Minutes approved July 17, 2018

ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
MAY 17, 2018

8:05:48 AM

Committee members present:

Dennis "Skip" Cook, Chair
Conner Thomas
Joyce Anderson
Deb Fancher
Rep Colleen Sullivan-Leonard
Sen John Coghill (telephonic)
Sen Dennis Egan (telephonic)

Others present:

Dan Wayne (telephonic)
Skiff Lobaugh (telephonic)
Jerry Anderson, Administrator
Jacqui Yeagle, Administrative Assistant

1. Call the Meeting to Order:

Chair Dennis "Skip" Cook called the meeting to order at 8:05 AM.

2. Approval of Agenda:

Conner Thomas made a motion to approve the agenda. No objection. Agenda approved.

3. Approval of Minutes:

a. March 8, 2018 Full Committee Minutes
Deb Fancher made a motion to approve the minutes. No objection. Minutes approved.

b. March 8, 2018 Senate Subcommittee Minutes
Conner Thomas made a motion to approve the minutes. No objection. Minutes approved.

c. March 8, 2018 House Subcommittee Minutes

Conner Thomas made a motion to approve the minutes. No objection. Minutes approved.

d. April 21, 2018 Senate Subcommittee Minutes
Deb Fancher made a motion to approve the minutes. No objection. Minutes approved.

e. April 21, 2018 House Subcommittee Minutes
Conner Thomas made a motion to approve the minutes. No objection. Minutes approved.

4. Public Comment: No public comment.

5. Chair/Staff Report
Administrator Jerry Anderson pointed out that an addition to the packet is a fiscal year-to-date report as of May 8. One of the categories shows an amount overbudget but Anderson explained that some portion of the contracts will lapse due to the public hearing being continued until a proposed date of July 17.

Jerry Anderson said that no Senate Subcommittee meeting is anticipated on that date. Anderson asked that if committee members anticipate a conflict with that date to please email him with that information.

Chair Skip Cook expressed his opinion that the Full Committee would meet prior to the House Subcommittee, and he suggested an 8:30 a.m. start time for the Full Committee and a 10:00 a.m. start for the House Subcommittee meeting and public hearing.

Jerry Anderson asked those attending telephonically if there were any conflicts with the proposed date and time. Dan Wayne reported that he may have a conflict on that date.

Jerry Anderson finished his report by saying that in 2018, 548 employees have completed the Sexual Harassment Training and 83 employees have completed the required ethics training. Two new employees received notice about the required trainings but have not yet completed it.

6. 2019 Ethics Training
Chair Skip Cook directed Jerry Anderson to open a discussion of current Ethics and Sexual Harassment Training requirements and the options for 2019.

Jerry Anderson noted that in 2018, the Committee required all legislators and legislative employees to attend the Sexual Harassment Training, which was conducted by the Alaska State Commission for Human Rights. Anderson asked for direction from the Committee regarding training requirements in 2019, specifically, whether the Sexual Harassment Training would be required in addition to the regular Ethics Training. Anderson added that currently new employees view an online version of the Sexual Harassment Training and that type of training is one option to consider for all employees in 2019 if the Sexual Harassment Training will be required.

Chair Skip Cook noted that it is unknown whether the Human Rights Commission is willing to conduct the training in 2019. Chair Cook also presented two options to consider for 2019: Continue a separate Sexual Harassment Training component if the Human Rights Commission is willing to do so or add the Sexual Harassment Training component to the regular Ethics Training. Either way, that would be a six-hour training block.

Legislative Affairs Agency Human Resources Manager Skiff Lobaugh confirmed that since the late 90s, new employees and legislators have received the EEO Sexual and Other Workplace Harassment Training. Chair Cook asked if only new employees received the training or if returning employees also received the training. Lobaugh responded that only new employees were required to attend unless there was a complaint or other reason that a returning employee was directed to attend.

Chair Skip Cook asked if that requirement would continue and Skiff Lobaugh responded that he expects to work at least one EEO training into the new employee orientation and work with the executive director to offer one new legislator session of the training. Lobaugh also indicated he is willing to work with the Committee in developing another approach.

