

**SENATOR HUGGINSALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 16, 2005  
8:37 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French

**MEMBERS ABSENT**

Senator Gretchen Guess

**COMMITTEE CALENDAR**

Overview of the Select Committee on Legislative Ethics (SCLE) - Review of the SCLE Opinion dated January 7, 2005 by Ms. Joyce Anderson, Administrator, Select Committee on Legislative Ethics (SCLE).

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at [8:37:28 AM](#). Present were Senators Charlie Huggins, Gene Therriault and Chair Ralph Seekins. Senator Hollis French arrived at 8:41.

**Overview Presentation: Select Committee on Legislative Ethics**  
[8:39:00 AM](#)

MS. JOYCE ANDERSON, SCLE administrator, said she had been working for the SCLE since June 2001. The committee is responsible for looking at the Legislative Ethics Code, AS 24.60. It issues advisory opinions for legislators or legislative employee.

[8:41:03 AM](#)

The request could be for a confidential advisory opinion or for a discussion in an open session. She said the opinion could be drafted by herself or Barbara Craver, SCLE legal counsel, and would go to the committee for review until the final decision was agreed upon. The advisory opinion is issued without names even if confidentiality was waived by the complainant.

The committee is responsible for looking at complaints against a sitting legislator or employee, present or past, if the incident occurred within a certain timeframe. It looks at the legitimacy of a complaint and could decide to go forward with an investigation. At that point, the scope of investigation is settled and will be what the committee focuses on. It is also decided at the first meeting whether an outside investigator would be appropriate. According to statute, if there is an investigation, all of the materials are confidential and the committee meets in executive session to look at them. If there is enough information, a decision can be made on whether there is probable cause, a dismissal or a need of more information.

[8:41:53 AM](#)

SENATOR HOLLIS FRENCH arrived.

[8:42:26 AM](#)

CHAIR SEEKINS asked what happens if a complaint has merit.

MS. ANDERSON replied that it's moved forward to an investigative stage. Not having merit could mean the issue is not within SCLE jurisdiction - the complaint might not be in the Ethics Code or the timeframe may have expired, among other reasons.

[8:43:31 AM](#)

MS. ANDERSON said the statute authorizes her to give informal advice, however it is not binding on the committee. A formal opinion can be requested.

[8:44:05 AM](#)

CHAIR SEEKINS asked the difference between binding and advisory.

MS. ANDERSON replied that the SCLE gives a formal binding advisory opinion - binding by the committee on the person who asked for it.

[8:44:43 AM](#)

CHAIR SEEKINS said he couldn't find that in statute.

[8:45:02 AM](#)

MS. ANDERSON continued describing her responsibilities saying that she provides administrative support to the nine-member committee makes sure the disclosures are properly completed and filed on time and distributes a bi-monthly newsletter. She has put together a "Standards of Conduct Handbook" and put together the published opinions. She investigates complaints the committee has put forward during its scope of investigation

phase and trains legislators and staff. She works closely with the Alaska Public Offices Commission (APOC).

[8:46:50 AM](#)

SENATOR HUGGINS asked the value of her informal advice since it's not binding on the committee.

MS. ANDERSON replied that she issues informal advice based on what a person is asking. It is given in good faith. All informal advice is cleansed of any identifying information and submitted to the committee at the next meeting.

[8:48:40 AM](#)

SENATOR HUGGINS asked what happens when the committee questions her informal advice.

MS. ANDERSON explained that she gets back to the individual who requested the advice, obtains more information and gets back to the committee. The new information may have answered the committee's questions or it may change the advice.

[8:49:33 AM](#)

CHAIR SEEKINS asked the value of an informal opinion on an ethics violation if it's not binding on the committee.

[8:50:28 AM](#)

MS. ANDERSON replied when an individual requests informal advice, she always suggests that he or she ask for an advisory opinion if that is appropriate.

[8:51:41 AM](#)

CHAIR SEEKINS asked whether the SCLE has questioned her advice.

MS. ANDERSON replied three times the committee questioned her advice. She obtained additional information for two times and changed the advice.

[8:52:19 AM](#)

SENATOR HUGGINS asked whether interpretation of advice is a common problem.

MS. ANDERSON replied that the statute is ambiguous; it depends on the facts of the situation.

