

MINUTES

HOUSE INVESTIGATIVE COMMITTEE ON LEGISLATIVE AND JUDICIAL COMMUNICATIONS

June 7-8, 2006
Room 313-S—Statehouse

Members Present

Representative Mike O'Neal, Chairperson
Representative Mike Peterson, Vice Chairperson
Representative Richard Carlson
Representative John Faber
Representative Geraldine Flaharty
Representative Becky Hutchins
Representative Lance Kinzer
Representative Janice Pauls
Representative Arlen Siegfroid
Representative Jim Ward

Staff Present

Jill Wolters, Senior Assistant Revisor, Revisor of Statutes Office
Athena Andaya, Research Analyst, Legislative Research Department
Martha Dorsey, Principal Analyst, Legislative Research Department
Heather Klaassen, Research Intern, Legislative Research Department
Sara Zafar, Research Intern, Legislative Research Department
Kris Aisleger, Kansas Assistant Attorney General (Thursday only)
Karen Clowers, Committee Secretary

Others Attending

See attached list.

Wednesday, June 7

The meeting was called to order by Chairperson Mike O'Neal at 1:45 p.m. on June 7, 2006, in Room 313-S of the Statehouse. Chairperson O'Neal introduced Special Counsel Nebraska Attorney General John Bruning, Assistant Attorney General of Nebraska Matt McNair, Nebraska Solicitor General Kirk Brown, and Kansas Assistant Attorney General Kris Aisleger. The Chairperson indicated Mr. Aisleger had not been involved in any investigative work performed by the Kansas Attorney General's Office and that he would provide services to the Committee.

Discussion of Rules

The Chairperson distributed a draft of proposed rules previously shared with Committee members (Attachment 1). The draft was modeled after rules used in the Select Committee on Kansas Public Employees Retirement System (KPERs) Investment Practices Investigation.

Following the reading of the first rule concerning the number of members required for a quorum, Representative Ward distributed an alternative set of rules (Attachment 2). Representative Ward pointed out that the KPERs Investigative Committee was split 50-50 between Republicans and Democrats. It was his opinion that his suggested rules would help ensure the public's confidence that the Committee has a clear "public purpose" and that the Committee's decision-making processes are nonpartisan.

Representative Ward moved that a quorum be comprised of seven members instead of six. Motion failed on a vote of four to six.

Chairperson O'Neal moved that a quorum be comprised of six members of the Committee. Motion carried.

The Chairperson read the proposed Rule 2 pertaining to Committee Rules and Rules of Order. *Representative Ward moved to change Rule 2 regarding the phrase "affirmative vote of a majority" to define the majority as including at least one member of the minority party. Following discussion, the motion failed on a vote of four to six.*

Chairperson O'Neal moved to adopt the original version of Rule 2. Motion carried.

The Chairperson read the language of proposed Rule 3. The Chairperson indicated Representative Ward's concern with section 3(a) regarding the possibility that the Chairperson could call meetings with virtually no notice. The Chairperson stated that it was his intent that any meetings called would be scheduled so that all members and staff would be able to attend. He does not contemplate any situations where meetings would be called on the spur of the moment and that "under no circumstances" would a meeting be called which would exclude members of the minority party. It is not the intent of the majority party to "block" the minority members' participation and there would not be any "spur of the moment" meetings.

Representative Ward proposed Rule 3(a) be amended to include that notice of meetings shall be posted not less than seven calendar days prior to the meeting.

Following discussion, the motion was amended to read: notice of meetings shall be posted not less than seven calendar days prior to the meeting unless otherwise agreed to by the Committee by unanimous consent. Motion passed by consensus of the Committee.

Rule 3 (b) was adopted by Committee consensus.

Representative Ward proposed inserting a rule to address circumstances requiring changes in a previously agreed upon witness list and that alterations of such changes be addressed and agreed upon by both the Chairperson and the Vice Chairperson. Discussion followed and the Committee agreed by consensus to insert language addressing changes in witness schedules by mutual agreement of the Chairperson and Vice Chairperson and to reletter the remaining subsections of Rule 3.

