

# **Alaska State Legislature**

## **Select Committee on Legislative Ethics**

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## **HOUSE SUBCOMMITTEE DISMISSAL ORDER COMPLAINT H 04-06**

The House Subcommittee hereby dismisses Complaint H 04-06 and finds that the actions of Representative Richard Foster did not give rise to a violation of the Legislative Ethics Code.

The House Subcommittee reviewed the results of the investigation of the complaint and determined that:

1. The House Subcommittee received a properly filed complaint against Representative Richard Foster, dated February 5, 2004. The complaint was in proper form and contained allegations, which if true, would constitute a violation of the Ethics Code, AS 24.60. The complaint was designated H 04-01. The House Subcommittee adopted a resolution defining the scope of the investigation on February 26, 2004. The subcommittee conducted an investigation of the allegation.
2. The complaint alleged the following:
  - That on January 12, 2004, the House majority went into a closed caucus to discuss a motion made on the floor of the House of Representatives asking for a joint session to override the Governor's veto of the longevity bonus program. No justification was given for the closed caucus or that it was necessary for caucus strategy. Only the discussion of political strategy is allowed under AS 24.60.037
  - Their subsequent vote on the House floor indicates that an agreement was reached in closed caucus on the issue and that a vote may have been taken in closed caucus in violation of the open meetings statute AS 24.60.037. The complaint further points out that Rules chair, Representative Norman Rokeberg, stated on the House floor that the vote was "procedural" and therefore the majority was required to vote against the motion. This statement indicated that a prior binding agreement was reached about the vote required of each majority member.

3. The House Subcommittee met on May 7, 2004 and May 24, 2004 to consider the complaint. The subcommittee reviewed the following: (1) AS 24.60.037 Open Meetings law; (2) HB 563, a bill that passed both houses of the legislature and is waiting signature by the governor; (3) gavel-to-gavel recording of the January 12, 2004 House floor session; (4) interviews with House members who attended the "meeting"; (5) a "contract" signed by House majority members which states: "We, the undersigned, as members of the House Majority Caucus, recognize the requirement to follow all procedural votes and to vote "yes" on all final budget bills and CBR votes when these issues are presented on the floor the House."; (6) Alaska State Legislature Uniform Rules; and (7) Mason's Manual of Legislative Procedure.

## DISCUSSION

Despite its finding that the actions outlined in the complaint did not give rise to a violation of AS 26.30.037, the Subcommittee determined that the subject of the meeting coupled with the "contract" created the appearance of impropriety. The Subcommittee makes the following observations after careful review and investigation of the allegations:

(a) Appearance of Impropriety: An abrupt recess (sometimes called "at ease") to retreat to a closed caucus during an open legislative floor or committee session with no clear purpose stated on the record for the benefit of public or press leaves observers in the dark as to what is going on. Closed meetings are allowed by statute for political strategy purposes. Closed executive sessions are also allowed by statute for clearly defined purposes. When a public body goes from an open meeting into an executive session, this transition is preceded by a motion to do so. The public understands that the body is going to discuss a matter falling within the executive session exception to open meetings. At a minimum a transition from an open meeting into a closed caucus should be preceded by a clear statement on the record that the recess/transition is for the purpose of a closed caucus as allowed by statute. Otherwise the public is left to assume that something improper has or may have occurred. This is particularly true for closed meetings of the House majority caucus, given the existence of a "contract" that predetermines how its members will vote. In recent public testimony members of the public expressed a strong desire that the legislature conduct public business in the open.

(b) Taking of Action in Closed Meeting: The statutory exception at AS 26.30.037 allows closed caucuses or meetings to discuss political strategy.<sup>1</sup> Votes are not to be taken in closed meetings. Decisions are to be made in public. The Subcommittee was unable to determine precisely if an actual vote was taken during the caucus in question. However, several present have stated that a determination was made that the matter before the House for a vote was "procedural." How and by whom this determination was made is unclear. Nonetheless, it appears a decision was made that the matter before the House was "procedural." In light of the "contract" referred to above, which requires all house majority

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<sup>1</sup> Recent legislation awaiting the governor's signature broadens the allowed activity to both discussion and deliberation.

members to vote with the leadership on procedural votes, the decision that the issue was “procedural” was therefore tantamount to a vote on the underlying issue.

(c) The House Majority Caucus “Contract”: The complaint brought to the attention of the Subcommittee’s public members the existence and content of the previously referenced “contract” signed before the start of the legislative session. Although House majority caucus members may have signed this contract individually outside of a meeting, the effect, as noted, is tantamount to taking action in a closed meeting. The contract has broad effect on votes taken on the House floor as well as in legislative committees. If a matter is determined in closed caucus to be “procedural” the outcome of a floor vote is guaranteed.

(d) Procedural Versus Substantive: The House majority in this instance equated the term “procedural” with “political strategy.” The Subcommittee is not convinced that procedural matters are by definition matters of political strategy.

Adopted this 24<sup>th</sup> day of May 2004  
by a majority of the House Subcommittee.

Signature redacted for privacy

H. Conner Thomas, Chair

Members Participating

H. Conner Thomas

Dennis “Skip” Cook

Herman Walker, Jr.

Ann Rabinowitz

Representative Mary Kapsner

