

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 17, 2005

8:36 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Gretchen Guess

COMMITTEE CALENDAR

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

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:38:16 AM](#). Present were Senators French, Huggins and Chair Seekins. The meeting began where it left off yesterday.

Overview Presentation: Select Committee on Legislative Ethics

[8:38:54 AM](#)

MS. JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics (SCLE), answered questions about employees who are covered by the Ethics Code.

[8:39:46 AM](#)

Her research led her to AS 25.60.990(a)(11), the ethics definitions statute. It says, "Legislative employees do not include individuals who perform functions that are incidental to legislative functions including security, messenger, maintenance and print shop employees and other employees designated by the committee." The committee used that authority to exempt employees who are Range 15 and below. It also added tour guides.

[8:41:00 AM](#)

SENATOR HUGGINS said the question of compelling people to vote after announcing a conflict of interest led him to ask some

different people what they thought. Their response was that people would dodge the vote if given the chance. He asked if she agreed.

MS. ANDERSON agreed with him. Barbara Craver, SCLE legal counsel, said that issue had always been in place. Advisory opinion 04.02 discussed it saying that it was the Legislature's decision if it wanted it changed.

[8:43:28 AM](#)

SENATOR THERRIAULT arrived.

[8:43:51 AM](#)

CHAIR SEEKINS asked how the committee could be structured in the future.

[8:45:19 AM](#)

CHAIR SEEKINS asked whom AS 24.60.020 applies to.

MS. ANDERSON answered that it applies to current sitting legislators, staff and certain employees of the Legislative Affairs Agency.

CHAIR SEEKINS said that it governs individual actions of individual legislators and individual employees. It could also govern a former legislator.

MS. ANDERSON agreed and said allegations must be stated within a certain timeframe if a legislator has already left office.

CHAIR SEEKINS asked whether there had been a complaint like that in the past.

MS. ANDERSON replied yes - one complaint since June 2001.

CHAIR SEEKINS said he was trying to figure out what to correct if someone is no longer in the body.

[8:47:37 AM](#)

CHAIR SEEKINS asked whether there is any indication the statute affects the Uniform Rules of the Legislature.

MS. ANDERSON replied a recent advisory opinion said the Uniform Rules are under control of the Legislature.

[8:48:49 AM](#)

CHAIR SEEKINS said Article 2, Section 12, of the Constitution says the houses of each legislature shall adopt uniform rules of procedure. "So, the Legislature's authority to adopt uniform rules comes from the Constitution and not from statute." He asked if she agreed.

MS. ANDERSON agreed.

[8:50:59 AM](#)

CHAIR SEEKINS noted that Rule 55 says the rules of parliamentary practice in Mason's Manual 2000 govern the Uniform Rules of the Legislature in all cases not covered by them. He interpreted that to mean that there are two authorities under which the Legislature has implemented its constitutionally authorized powers.

Part 1, Section 4, says the Rules of Legislative Procedure are derived from several sources and take precedence in the order listed below. The principal sources are as follows: a) constitutional provisions and judicial decision thereof, b) adopted rules, 3) custom, usage and precedence, d) statutory provisions, e) adopted parliamentary authority and f) parliamentary law.

Further, he said, Paragraph 4 says whenever there is conflict between rules from these sources, the rule from the source listed earlier prevails over the rules of the source listed later.

[8:53:51 AM](#)

CHAIR SEEKINS said there may be a provision that is contrary to the Legislature's adopted rules and contrary to custom, usage and precedence that could put the committee in a position where it felt it had to examine something that is in a lower hierarchical position in authority than the ones above it. "I don't want to have that kind of a conflict arise, because it's not good for anybody." He wondered if something in statute conflicted with the Uniform Rules.

[8:55:25 AM](#)

MS. ANDERSON added in the beginning, the committee was required to propose open meeting guidelines by statute and they contained the notice requirements.

[8:57:02 AM](#)

CHAIR SEEKINS asked if two members of the Senate asked for the advisory opinion.

MS. ANDERSON replied yes.

CHAIR SEEKINS asked whether they brought the question as a point of order to the body before they came to the SCLE.

MS. ANDERSON replied that she didn't know. Senators Hoffman and Olson requested the opinion.

CHAIR SEEKINS asked Senator Therriault if he remembered that question being brought as a point of order.

SENATOR THERRIAULT replied no.

[8:59:14 AM](#)

CHAIR SEEKINS asked whether she reviewed the Uniform Rules and Mason's Manual for legislative procedure in preparation. He wanted to know whether custom was considered as a higher level of consideration than the statute.

MS. ANDERSON replied once the information was put together, a copy was sent to legal counsel (Barbara Craver) who drafted the opinion.

CHAIR SEEKINS said he saw both opinions that she drafted, one that was refused and the other that she prepared after the committee told her what it wanted.