The next portion of Rule 3 concerned compulsory process. Representative Ward proposed that the Committee, by majority vote, may authorize the Chairperson to exercise the powers of

compulsory process, rather than consulting with the Speaker of the House. Following discussion, the Committee agreed by consensus to the change, with the addition that the Chairperson may consult with the Speaker of the House.

Representative Ward moved that one minority member be in agreement to exercise compulsory process. Motion failed on a vote of four to six.

The last section of Rule 3 was addressed, pertaining to open meetings, executive sessions, and sealing of testimony. Representative Ward proposed using the language in his draft of rules which detailed executive sessions. Following discussion, the Chairperson tabled the final decision until later in the meeting.

The Chairperson read Rule 4 from the proposed draft, concerning the role of subcommittees. Chairperson O'Neal indicated he was not anticipating a need to use subcommittees, but the rule was included since it was part of the original KPERS investigation rules. Following discussion concerning the need for subcommittees, the Committee moved to discussion of Rule 9, regarding testimony by deposition upon written questions.

Rule 9 was changed to allow 30 written questions per Committee member. The Chairperson and Vice Chairperson will review and select an agreed-upon set of questions and all questions submitted shall be open to the public.

It was then agreed that there was no need for a rule concerning subcommittees and this provision was deleted.

In further discussion, the reference to Special Counsel in Rule 5 was deleted.

The Committee revisited the last section of Rule 3, agreeing by consensus to adopt the language proposed by Representative Ward regarding executive sessions, and also to retain the original language concerning the sealing of testimony.

The Committee discussed the attendance of the Special Counsel from Nebraska. It was noted that since the Committee would have assistance from the Kansas Attorney General's office, there really was no need for the Nebraska contingent to continue. *Representative Ward moved to delete Rules 6 and 7 of the proposed draft regarding Special Counsel. Motion carried.*

The Special Counsel from Nebraska was thanked for their assistance and dismissed from further attendance.

Rule 8, pertaining to legal representation for a witness, and Rule 11, regarding questioning of witnesses, were agreed upon by consensus.

Rule 10, regarding the procedure for questioning of witnesses was discussed. *Representative Peterson moved all proceedings be conducted according to the rules of Civil Procedure. Following discussion, the motion failed.* It was agreed to accept the proposed rule with the following changes: addition of the phrase, "if any" following Special Counsel; allow additional time for questioning if the witness confers with Counsel, the Committee engages in discussion, or the witness reviews exhibits; allow Committee members to reserve a portion of their time for questioning following all other Committee members; and Committee members shall be called to question by alternating members of each political party and rotating the order for each witness.

The Committee agreed to insert a rule stating any subject not covered by the rules pursuant to Rule 2 shall be submitted to the Chairperson and the Vice Chairperson for initial determination and subject to approval by a majority vote.

The Committee discussed possible future meeting dates, and identified July 5, July 6, and July 12, as open for all Committee members. Copies of the investigative materials from the Attorney General's office were distributed to the Committee with the exception of the affidavit of Senator Pine, because Senator Pine had not given his permission to distribute his affidavit. The Committee discussed potential witnesses for future meetings. Following the discussion, the Chairperson requested each Committee member submit a list of potential witnesses by July 5, 2006.

The Chairperson requested the staff make the necessary changes to the agreed-upon rules and have them ready for consideration at the next meeting.

Representative Hutchins moved and Representative Carlson seconded the motion to accept the minutes of May 24, 2006. Motion carried.

The meeting adjourned at 5:37 p.m.

Thursday, June 8 Morning Session

The meeting was called to order by Chairman Mike O'Neal at 9:14 a.m. on June 8, 2006, in Room 313-S of the Statehouse. The Chairman introduced Kenda Falley, a certified shorthand reporter, and stated the procedure he planned to follow with each witness scheduled to testify. The Chairman also reviewed the various exhibits to be used during questioning. They were:

- Exhibit 1: Senator Morris' written statement presented to the Republican Caucus (Attachment 3);
- Exhibit 2: Answer filed by Justice Nuss (Attachment 4);
- Exhibit 3: Senator Pat Apple's affidavit (Attachment 5);
- Exhibit 4: Senator Terry Bruce's affidavit (Attachment 6);
- Exhibit 5: Senator Jim Barnett's affidavit (Attachment 7);
- Exhibit 6: Senator Susan Wagle's affidavit (Attachment 8); and
- Exhibit 7: School finance spreadsheet (Attachment 9).