[8:53:37 AM](#)

CHAIR SEEKINS asked whether someone could request an opinion about someone else's actions.

MS. ANDERSON replied that the person could only request an opinion about his own actions.

[8:54:27 AM](#)

CHAIR SEEKINS asked if it ever looked like someone wanted an opinion to bring charges against someone else.

MS. ANDERSON said she would have to check. She added that SCLE has received a request for a binding opinion that was not on the action of the individual requesting it and the committee denied responding to that request.

[8:55:18 AM](#)

SENATOR HUGGINS asked for a clearer understanding of what advisory and binding opinions are.

[8:56:24 AM](#)

CHAIR SEEKINS said if new material facts are admitted, the binding opinion can change. Otherwise the SCLE opinion can't change.

MS. ANDERSON agreed. She referenced AS 24.60.165 that talks about use of information submitted with requests for advice. The last sentence says if the individual goes against the advice of the advisory opinion, that information could be used against him in a complaint process.

[8:58:10 AM](#)

CHAIR SEEKINS asked if Chapter 60, the "Standards of Conduct," apply to all employees or just some.

MS. ANDERSON replied that it applies to all legislators and staff plus some Legislative Affairs employees. Certain employees are exempt like the supply shop, the print shop and a few others. It also covers members of the SCLE.

[8:59:25 AM](#)

CHAIR SEEKINS said AS 24.60.020 leads him to believe it includes all legislative employees.

[9:00:00 AM](#)

MS. ANDERSON said employees under a Range 15 aren't covered because they don't have a level of responsibility that requires them to be covered. She offered to research the issue further.

[9:00:38 AM](#)

CHAIR SEEKINS asked what the timeframe is for an advisory opinion.

MS. ANDERSON replied the committee must issue an advisory opinion within 60 days. The person requesting the opinion may waive that request or the committee, based on circumstances, may ask him to waive that request.

[9:01:48 AM](#)

CHAIR SEEKINS asked about confidentiality.

MS. ANDERSON explained that an advisory opinion is confidential unless, but the requestor can waive confidentiality.

[9:02:19 AM](#)

CHAIR SEEKINS asked what the responsibilities for a complainant has.

[9:02:41 AM](#)

MS. ANDERSON replied that according to legislation that passed last year, the complainant must keep confidential that they did file a complaint or the committee will dismiss the complaint.

The statute also says that does not affect the right of the committee or any other person to file a complaint under similar circumstances. It's just that individual that filed the complaint would not be able to file another one.

She referenced an incident a couple of years ago when someone filed a complaint and then went public with it on TV.

[9:05:20 AM](#)

CHAIR SEEKINS said he remembered that circumstance and asked if that complaint would be dismissed under the new legislation.

MS. ANDERSON replied yes.

CHAIR SEEKINS asked whether the committee could dismiss that complaint, but then might proceed forward with its own complaint using the information.

MS. ANDERSON answered that could happen, although it hasn't. "It would be a policy decision by the committee as to how they wanted to proceed with that."

[9:05:49 AM](#)

SENATOR HUGGINS said Wasilla residents want integrity, but if he goes public with a violation, he is in violation of confidentiality. He asked if that made sense. He didn't want people to use this as a "steel trap" for things that weren't intended.

[9:07:43 AM](#)

CHAIR SEEKINS responded that the ethics laws don't apply to people who aren't legislators or legislative employees.

MS. ANDERSON replied that her research shows that a lot of states fine individuals who have filed an ethics complaint and then make it public. Some states don't allow the complaint to be brought forward again.

[9:10:40 AM](#)

CHAIR SEEKINS asked what the majority of complaints are concerning.

MS. ANDERSON replied that advisory opinions run the whole gamut - 40 opinions mentioned "financial" or "conflict of interest" since 1984, advisory opinions have been asked for contracts over \$5,000. Some requests are very factual; others are general. It's difficult to talk about complaints since they are confidential. The only ones that are published are the ones that are investigated; she can't talk about ones that are dismissed. The committee has had complaints regarding legislators with legislation, use of employees for personal purposes and open meetings.

[9:14:23 AM](#)

SENATOR HUGGINS asked if she thought anything should be changed based on the coalbed methane issue in the Mat-Su Valley.