MS. ANDERSON agreed that there were two different opinions.

[9:01:15 AM](#)

SENATOR THERRIAULT asked whether the opinions were in the committee packets.

MR. BRIAN HOVE, staff to Senator Seekins, said he printed the opinions off the SCLE website.

SENATOR THERRIAULT asked since there were two drafts, if there were instructions to change the legal interpretation for the last one.

MS. ANDERSON responded the committee just felt the advisory opinion should be redrafted.

CHAIR SEEKINS asked whether the committee discussed Mason's Manual.

[9:02:17 AM](#)

MS. ANDERSON replied she thought it came up, but she didn't remember the discussion about it.

SENATOR THERRIAULT asked whether she had a tape of the meeting.

MS. ANDERSON replied yes. They are recorded and are in the archives. She has copies of the minutes except for the January 7 meeting, which weren't finished yet.

[9:03:08 AM](#)

SENATOR FRENCH recapped there seems to be the suggestion that the SCLE failed to consider that custom and usage would trump a statute and that the committee was in error for relying on a statute when it should have relied on custom.

[9:03:46 AM](#)

CHAIR SEEKINS indicated that is correct, but wanted to frame the question differently and referred the committee to page 22, Section 13, of Mason's Manual.

[9:04:19 AM](#) Recess [9:08:20 AM](#)

CHAIR SEEKINS noted he was trying to determine whether the Legislature had put the SCLE in the untenable position of trying to determine something over which it has no authority and whether the statutes need to clarify what the authority is. He referenced Rule 3 on page 22 of Mason's Manual that says:

3. The power of a house of Legislature to determine its rules and proceedings is a continuous power. It can always be exercised by the house and is absolute and beyond the challenge of any body or tribunal if the rule does not ignore constitutional restraints or violate fundamental rights.
4. A legislative house cannot tie its own hands by establishing unchangeable rules. It may adopt and change procedure at any time and with no other notice than the rules may require.
5. Rules of procedure passed by one legislature or statutory provisions governing the legislative process are not binding on a subsequent legislature.

He skipped to rule 7.

7. Rules of procedure are always within the control of the majority of a deliberative body and may be changed at any time by a majority vote.

CHAIR SEEKINS said these rules lead him to believe the Legislature has the absolute authority to control its own rules. No one can challenge them and that even a statute, such as the Open Meetings Act, established by the 23rd Legislature would not be binding on the 24th Legislature unless the 24th Legislature were to adopt those provisions in its Uniform Rules. "That appears to be the constitutional provision that I see."

[9:11:56 AM](#)

He read section 14, Rule 3, which says, "The purpose of rules is to aid a body to perform its duties more efficiently and with fairness to its members."

[9:12:35 AM](#)

CHAIR SEEKINS questioned if the courts couldn't review a violation of the rule, how could it be subject to review by a citizen's committee. Section 51 on page 47 says:

1. A public body cannot delegate its powers, duties or responsibilities to any other person or groups including a committee of its own members.
2. Where duties or responsibilities are imposed on a public body as on a state legislature, that body is bound to exercise those duties and responsibilities and cannot divest itself of them by delegation to others.

He interpreted that to mean that the Legislature could not divest itself of that responsibility or delegate it to others according to rules it adopted.

It appears to me that the statute and the rules are in conflict. And under such case, because it's our mandate under the constitution to establish rules, we can't do what we've done or asked you to do. I may be wrong, but I'm trying to get squared away.

[9:13:59 AM](#)

MS. ANDERSON said she thought he said:

Unless the open meeting statute is adopted every year by the Legislature under the Uniform Rules, it doesn't apply. Is that what you said, Mr. Chair?

CHAIR SEEKINS said:

It appears to me that if the proper procedure for the senators who filed the question with you under the rules would have been to raise a point of order with the body, which at that the time, the president of the senate, Senator Therriault, would have made a ruling. And if the body did not unanimously agree with that, the body would vote. If a majority voted for his ruling, then it would be a precedent just like in a court of law. If the body voted down his ruling, he could attempt again. But a ruling would still have to be made somewhere on the point of order. So, to take a matter that is controlled by the Uniform Rules outside of the body and delegate the responsibility to interpret the Uniform Rules there, is something according to the Uniform Rules we cannot do.

[9:16:09 AM](#)

SENATOR THERRIAULT responded that a lot of this has been argued before in the courts and they have said the Legislature is a pure democracy and with a vote of 50% plus one, it dictates whom they can run its business. "That has been litigated all the way up to the Supreme Court."

