

MINUTES

HOUSE INVESTIGATIVE COMMITTEE ON LEGISLATIVE AND JUDICIAL COMMUNICATIONS

May 25, 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

Others Attending

See attached list.

The meeting was called to order by Chairperson Mike O'Neal at 2:50 p.m. on May 25, 2006, in Room 313-S of the Statehouse. Chairperson O'Neal made opening remarks to the Committee regarding the formation of the Committee and stated that this meeting is an organizational meeting. He advised that he had a preliminary meeting with the Vice Chairperson and staff to talk about the logistics of meeting as a committee. Chairperson O'Neal commented that the business of this Committee will probably not be concluded by the end of June.

Scope of Study

Chairperson O'Neal stated that the Committee is charged to study, inquire, and investigate the communications, specifically the conversations that occurred, between senators and a Supreme Court Justice; what use was made of this information concerning the communications by participants in the communication and others who became aware of such communications; what effect such communications had on the legislative process; and whether other communications have occurred. The Chairperson expressed the desire to understand what happened, to find out if it was appropriate, to find out what is the effect of the communication, and to find out what can be done to prevent a similar situation in the future. The Chairperson expressed appreciation to media for their in-depth coverage of a remarkable event.

The Chairperson advised that this Committee is a statutory investigative committee pursuant to KSA 46-1001, *et seq.* Therefore, the Committee has the authority to use compulsory process. However, the Chairperson expressed his desire to initially ask the witnesses for voluntary compliance. Only after a refusal, the Chairperson will request the use of compulsory process to obtain statements or documents. He advised that this is not a *per se* investigation of the justice or of the judicial system. The facts that will be reviewed by this Committee are in common with the investigation by the Judicial Qualifications Commission, but this Committee will focus on the legislative side of the equation, and whether and to what extent the legislative process is affected.

Representative Jim Ward stated that it is his understanding that the House cannot sanction or discipline the members of the Senate. Chairperson O'Neal agreed and said it is not the role of the Committee to act as a disciplinary committee for the senators. The information gathered by this Committee would be available to the Senate to do with what they will. Representative Ward stated it was his understanding that no House members are directly involved. Chairperson O'Neal agreed with this statement.

Chairperson O'Neal informed the Committee that he requested the Attorney General to provide the Committee with legal counsel. The Chairperson is optimistic that legal counsel will be appointed, and that the legal counsel might be a borrowed counsel from another State's Attorney General's Office or possibly a borrowed prosecutor from within the State. Representative Jim Ward asked Chairperson O'Neal about the potential conflict of interest between the Attorney General as a witness in this matter and being the Committee's counsel. Representative Ward clarified that his question was not a question of the competence of the Attorney General's Office, but whether it is a disqualifying conflict of interest. The Chairperson replied that the legal counsel should have an arm's length relationship to ensure that there is no conflict of interest.

Chairperson O'Neal advised that he asked staff to collect the clippings and compile a summary to organize the statements for the benefit of the Committee. The summary and the clippings were handed out to the Committee members (Attachment 1 and 2). Martha Dorsey explained how the statement was organized and how to use the document. Chairperson O'Neal also asked staff to brief the Committee on prior legislative investigative committees. A memorandum on prior legislative investigative committees also was distributed by staff (Attachment 3). Chairperson O'Neal handed out copies of the Code of Conduct for Judges to the Committee (Attachment 4).

Chairperson O'Neal opened the floor for suggestions on information or documentation that staff could gather before the next meeting. The suggestions include:

- Sworn statements in Attorney General investigation, fields notes, reports;
- A statement from the Office of Judicial Administration announcing the recusal of Justice Nuss and the spreadsheet;
- Senator Steve Morris' memorandum to the Republican Caucus;

- The text of the letter by Chief Justice to Judicial Qualification requesting an investigation;
- Information and complaint from the Judicial Qualification Commission regarding its investigation; and
- Speaker Mays' letter stating he was going to form the Committee.

Chairperson O'Neal advised the Committee that the services of a certified shorthand reporter are necessary, and that he thought it was prudent to look into retaining the services of an expert to talk about ethics. Representative Ward asked Jill Wolters, Senior Assistant Revisor, to prepare a memorandum on the principles of the Separation of Powers Doctrine.

Discussion of Rules

Chairperson O'Neal advised that he would have a draft of proposed rules for the Committee to review at the next meeting. Representative Faber asked if the rules would include an executive session provision. The Chairperson replied that that was a good suggestion, and he would include such a provision for the Committee's consideration.

Scheduling of Meeting Dates

The Committee agreed to a meeting on June 7, 2006, commencing at 10:00 a.m. The Chairperson anticipated the discussion on the rules would occur in the morning, with the Committee being able to hear from one witness in the afternoon. It was suggested by Representative Kinzer that the invitation to appear on a meeting date also contain a request for documents. The Committee agreed.

The Committee also agreed to a meeting date on June 8, 2006, to hear from one witness.

The scheduling of future meeting dates is anticipated by the Committee.

Discussion of Potential Witnesses

There was discussion on how the witnesses would be questioned. It was suggested that each member formulate questions in advance and submit them to the Chairperson and Vice Chairperson so that duplicitous questions can be eliminated. Representative Pauls commented that spontaneous questions are important to the Committee function. Vice Chairperson Peterson advised the suggestion to submit the questions in advance was only in the interest of time or witnesses' schedules.

Chairperson O'Neal was hopeful that the Committee can arrive at a method that will expedite the process. He indicated that prior rules contemplate the Special Counsel would be the only one asking questions. Chairperson O'Neal suggested that there needs to be some sort of organization. Representative Pauls is interested in knowing the process of the Special Counsel. Chairperson O'Neal stated that if questions are agreed upon, then it matters little who asks the questions.

Representative Ward suggests the Committee allocate a certain amount of time to each member, and possibly have the Special Prosecutor ask the foundation questions.

The next meeting is scheduled for June 7, 2006, from 10:00 a.m. to 5:00 p.m., and June 8, 2006, at 9:00 a.m. in 313-S, Statehouse, Topeka. With no further business before the Committee, the meeting was adjourned at 4:01 p.m.

Prepared by Athena Andaya

Approved by Committee on:

June 8, 2006
(Date)