MS. ANDERSON replied when to declare a conflict of interest on the floor is one of the areas that require clarification. Her advice has been to announce a conflict in committee as well as on the floor, although the Ethics Code does not require action. Most people attend the committee meetings and not the floor session.

[9:17:58 AM](#)

SENATOR THERRIAULT commented that you don't have to stand up on the floor and say you're a fisherman every time a fishing issue comes up; you disclose that information on a financial disclosure. "We don't want to get to the point where at the

beginning of every committee meeting everybody turns in a copy of their financial disclosure. We're required to do it once."

9:19:16 AM

CHAIR SEEKINS said there is a difference between impropriety and appearance of the same. Sometimes it's a good idea to insulate oneself from appearance of improper behavior. The question is if the statute makes what improper behavior clear.

9:21:00 AM

MS. ANDERSON referenced AS 24.60.030 (g) that says a legislator may not vote on a question if the legislator has an equity or ownership interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect of that interest of the action to be voted on is greater than the effect in a substantial class of persons to which the legislator belongs as a member of either that profession, occupation, industry or region.

9:22:51 AM

CHAIR SEEKINS asked how the Uniform Rules come into effect.

MS. ANDERSON replied that they say, "Unless the entire body agrees to allow that person not to vote, they must vote."

CHAIR SEEKINS he thought that referred to Rule 34(b) and that it referred to voting on the floor, but not in committee.

MS. ANDERSON agreed and said there is an example on page 15 of the SCLC Handbook.

9:26:20 AM

SENATOR THERRIAULT said it gets to be absurd.

9:28:01 AM

CHAIR SEEKINS asked if she had seen someone dismissed from a vote.

MS. ANDERSON answered that it had happened according to research she did.

SENATOR THERRIAULT remarked, "There are only 20 of us.... I have never seen anyone excused from voting - ever."

CHAIR SEEKINS asked the definition of "substantial."

MS. ANDERSON replied that it isn't defined in the code and that would be an area the Legislature could look at. The other example has to do with stock ownership.

Owning \$2,000 worth of stock in a major oil company would not be considered substantial, whereas owning \$2,000 of stock in a fledgling business that only issued \$10,000 total in stock would be considered substantial.

[9:29:25 AM](#) Recess [9:38:08 AM](#)

[9:38:53 AM](#)

SENATOR THERRIAULT asked who determines the appearance of conflict of interest.

MS. ANDERSON replied that the statute itself has no definition of "substantial" and if a complaint were received, the committee would have to look at it to see whether there is a possible violation of the Ethics Code, in which case, it would be moved forward to an investigation.

[9:41:06 AM](#)

SENATOR THERRIAULT said he thought the issue of appearance of a conflict of interest in the findings section is problematic.

MS. ANDERSON replied that she doesn't speak for the SCLE, but for informal advice, she doesn't look at the findings. She looks at a particular statute that talks about the issue. The issue Senator Therriault is talking about is in AS 14.60.010 (2).

[9:44:24 AM](#)

SENATOR FRENCH said he thought findings lay out high standards, but a violation must be grounded in some statute. Findings are good precepts to guide one's behavior.

[9:45:32 AM](#)

SENATOR THERRIAULT referenced section (4) that says, "The law should not impose unreasonable or unnecessary burdens that would discourage citizens from entering the state of government service." If the law is fuzzy, that discourages public service.

[9:47:20 AM](#)

CHAIR SEEKINS agreed that it must be clear and definitive.

[9:48:22 AM](#)

SENATOR THERRIAULT asked if an outside group requested an ethics opinion on the coalbed methane issue.

MS. ANDERSON replied a legislator or a legislative staff person could only request an advisory opinion.

[9:49:03 AM](#)

SENATOR THERRIAULT asked if a complaint was made.

MS. ANDERSON replied that committee neither acknowledges nor doesn't acknowledge if a complaint has been filed.

If a complaint had been filed and investigated, it would have been put in the book that was sent around to offices and no, there is not one in there.

[9:49:50 AM](#)

SENATOR THERRIAULT said the troubling aspect is the appearance of conflict. "What is the bar for that?"

MS. ANDERSON replied that she hasn't received a complaint that talked about an "appearance" of conflict and didn't think one had ever been filed. Public complaints have pointed to a particular statute and given a particular statement as to what someone thought was thought to be violated.

