot: one regarding campaign finance and the other regarding campaign disclosure, which was then called conflict of interest. In 1974, the Alaska State Legislature enacted a law that was later found by the Alaska Supreme Court to be similar to the citizens' petition regarding campaign finance, and the legislation became law. However, no law similar to the financial disclosure initiative was passed, thus that initiative became law through the public process.

[8:35:43 AM](#)

MS. MILES noted that Alaska's lobbying law dates back to territorial days; the Alaska State Constitution requires that the lobbying activities be regulated and assigns that responsibility to the legislature. In 1976, the legislature tuned up the lobbying law and gave the responsibility for it to APOC.

[8:36:23 AM](#)

MS. MILES said the mission of APOC is to encourage citizens' confidence in their appointed and elected public officials, by administering and enforcing the disclosure laws and the rules of conducting campaign activities, and by filing the annual financial disclosure statement.

[8:37:02 AM](#)

MS. MILES mentioned a landmark case called, Buckley v. Valejo, which threw out the whole idea of spending limits by finding in the U.S. Supreme Court that limiting the ability of a candidate to spend money on his/her campaign is a violation of the First Amendment. Ms. Miles said there still are contribution limits. In 1996, there was a campaign finance reform, which took out business and corporate interests from giving to state candidates. It also removed the ability of lobbyists to give to legislative candidates outside of the district in which the lobbyist is registered to vote.

[8:38:59 AM](#)

MS. MILES offered her understanding that APOC is the only state agency created as a result of the public. By law, the commission is within the Department of Administration; however, APOC regulates the governor when he is a candidate. She said APOC has its own voice when speaking with the media on subjects relating to the laws that it administers.

[8:40:48 AM](#)

MS. MILES mentioned the names and specialties of several of her staff members and commission members. The staff administers the law, but only the commission can set policy, grant a waiver or a reduction in a civil penalty, or make the ultimate decision in advisory opinion and the final decision with respect to complaints.

[8:42:42 AM](#)

MS. MILES stated that APOC has just filed regulations with the lieutenant governor that are - for the most part - noncontroversial and conforming. The new regulations were put in place to make the new complaint process work. She noted that during the 2004 election, seven administrative complaints were filed. She said there is a short timeline requiring that

complaints be concluded within 60-75 days. She said this was difficult with the loss of an investigator, but worked well all the same.

[8:44:22 AM](#)

MS. MILES noted that the last two complaints are being continued, because legislators are involved. Legislators are subject to immunity; however, an attorney general said that a legislator cannot waive his/her own legislative immunity in matters of civil process.

[8:44:53 AM](#)

REPRESENTATIVE GARDNER said she has always been impressed with APOC.

[8:45:27 AM](#)

ACTING CHAIR GATTO noted that it's easy for a person to file a complaint without having to back it up, which often results in attention from the press, even when it turns out that the complaint was unwarranted. He asked if there is any way to address the problem.

MS. MILES said she isn't sure how to handle that, because there is a risk - especially during campaigning time - of disenfranchising the public by not accepting complaints.

[8:48:29 AM](#)

MS. MILES, in response to a question from Representative Elkins, said it's a coincidence that many of the people on the board of the commission happen to be attorneys.

[8:48:36 AM](#)

REPRESENTATIVE GRUENBERG said the filing of frivolous lawsuits has been a problem that the courts have dealt with for a long time. He offered his understanding that there are two remedies: abuse of process and malicious prosecution, the latter of which requires a non-meritorious litigation pursued for malicious purposes. He asked what Ms. Miles thinks about having such a remedy in place for APOC.

[8:49:39 AM](#)

MS. MILES said she hasn't given the matter much thought, but something like that may be helpful. In response to a follow-up question, she said she would send a copy of the previously mentioned remarks of the attorney general. She confirmed that those remarks are constitutionally based.

[8:51:16 AM](#)

MS. MILES, in response to a question from Representative Gruenberg, said she doesn't think APOC feels undue influence from the [Department of Administration]. She said that before 1979, APOC was in the governor's office. She stated that APOC works with the Department of Law. The Department of Law is also the attorney for the executive branch. Ms. Miles said if there were an instance when APOC couldn't use its counsel, it could request independent counsel.

