

MINUTES

HOUSE INVESTIGATIVE COMMITTEE ON LEGISLATIVE AND JUDICIAL COMMUNICATIONS

October 26, 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 Siegfried
Representative Jim Ward

Staff Present

Jill Wolters, Senior Assistant Revisor, Revisor of Statutes Office
Athena Andaya, Research Analyst, Kansas Legislative Research Department
Martha Dorsey, Principal Analyst, Kansas Legislative Research Department
Dianne Rosell, Legislative Fellow, Revisor of Statutes Office
Karen Clowers, Committee Secretary

Others Attending

See attached list.

The meeting was called to order by Chairperson Mike O'Neal at 10:10 a.m. Chairperson O'Neal requested that the Committee review the minutes of the October 3, 2006 meeting.

Representative Flaharty requested the minutes be corrected to indicate Representative Pauls' absence rather than Representative Flaharty's in the afternoon session.

Representative Pauls requested the minutes show that her absence was due to her attending a Sentencing Commission meeting.

Representative Kinzer moved and Representative Peterson seconded the motion to accept the minutes, as amended, of the October 3, 2006 meeting. Motion carried.

The Chairperson reviewed the request made to the Commission on Judicial Qualifications for copies of the affidavits referred to during the pre-hearing conference on June 15, 2006, and the negative responses received (Attachment 1).

Following discussion, Jill Wolters was directed to contact Carol Green, Clerk of the Supreme Court, and Mr. Nick Badgerow, counsel for Justice Nuss, and request the names of the people that provided affidavits for the Commission's investigation.

The Chairperson then called a recess at 10:30 a.m., so that the Committee could break into majority and minority groups to discuss the draft report (Attachment 2).

The meeting resumed at 11:15 a.m.

It was agreed that there would be a Majority report and a Minority report.

Representative Peterson requested clarification on page 4, line 8 of the draft report, which indicated that according to the investigative report provided by the Attorney General's Office, (Attachment 3) it was Senator Morris, and not Senator Brungardt, who was the longtime friend of a court employee. It was indicated that the investigative report was quoted correctly.

The Chairperson suggested that for clarity the report should say, "According to the report, Senator Morris had known the employee of the court on a personal basis for a number of years."

Representative Ward stated that the statements under discussion were pulled from a larger record and thought it may be an attempt by the majority to support its conclusions.

The Chairperson agreed that the request was an attempt to amend part of the majority report, but that staff was given no direction as to what testimony was to be included in the report. Chairperson O'Neal suggested in fairness that the report should reflect that the statements are those the investigator indicated had been told to him by Senator Morris and not a statement of fact. The Committee agreed.

Representative Peterson requested a change on page 11, paragraph 3, to remove the word "tragic" and to insert a paragraph stating all senators that testified before the Committee were not influenced by the conversation between Senator Morris, Senator Brungardt, and Justice Nuss. In addition, there was no evidence from the Attorney General's investigation, the Commission on Judicial Qualifications hearing, or reports by the media that any legislator was influenced by the conversation.

This concluded the changes requested by the minority.

From the majority's standpoint, Representative Kinzer inserted a statement at the beginning of the Conclusions and Recommendations section that the conclusions and recommendations are made without benefit of any direct testimony from Senator Morris or Senator Brungardt. In addition, it is a weak argument to apply the immunity of the Speech or Debate Clause to conversations outside of the Capitol with members of the judicial or executive branches.

Representative Kinzer suggested the first bullet regarding the section on numerous unanswered questions be rephrased and expanded. The Chairperson indicated the first bullet point

should ask, "Was there knowledge by the Senators that they were doing something wrong; and The majority is troubled by the fact that Senator Morris refused, upon request, to identify the individual he was communicating with at the Court". The refusal was both in terms of communications with the individual senators in his office and with the investigator of the Attorney General's Office during his interview.

Representative Kinzer stated that the second bullet should be rephrased to ask the question, "Was there more than one communication between Senator Morris and the Court," and specifically indicate that the Committee finds there is evidence from sworn testimony given to the Committee of a conversation between Senator Morris and a employee of the court, who was not a Justice. Representative Kinzer suggested that the third bullet be incorporated into the second bullet.

An additional bullet point to be added should state that the majority found that the senators who testified before the Committee were consistent on the general nature of the discussion that took place in the meetings with Senator Morris and that the employee referred to in the Attorney General's investigative report was not a Justice.

Representative Siegfried referred to page 4, paragraph 3, of the transcribed investigative report regarding Senator Morris' statement "that he assumed the information known to the interviewing agent was coming from Senator Jim Barnett" and requested that the statement be included in full in the final report.

Chairperson O'Neal requested that on page 8, to add to the last bullet point that it was apparent from the evidence that at least Senator Morris' vote was influenced by the conversations with the Court and the fact that the bill in question lost by a 20-20 vote shows further evidence of the impact of the influence.

The Chairperson indicated the section reserved for the October 26 meeting should reflect the status of the request for information from the Court including Jill Wolters' request earlier in the day to Carol Green and Nick Badgerow for the names of persons providing affidavits as cited in the pre-hearing conference. Carol Green declined to disclose the names and Mr. Badgerow indicated he was not authorized to provide the information.

Chairperson O'Neal questioned the Committee on the failure to get cooperation from the Court with request for documentation and the possibility of approaching the Legislative Coordinating Council (LCC) to pursue it. Representative Kinzer stated that the conduct was a matter of concern and that the LCC should be notified of the lack of cooperation.

The Chairperson inquired if there was a consensus to contact the LCC. Representative Ward indicated that he objected to contacting the LCC.

Representative Ward asked if Legislative Research had responded to the request to indicate the cost of the investigative Committee including the cost of the per diem and mileage for legislators, court reporter, and transcripts as well as the expenses incurred by the Nebraska Attorney General. Staff indicated the Attorney General's Office had not provided the information regarding the expenses for the Nebraska Attorney General.

Representative Ward indicated his opinion that the majority meeting to discuss the draft report should have been held as an open meeting. Chairperson O'Neal indicated that it was the agreed process for the majority report and not subject to the open meeting requirement.

The staff was directed to send out revised copies of the report to Committee members.

The meeting adjourned at 11:50 a.m.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Committee on:

November 9, 2006
(date)