[9:51:16 AM](#)

SENATOR THERRIAULT asked if language about appearance is standard in decisions that the committee issues.

MS. ANDERSON replied that she is not familiar with the '94 advisory opinion in question and she offered to check that out. She doesn't usually doesn't volunteer that language unless someone asks about it.

[9:52:26 AM](#)

CHAIR SEEKINS asked if the SCLC has defined something that is not in statute.

MS. ANDERSON replied yes; the committee is required to make a decision based on the information it had whether it's a complaint or a request for an advisory opinion. She asked him to clarify whether he meant something that wasn't stated or something that was ambiguous.

[9:53:58 AM](#)

CHAIR SEEKINS replied both, but one at a time. If an activity is not prohibited in statute, but appears to be an ethics violation, would SCLE define it and has that ever happened.

MS. ANDERSON replied that it hasn't ever happened.

The committee is very careful in that aspect, because they are not creating law, because that isn't their jurisdiction. Their jurisdiction is to look at issues that relate to the ethics statute.

9:55:47 AM

CHAIR SEEKINS asked if advisory opinions are viewed in light of statutes that existed at the time of the opinion versus the statute that is in place today.

MS. ANDERSON answered yes. The SCLE internal web page has advisory opinions listed and has a disclaimer saying the opinions might not be applicable to today's statutes, because they may have changed.

9:57:20 AM

CHAIR SEEKINS asked when something hasn't been clearly defined in statute and might become a benchmark, for instance like 25% ownership being a substantial interest, would that carry forward into future decisions.

MS. ANDERSON replied that he was speaking of an example in the Standards of Conduct Handbook. The committee looks at all the facts relating to a particular case. The committee might ask for outside information if it feels all the facts aren't there.

9:58:43 AM

SENATOR HUGGINS asked if she had seen any significant changing of ethics laws in her tenure.

MS. ANDERSON replied that the statute has been changed four times during her tenure. It was changed for advice on lobbyists giving tickets to legislators and legislators using private airplanes, for instance.

10:00:15 AM

SENATOR HUGGINS said he is concerned when an issue has notoriety as this one does and he is resistant to a knee-jerk reaction to fix it so well it's overkill and needs to be revisited again.

10:01:38 AM

SENATOR FRENCH asked how the complaint system works and if a finding of no violation remains confidential.

MS. ANDERSON replied that complaints moved to the investigative stage are public. If a complaint doesn't move to the investigative stage, it remains confidential. The first thing she does when a complaint is received is she contacts the chair of the House or Senate subcommittee. The complaint would go before one or both of those depending on whom the issue is concerning. A complaint against a Legislative Affairs person would go before the full committee.

[10:03:34 AM](#)

SENATOR FRENCH asked if the complaint stays in-house.

MS. ANDERSON replied that the complaint stays in the house that has the complaint. The subcommittee is instructed to not share the information with other committee members. If the complaint is completely out of the committee's jurisdiction, she wouldn't call it together. The chair of the subcommittee would call a meeting to look at the complaint. She could do a preliminary investigation. The committee decides if the subject is a violation of the Ethics Code. If so, it is obligated by statute to move it forward to an investigative stage. At the meeting in executive session, the committee would decide the scope of investigation. The scope would be sent to the subject of the complaint and the complainant. At this first meeting, the committee decides if staff will investigate the complaint or whether to go with an outside investigator. It has gone with an outside investigator when allegations were very complex.

[10:06:15 AM](#)

At the second committee meeting the committee would look at the investigative materials and see whether it had the information it needed. It could make a determination of probable cause or it could ask for more information. Statute also allows the committee to expand its scope of investigation if there is another possible violation. The subject of the complaint has the option to appear before the committee and can have counsel. After the committee has all the information, it would deliberate on whether there was probably cause or dismiss the complaint.

[10:08:21 AM](#)

SENATOR FRENCH asked what statute governs the complaint process.

MS. ANDERSON replied AS 24.60.170 and there are some legal opinions on how to interpret some of issues.

[10:08:38 AM](#)

SENATOR HUGGINS asked if a potato farmer wanted to be on the committee, what could he tell him the prerequisites are.