Jerry Anderson reviewed the current Ethics Committee training requirements: All legislators and legislative employees are required to complete ethics training every two years. There are several training sessions. The session for legislators is slightly shorter than the session for

non-staffer legislative employees. At three hours, legislative staffers have the longest training session.

Senator John Coghill asked if the recently-developed Legislative Council policy regarding workplace values would be part of the regular ethics training.

Skiff Lobaugh responded that the policy was intended to be part of an ethics training mandate. The details of how that training would be implemented needs to be worked out.

Senator John Coghill asked Skiff Lobaugh how long a Sexual Harassment refresher training might be. Lobaugh responded that in his opinion a 20- 30-minute refresher of the policy would be sufficient if it is in conjunction with the Ethics Training. However, Lobaugh is not sure whether the Human Rights Commission would consider that a full-fledged training. Lobaugh estimates that a full-fledged training would take a couple of hours.

Chair Skip Cook asked if it is possible to have a more refresher rather than a full training.

Deb Fancher asked about having the refresher training available online, adding that the problem is that an online training does not allow for asking questions of a facilitator.

Chair Skip Cook agreed that online training could be a possibility and asked Jerry Anderson if he had had any discussion with the Human Rights Commission about this topic. Anderson replied he had not had any direct communications with them.

Jerry Anderson commented that currently new employees watch a three-hour online version of the training. A shorter version of the training is a possibility, but he has not approached the Human Rights Commission about that.

Chair Skip Cook asked Jerry Anderson if he could arrange a meeting with Skiff Lobaugh and the Human Rights Commission to consider the question and report back at the next Committee meeting. Lobaugh offered to arrange that meeting.

Representative Colleen Sullivan-Leonard mentioned she is a member of the Society for Human Resource Management and she believes there are a number of sexual harassment and EEOC

trainings available through the organization that could serve as a refresher.

Conner Thomas asked if it is a foregone conclusion that the Sexual Harassment Training is a responsibility of the Ethics Committee. Chair Cook responded that it appears to be so and asked Jerry Anderson to identify the part of statute that addresses it. Anderson replied that part of statute is AS 24.60.155. Skiff Lobaugh read the section to the Committee.

> **Sec. 24.60.155. Legislative ethics course.** (a) A person who is a legislator, legislative employee, public member of the committee, legislative intern, or legislative volunteer shall complete a legislative ethics course administered by the committee under AS 24.60.150(a)(4) within 10 days of the first day of the first regular session of each legislature or, if the person first takes office or begins service after the 10th day of that session, within 30 days after the person takes office or begins service. The committee may grant a person additional time to complete the course required by this section.

Chair Skip Cook asked if there was language that mentions harassment. Skiff Lobaugh read the language in 24.60.039.

> **Sec. 24.60.039. Discrimination prohibited.** (a) A legislator or legislative employee may not engage in acts of discrimination in violation of AS 18.80.220.

Skiff Lobaugh said that it does not address a legislative sexual harassment policy. That raises the issue of whether sexual harassment policy training is mandatory under the Ethics Act even though the Legislative Council policy suggests that it is. The Legislative Council cannot amend the Ethics statutes – that would require a change in the statute, which the legislature could do.

Deb Fancher recalled that it was legislators who wanted to make the training mandatory and including it as part of Ethics Training would accomplish that. Dan Wayne confirmed Fancher's recollection and said that the training is in

compliance with AS 18.80.220(a), which prohibits sexual harassment in the workplace.

Skiff Lobaugh stated that he would argue the "meat of the thing" is in the ethics realm under AS 24.60.039 rather than AS 18.80.220.

Dan Wayne suggested the Committee might want to consider whether it wants to get involved in administering the sexual harassment policy adopted by the legislature or interpreting its provisions when it was not crafted by the Ethics Committee.

Senator John Coghill recalled that last year's extraordinary circumstances led to the mandate for this year but there was a question about whether it would be mandated every year. Senator Coghill is not sure if a decision about that had been made, in part because it seemed they were interested in developing a policy. Senator Coghill added that the failure to act properly can be dealt with in a complaint process.