"Statements Taken from Kansas Newspapers" which was distributed at the May 27, 2006, meeting are included as (Attachment 10).

Senator Pat Apple was sworn in by Ms. Falley, and following the Chairman's introductory remarks, the Committee proceeded to question the witness. A transcript of the testimony is attached (Attachment 11).

Senator Terry Bruce was sworn in by Ms. Falley, and following the Chairman's introductory remarks, the Committee proceeded to question the witness. A transcript of the testimony is attached (Attachment 12).

The Committee recessed for lunch at 12:45 p.m.

Afternoon Session

The Chairman resumed the meeting at 1:55 p.m.

Senator James Barnett was sworn in by Ms. Falley, and following the Chairman's introductory remarks, the Committee proceeded to question the witness. A transcript of the testimony is attached (Attachment 13).

Senator Susan Wagle was sworn in by Ms. Falley, and following the Chairman's introductory remarks, the Committee proceeded to question the witness. A transcript of the testimony is attached (Attachment 14).

Following questioning, the Chairman opened discussion on the agenda for the next meeting. Various names were mentioned as potential witnesses, including Senator Stephen Morris, Senator Pete Brungardt, Senator Roger Pine, Senator Derek Schmidt, Senator Anthony Hensley, and Troy Findley of the Governor's Office. Senator John Vratil was discussed as a potential conferee for the purpose of formalizing his representation of Senators Morris and Brungardt and explaining the objections, if any, to their appearance and testimony before the Committee. Representative Ward objected to calling Senator Hensley, Senator Vratil, and Mr. Findley as witnesses because he felt the Committee would be straying too far from the scope of inquiry.

Chairman O'Neal clarified that Senator Vratil would be called in his capacity as counsel for Senators Morris and Brungardt. Senator Hensley would be asked to testify about a meeting he attended at Cedar Crest prior to the March 30-31 meetings.

Representative Ward proposed that Senator Vratil might claim attorney-client privilege if asked to testify. Representative O'Neal indicated questions would be limited to explaining the position(s) taken by Senators Morris and Brungardt if they refuse to appear before the Committee.

The Chairman moved that Senator Pine, Senator Derek Schmidt, Senator Hensley, and Troy Findley be invited to testify at the next meeting. Motion carried on a vote of six to three.

The Chairman stated that he would again invite Senator Vratil to appear before the Committee to explain his clients' decisions not to testify.

The Chairman indicated it was possible that witnesses may not be available to testify at the next meeting, and the Committee may have to take the step of submitting questions for depositions. The Committee will be kept updated through email.

Representative Ward asked that his objection to inviting Senator Vratil to appear before the Committee be recorded. He directed staff to obtain the written document Senator Wagle testified Senator Barnett was in the possession of when he met with Senator Morris; to inquire about the status of the US Attorney General investigation and the status of Attorney General Phil Kline's investigation; and to request Senator Pine's affidavit be turned over to the Committee.

The Chairman reported that the Attorney General had not yet received permission to release Senator Pine's affidavit, but he expects to have it by the next meeting. Chairman O'Neal also indicated that he had requested copies of all materials turned over to the Commission on Judicial Qualifications and the only document not received to date is Senator Pine's affidavit.

The Chairman requested that staff ensure that the Committee has all of the documents from the Commission on Judicial Qualifications' file.

It was decided to hold June 28, 2006 open as a tentative meeting date.

Representative Kinzer moved and Representative Carlson seconded a motion to adopt the Rules as discussed on June 7, 2006 (Attachment 15). Motion carried on a vote of six to three.

The meeting was adjourned at 5:20 p.m. The next scheduled meetings are June 28, 2006; July 5-6, 2006, and July 12-13, 2006.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Committee on:

July 6, 2006
(Date)

AEA/kal