[9:16:57 AM](#)

CHAIR SEEKINS quoted from page 58 of "Alaska's Constitution: A citizens' Guide - Fourth Edition," a state Supreme Court decision regarding Malone versus Meekins, 650, p2nd, 351, 1982 - the legislative coupe in 1981 to replace the Speaker of the House. The charge was that it violated the Joint Rules. It says:

We can think of few actions, which would be more intrusive into the legislative process than for a court to function as a sort of super parliamentarian to decide the varied and often obscure points of parliamentary law, which may be raised in the course of a legislative day. Thus, even though the Uniform Rules may have been violated, such violation is solely the business of the Legislature and does not give rise to a justifiable claim.

CHAIR SEEKINS reasoned, "If the State Supreme Court says we can't intervene in the Uniform Rules, how can we expect that a citizens' committee could do that? That's my dilemma."

[9:19:37 AM](#)

SENATOR THERRIAULT explained that the courts have upheld the separation of powers. A pure democracy resides in its legislative body.

CHAIR SEEKINS agreed and said that concept is repeated over and over again in Mason's Manual.

[9:20:25 AM](#)

SENATOR FRENCH asked if he is trying to make the point that the SCLE is without power to stand in judgment of acts that happen inside the building, in general, (following the chair's analysis) or is this in reference to the specific advisory opinion, 04.03. He asked if the chair's thrust is that the structure of the SCLE needs to be redone through amendments to the Uniform Rules or that the opinion is invalid, because it looked at a statute when it should have looked at custom or some other rule.

[9:21:10 AM](#)

CHAIR SEEKINS replied that his intent was to try to come out with a final product that eliminates potential constitutional conflicts and puts yardsticks where measurement is needed. He thought the ethics statutes control individual behavior under certain circumstances. However, the Ethics Committee never had the power to rule on parliamentary procedure within the body, because that can't be delegated according to the Uniform Rules. Secondly, guidelines that weren't adopted under the Uniform Rules would never have authority.

[9:23:13 AM](#)

CHAIR SEEKINS disagreed with the opinion on several points. He didn't think the notice requirements in the Uniform Rules required notice of the subject matter of a bill, but rather the subject matter of the meeting.

The subject matter of the meeting has by usage always been bills previously heard or considered or heard or introduced or whatever. That has been the usage that has been established by the Legislature, which would then become part of the Uniform Rules and only by a vote or by raising of a point of order with a ruling to establish a precedent or by a vote of the members

would that rule be changed.... It's a complicated situation, but it's one that needs to be squared away. I think probably in my opinion, based on what I read in the Uniform Rules, they have no authority to even review the Uniform Rules. So, therefore, I don't want to get into the substance of the opinion; I just think that we could not give them that authority ever - according to the Uniform Rules.

9:25:01 AM

SENATOR FRENCH offered a slightly different analysis.

We began 20 minutes ago with Section 13, page 22 of Mason's and Rule 3... and the rule reads that:

The power of the house of the Legislature to determine its rules of proceedings is a continuous power and can always be exercised by the house and is absolute and beyond the challenge of any body or tribunal if the rule does not ignore constitutional restraints or violate fundamental rights.

Analyzing the 04.03 opinion, his view is that one of the fundamental rights at stake here is due process of law. It's one of those things that pervade everything. Everyone is entitled to it. It boils down to two simple ideas.

Due process of law means notice and opportunity to be heard.... And from what I heard in Finance, there was no due process of law. That bill came up under a format that allowed no citizen to know that was going to be taken up. And that was the fundamental issue. If the bill had been listed by number - if the bill had been listed by title - case closed. And you can properly say that each citizen who wanted to pay attention would know that bill is going to be heard and there was probably a moment when they said is there any more testimony on this and that citizen had the opportunity to weigh in.

So, it seems very simple to be able to avoid the problem in 04.03 and that's just to list the bills you're going to hear in a committee.

9:27:23 AM

CHAIR SEEKINS asked why he didn't raise that as a point of order and allow the body to vote on it. He further refuted Senator French's view that the public didn't have a chance to weigh in at the Finance meeting saying that the whole day was dedicated to the education budget and that the Bill Action Status Inquiry System (BASIS) is available to everyone all the time.

[9:29:58 AM](#)

SENATOR THERRIAULT agreed and added that the methodology used by the committee on that day has been used for a long time. Specific notice wasn't given, but he personally told the minority and majority leaders the previous day that education funding was coming up the next day.

[9:30:48 AM](#)

CHAIR SEEKINS said he thought that an improper usage by a body that isn't challenged by that body becomes a Uniform Rule of that legislature.

[9:33:05 AM](#)

SENATOR HUGGINS said he was surprised by how clear the rules are laid out.

[9:34:44 AM](#)

CHAIR SEEKINS said he wanted to know if more clarification is needed.

[9:35:39 AM](#)

MS. ANDERSON said there are differing opinions and she also thought clarification was needed.

[9:37:37 AM](#)

MR. CONNOR THOMAS, Chairman, SCLE, said the committee felt that Section (d) gives it authority to interpret the rule. He asked for a legal opinion about that. He suggested the legislature consider another sentence saying the SCLE has no authority to interpret the Uniform Rules.