Senator John Coghill continued by saying that he thinks the training should be provided because it is valuable but suggested that long-term legislators need only a review of the policy because the Ethics Committee will deal with breaches. However, a full training for first-time legislators is appropriate because they need to know their responsibilities in this complex employer circumstance.

Chair Skip Cook said that under AS 24.60.039, legislators or employees may not engage in acts of discrimination. The question is: Does "discrimination" encompass all types of discrimination and is sexual harassment discrimination? If so, it can logically be seen to be under the Ethics Committee venue. Chair Cook suggested seeing what could be worked out in terms of training. He added that part of the concern is whether six hours of training every two years may be onerous. Refresher training as an alternative and using the tools in place seems logical.

Conner Thomas said that a 25- to 30-minute refresher training in addition to the regular ethics training would be one thing but mandating a 3-hour training conducted by another group may be another.

Chair Skip Cook said that if we were going to incorporate the sexual harassment training into the ethics training, the ethics training would need to be shortened.

Conner Thomas suggested checking to see if the Human Rights Commission can shorten their training for returning legislators and employees.

Representative Colleen Sullivan-Leonard said that continued training is important because people forget over two years and it is better to err on the side of caution to prevent a repeat of past issues.

Senator Dennis Egan agreed with Representative Sullivan-Leonard and thinks that this year's training was excellent. Senator Egan thinks everyone should attend the training every two years – employees and legislators.

Chair Skip Cook suggested that it would be worth asking the Human Rights Commission if they are willing to conduct the training every two years with an available online option, though he recognizes the value of discussion that is possible in a live presentation.

Joyce Anderson asked if the Ethics office would track attendance at the sexual harassment training as well as the ethics training.

Chair Skip Cook replied affirmatively to Joyce Anderson's question.

Chair Skip Cook recommended that a meeting be arranged between Jerry Anderson, Skiff Lobaugh, and the Human Rights Commission to discuss training options.

7. Advisory Opinion 18-02

Dan Wayne introduced Advisory Opinion 18-02 by reading each of the questions and summarizing the answers.

1) *May a legislator, after a state funded relocation to Juneau for a legislative session, attend and sponsor a fund raiser for a state election campaign before the start of the legislative session?*

The draft concludes yes, a legislator may attend and sponsor a fund raiser for a state election campaign before the start of the legislative session.

2) May a legislator, after a state funded relocation to Juneau for a legislative session, attend a political forum or a fund raising dinner for a political party in Juneau during that legislative session?

The draft concludes yes, as long as the legislator merely attends and does not directly or indirectly host, co-host, solicit participation, promote the event, or aid in the fund raising. Legislators have to be careful. Some years ago, legislators' names were listed on posters promoting the event and that is not allowed.

Chair Skip Cook asked if there were questions for Dan Wayne.

Conner Thomas made a motion to adopt AO 18-02 as drafted and presented. No objection.

Roll Call Vote AO 18-02

Dennis "Skip" Cook	Y
Joyce Anderson	Y
Conner Thomas	Y
Deb Fancher	Y
Rep Colleen Sullivan-Leonard	Y
Sen John Coghill	Y
Sen Dennis Egan	Y

Advisory Opinion 18-02 was approved by a vote of 7-0.

8. HB 44 Discussion

Administrator Jerry Anderson commented that HB 44 has a number of provisions and some apply to sections of the Ethics Act, and it is those he would focus on in his review.

One significant change to the legislative ethics act begins on page 8. In referring to a gift of food or drink for immediate consumption to a person covered under AS 24.60, it adds the word "nonalcoholic" as a descriptor to the word "beverage." That impacts AS 24.60.080.

In addition, section 7 on page 8 amends AS 24.60.030(e). This is a significant change because it expands the provisions under 24.60.030(e) beyond simply restricting a legislator who is negotiating for employment from taking or

withholding official action or exerting official influence that could be substantially benefit or harm the financial interests of another person. It expands the provision to include a member of the legislator's immediate family or a member of the immediate family's employer. It leaves in the provision a legislator who is negotiating for employment. In (D) on page 9, it adds "from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than $10,000 of income."

Jerry Anderson turned the discussion over to Dan Wayne, who has worked with the provisions, "substantially benefit or harm the financial interests of another person" and "taking or withholding official action or exerting official influence."