MS. ANDERSON answered that the public members serve a two-year term and are appointed by the chief justice of the Supreme Court. So they submit an application letter to the chief justice saying they would like to be a member of the committee. The only requirement is they must let him know what political party they belong to. She said that there hasn't been much publicity about the application process and the committee has decided to do more in the future.

[10:10:11 AM](#)

SENATOR HUGGINS asked what the average profession on the committee is.

MS. ANDERSON responded that right now there are three attorneys, one teacher and one professor.

[10:11:00 AM](#)

SENATOR HUGGINS said it is questionable where attorneys rate in ethical confidence by the public.

[10:11:36 AM](#)

CHAIR SEEKINS asked if she thought AS 24.60.170 should be reviewed for clarification.

MS. ANDERSON said it is a difficult statute because it is long and add-ons refer to many preceding sections.

[10:12:45 AM](#)

CHAIR SEEKINS asked how it would read easier?

MS. ANDERSON replied that recommending legislation is part of her duties and she would look at that issue and make recommendations.

[10:13:36 AM](#)

CHAIR SEEKINS said he wants the statute to be clear and easily understood. He asked if there is any published commentary to help understand it.

[10:16:29 AM](#)

MS. ANDERSON replied that only the Handbook and advisory opinions are available. She asked him to be more specific about what he meant in terms of commentary.

CHAIR SEEKINS elaborated something that gives a little bit of history of where the law came from, what the intent was, some guidelines of what to do, a cross reference to the form that would have to be used to declare a conflict.

MS. ANDERSON said something like that sounds like it would be helpful. She thought declaring conflict on the floor could be clarified.

[10:18:14 AM](#)

SENATOR FRENCH asked how advisory opinions are circulated.

MS. ANDERSON replied by e-mail newsletter, booklets on complaints and advisory opinions reports and on the SCLE website.

[10:19:46 AM](#)

CHAIR SEEKINS asked if any other section of the statute might need additional clarification.

MS. ANDERSON suggested the membership of the committee should be fleshed out; it is supposed to have nine members, but has only four. Senators have not been appointed yet and three of the five public member terms expired last week. The committee doesn't have enough for a quorum. She suggested making the public member terms for three years at staggered intervals. "We're not operational right now. We cannot meet to discuss advisory opinions. We cannot meet to discuss complaints or any of our other business that needs to be taken care of."

[10:22:16 AM](#)

SENATOR FRENCH asked the process for getting new public members.

MS. ANDERSON replied the chief justice has referred three names to the Legislature for confirmation hearings.

[10:23:45 AM](#)

SENATOR HUGGINS asked how his potato farmer finds out about vacancies.

CHAIR SEEKIKNS said he doesn't.

MS. ANDERSON responded there has not been a good formal system in place for vacancies on the committee. The website tells people to contact the chief justices of the Alaska Supreme Court by submitting a letter. An application process is being worked on.

[10:24:55 AM](#)

SENATOR HUGGINS aired the public is unaware it can become involved in the process.

[10:25:20 AM](#)

CHAIR SEEKINS said the make up of the committee should have broad representation.

[10:26:18 AM](#)

SENATOR FRENCH asked when public member terms end.

CHAIR SEEKINS replied 30 days after the start of the legislative session.

SENATOR FRENCH asked whether forwarded names are public record.

MS. ANDERSON replied Chief Justice Bryner forwarded three names for three vacancies in early December.

SENATOR FRENCH openly considered the fact that the Legislature has to just vote up or down on individuals. "It's not as if we're going to get more names. Is that right?"

MS. ANDERSON replied her experience is that the chief justices have always forwarded just the number of names for the number of vacancies.

[10:27:46 AM](#)

SENATOR HUGGINS asked the professions of the three candidates.

MS. ANDERSON replied two attorneys and one teacher.

[10:28:57 AM](#)

SENATOR HUGGINS said he was concerned that a potato farmer doesn't have access to the chief justice.

MS. ANDERSON said her suggestion was to have three-year staggered terms for public members.

[10:31:05 AM](#)

CHAIR SEEKINS said the last time the Judiciary Committee considered a nomination there was concern that a member had been on the committee for some time. It has nothing to do with the performance of an individual, but it shouldn't be a lifetime appointment. A new individual might be needed to provide a regular rotation from the public.

There being no further business to come before the committee, he adjourned the meeting at [10:32:44 AM](#).