CHAIR SEEKINS asked him if he was referring the opinion A or B. Opinion A states that there was no violation, because it was concerning an area under legislative control. His understanding of the minutes is that the committee had Ms. Craver prepare another opinion showing there was a violation.

MR. THOMAS replied the committee asked for two different opinions.

Although we did ask her whether or not the committee had the authority to make an interpretation of the Uniform Rules - in this case whether or not subject matter and jurisdiction included actual notice of the bill. Her opinion was that we did. That's why I say if your intent is to cut that off, and then another sentence may do that."

CHAIR SEEKINS reiterated that it was his interpretation of the minutes that the committee asked her for another opinion that stated that.

MR. THOMAS replied that the committee asked her specifically whether it had the authority to interpret the Uniform Rules.

[9:40:07 AM](#)

SENATOR THERRIAULT said they needed to ask Tam Cook, Legislative Legal, to see if this is a correct interpretation. He also asked for a copy of the two legal opinions, a copy of the written minutes and a copy of the tape.

[9:42:13 AM](#)

CHAIR SEEKINS read from a portion of SCLE minutes that, "Member Walker asked for clarification of Rule 23A, which requires subject matter notice for bills." It says:

'Written notice of the time, place and subject matter of all meetings of standing, special and joint committees during a week shall be....' Is there a difference in your opinion between the subject matter of a meeting and subject matter of a bill?

MR. THOMAS replied yes.

[9:43:11 AM](#)

CHAIR SEEKINS asked where Mr. Walker got his interpretation of Rule 23A to be the subject matter of a bill from the subject matter of a meeting.

MR. THOMAS said he couldn't speak for Mr. Walker, but the committee felt that the subject matter of the meeting was broad enough to include the subject matter of the bill. It was the general consensus of the committee in this instance that there should have been some notice regarding what the subject matter of the bill was in order to comply with rule 23A.

CHAIR SEEKINS asked if the committee looked at usage.

MR. THOMAS replied that it didn't discuss usage, because it felt that if something was used wrong historically, that was not justification for doing it that way.

CHAIR SEEKINS asked if it looked at Mason's Manual, Section 4, Rule 2, that says usage has precedence over statute.

MR. THOMAS couldn't recall.

[9:44:34 AM](#)

SENATOR FRENCH asked if the adopted rule takes precedent over custom.

[9:45:08 AM](#)

CHAIR SEEKINS replied that it does and if there's a question, the adopted rules say to look at Mason's Manual.

SENATOR FRENCH responded, "If the rule is clear, you don't need custom."

CHAIR SEEKINS retorted, "Obviously, the rule is not very clear."

[9:45:55 AM](#)

SENATOR THERRIAULT looked up Rule 23(A).

[9:46:43 AM](#)

CHAIR SEEKINS stated that the Uniform Rules say that usage becomes the uniform rule unless it's objected to and everyone has to know that.

[9:47:19 AM](#)

SENATOR HUGGINS asked if that was clear to Senator French.

SENATOR FRENCH replied he disagrees with the chair.

[9:49:36 AM](#)

SENATOR THERRIAULT remarked that every Legislature is an independent body.

[9:50:02 AM](#)

CHAIR SEEKINS emphasized a point of order could be raised by any legislator for anyone who has a question.

[9:56:53 AM](#)

He went on to the disclosure section - 24.60.040 and 050 - that referenced no particular time for filing.

MS. ANDERSON said she would like to look at the disclosure section, as well.

[9:58:16 AM](#)

SENATOR FRENCH said it seems to him that the chair is suggesting that a legislator must raise a point of order to the floor about a practice he or she finds objectionable prior to referring that matter to the SCLE. Or did he feel it could only be resolved inside the body through the decision on that point of order and that's not appealable.

CHAIR SEEKINS responded he believed the only place an issue having to do with legislative procedure can be resolved is within the body and that is covered in the Uniform Rules.

SENATOR FRENCH reasoned the SCLE has no jurisdiction over subject matter in the Legislature's doings.

CHAIR SEEKINS said that is how he would interpret the rules and that the legislature could change its rules anytime with a majority vote.

SENATOR FRENCH asked if he thought the statutes that do pertain to the SCLE must be reauthorized by each Legislature because they somehow bind each session.

CHAIR SEEKINS replied yes.

SENATOR FRENCH pressed on, "And unless they are reauthorized, they're null."

CHAIR SEEKINS continued, "Unless they become part of the Uniform Rules, they have no control over legislative procedure if there's anything higher on the hierarchy list that would trump it."

CHAIR SEEKINS said this has been a very interesting and important discussion. There being no further business to come before the committee, he adjourned the meeting at [10:01:41 AM](#).