Dan Wayne commented that on page 9 the word "substantial" is given a new definition and he read, "Substantially benefit or harm means the effect on the person's financial interest is greater than the effect on the financial interest on the general public of the state." Wayne suggests waiting to see what kind of facts come before the Committee. It leaves it up to the individual to figure out what it means, to call the ethics office and ask for advice about whether or not they need to declare a conflict and so forth. The definition is pretty broad; it is hard to describe exactly what "substantial" is and so it will need to be looked at on a case-by-case basis.

Jerry Anderson reminded the Committee that there have been a number of advisory opinions under the old law about when that provision would apply. Anderson thinks there is an opportunity for the Ethics Committee to explore that question with the individual legislators if they ask for formal advice. Anderson expects that will happen under the changes outlined in HB 44. Anderson asked Dan Wayne to speak a bit more about what "taking or withholding official action or exerting official influence" means.

Dan Wayne said there is no definition in the Ethics Act of "official action" but there is a definition of "legislative action." In the past, the Committee has said that official action includes legislative action; official action is the broader term. If the Committee looks at the question again, that could change. Legislative action means "conduct relating to the development, drafting, consideration,

sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction." There are a lot of ways this could go depending upon the facts in each situation.

Representative Colleen Sullivan-Leonard asked Dan Wayne if he could speak to the intent of Section 9, (2).

Dan Wayne replied that basic intent was talked about in hearings and also in the sponsor statement. Wayne read, "HB 44 contains provisions to ensure conflicts are "substantial" before a legislator would be required to abstain from voting. Any benefit a legislator or a member of the legislator's immediate family might receive from supporting a particular piece of legislation would have to be greater than the benefit a large group of Alaskans would receive in order to require abstention. The bill recognizes the responsibility of legislators to vote, except in clear cases where the outcome of the vote would result in substantial personal financial gain. This includes cases where an immediate family member or a legislator's employer would receive a large and direct financial benefit."

Dan Wayne continued by saying that it does not look like the intent was to rule out *any* type of financial benefit; it has to be something big.

Representative Colleen Sullivan-Leonard asked Dan Wayne if HB 44 better defines the process for a legislator who feels they have a clear conflict, asks to be excused, and someone objects to the request to abstain every time. Chair Cook asked if the uniform rules override the legislation.

Dan Wayne acknowledged there has been a problem for legislators when they try to abstain. In virtually every case, there has been an objection and they have been required to vote. The bill does not change the uniform rules. And the uniform rules would override the statute, so when a legislator declares a conflict on the floor when voting, the same rules would apply.

Chair Skip Cook asked if the uniform rules allow the chair to excuse a legislator from voting in committee. He also asked if the uniform rules require legislators to vote on the floor and in committee also.

Dan Wayne read from Uniform Rule 34(b). "Every member present in the house shall vote unless the house for special reasons permits a member to abstain." Wayne thinks there has been some debate in the past about whether this section applies to committee but is uncertain if or how it was resolved. It is not an ethics question; it is a uniform rules question. Wayne said he would need to talk to other attorneys about the question.

Senator John Coghill explained that the reason it is a question in committee is that a bill generally and legally does not belong to the committee, it belongs to the whole body. Legislators have declared a conflict in committee, but they are still required to be part of the discussion. They do not have a say in the final disposition on that bill until it is on the floor.

Chair Skip Cook said the Ethics Committee might be called upon to address the question of whether someone failed to declare a conflict.

Joyce Anderson reported there are two definitions of immediate family and the one being referred to is the actual definition in statute, which is narrow compared to the one in the gift statute, which includes grandparents and aunts and uncles and so on. It is important to point out the definition is the narrower one.

Jerry Anderson reminded the Committee that they have had formal advisory opinion requests about conflicts of interest. Anderson anticipates getting more questions with this legislation. It also affects ethics training, substantially affecting a number of sections, and that will be incorporated into the training.

Joyce Anderson pointed out that there is a new definition in Section 11 – financial interest.

9. Other Business: Next meeting is July 17.

10. Adjourn:

A motion to adjourn was made by Conner Thomas. No objection. Meeting adjourned at 9:18 AM.

9:18:13 AM