[8:54:10 AM](#)

MS. MILES, in response to questions from Acting Chair Gatto, said when a person testifies in public and says who he/she works for, that testimony is "in sunlight." Conversely, when lobbyists wine and dine public decision makers, that is not in the open. She said there is a limit of 40 hours in a lobbying law. She mentioned a limit of 4 hours that was judged as too short a time.

[8:57:33 AM](#)

MS. MILES answered a series of questions from Acting Chair Gatto, regarding the use of [Public Office Expense Term (POET) account] and non-POET [account] campaign funds. She indicated that there are grey areas. She said APOC doesn't always have an answer, and she recommended that the candidate always consider whether his/her spending will be looked at in a negative light.

Due to technical difficulties, the committee took an at-ease from 9:03 a.m. to 9:07 a.m.

[9:08:33 AM](#)

MS. MILES answered a question from Representative Gruenberg regarding surplus payments or deposits that are not paid back until later.

[9:09:05 AM](#)

REPRESENTATIVE RAMRAS said he was struck by hearing APOC's mission statement. He asked Ms. Miles if she is familiar with HB 21, which he said is coined, "the liars' bill."

[9:10:14 AM](#)

MS. MILES said she is familiar with HB 21 and, although the commission has not discussed it, they would agree that people who are conducting campaigns should be telling the truth. She said, "To us, it's an enforcement quandary." She stated that truth in advertising is a great idea. She noted that the finer point is to ask how much of the truth is the truth.

[9:12:04 AM](#)

REPRESENTATIVE RAMRAS said sometimes airwaves are littered with horrible things. He asked if it would be possible for APOC to handle these issues of outright falsehoods in an expedited fashion.

[9:13:24 AM](#)

MS. MILES responded that the commission can issue a cease and desist order, which would work if the person giving to the candidate was breaking the law in some way. However, she said the commission wouldn't have the ability to "do that just on the fact of it being untrue."

[9:14:39 AM](#)

ACTING CHAIR GATTO talked about the fine line between ascertaining what is true and what is not. He offered examples.

[9:16:19 AM](#)

MS. MILES, in response to questions from Representative Gruenberg, noted that four of her board members could act as administrative law judges. She said anybody who is dissatisfied with a decision by APOC can go to the courts.

[9:17:40 AM](#)

MS. MILES answered another question from Acting Chair Gatto regarding the use of campaign surplus funds and office accounts.

[9:18:34 AM](#)

MS. MILES said the big question is whether an action abides within the guidelines of the law. She noted that many legislators in both bodies are dealing with surplus funds in their accounts.

[9:20:10 AM](#)

MS. MILES explained that if a legislator has surplus campaign funds, he/she can put \$5,000 per term of office into the POET account. She offered a brief history of the use of the reserve account and the POET account.

[9:23:43 AM](#)

ACTING CHAIR GATTO asked further questions regarding money left in various accounts. He talked about not wanting to violate the law but wanting to use the money.

[9:24:54 AM](#)

MS. MILES told of a person who used POET account money to pay home bills, and the commission's decision that that was in violation of the law.

[9:26:27 AM](#)

MS. MILES offered an example of a case where a complaint was filed. She suggested that one question to ask is, "How would a contributor want money spent?"

[9:28:08 AM](#)

MS. MILES, in response to a question from Representative Ramras, said APOC can enforce civil penalties and file complaints. When a complaint is adjudicated, the commission can assess civil penalties. If the violation is substantial, the commission can hand it over to the Department of Law.

[9:30:15 AM](#)

MS. MILES, in response to a question from Acting Chair Gatto, said a candidate cannot accept contributions for a future campaign until "18 months out." She addressed what could be considered campaigning.

[9:31:35 AM](#)

MS. MILES, in response to a question from Representative Elkins, said APOC does not go public with violations. She talked about the benefit of the open public process. In response to questions from Representative Elkins and Acting Chair Gatto regarding a particular case, she explained how the media found out about it.

[Acting Chair Gatto turned the gavel back over to Chair Seaton.]

[9:34:55 AM](#)

CHAIR SEATON thanked Ms. Miles and said that, judging by the type of bills introduced to the House, the committee would be seeing much more of her.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [9:35:23 AM](#).