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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

July 20, 2010

The Committee on Legal Services met on Tuesday, July 20, 2010, at 10:06 a.m. in HCR 0109. The following members were present:

Representative Labuda, Chair
Representative B. Gardner
Representative Kagan
Representative Levy
Senator Brophy
Senator M. Carroll
Senator Morse, Vice-chair

Representative Labuda called the meeting to order. She said the Committee should have received the e-mail from Charley Pike announcing his planned retirement. That's what brings us here.

10:07 a.m. -- Debbie Haskins, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1 - Selection and Appointment of the Director of the Office of Legislative Legal Services.

Ms. Haskins said I'm going to be referring to the June 28, 2010, memo from Charley Pike we sent out to the Committee and the Executive Committee regarding the selection and appointment of the director of the Office. As you know, Mr. Pike is resigning effective October 1, 2010, or until a new director is hired, and he has asked for his formal retirement from the Office to be delayed for a month or so to allow for a transition period between the directors. What I would like to talk about is to look at the statutes that relate to the Committee's role in selecting a director. Addendum A in the memo has the two statutes that are relevant. In section 2-3-503, C.R.S., the Committee,

as the oversight committee for the Office, is directed to interview persons applying for the position of staff director as to qualifications and ability and shall make recommendations to the Executive Committee. If you look at section 2-3-303, C.R.S., that provides that the Executive Committee is the committee that actually appoints the legislative service directors, other than the state auditor, and the Executive Committee makes those appointments after receiving recommendations from the respective committees. The Committee's role is to interview and make recommendations to the Executive Committee about the candidate or candidates for the director and the actual selection is made by the Executive Committee. The statute also does provide some statutory qualifications. The director is required to be an attorney and the director and all employees of the Office shall be appointed without regard to affiliation and solely on the basis of their ability to perform their duties. The director and employees of the Office are employees of the General Assembly and so are not subject to the state personnel system.

Ms. Haskins said the next thing I would like to talk about is to give you some information about the searches that have been done at the General Assembly in the last 10 years for this Office, the Legislative Council, and the Joint Budget Committee. The oversight committee for a legislative service agency that is looking for a new director has two main issues to decide: The scope of the search - do you want to have it be internal, statewide, or national - and whether to create a smaller group, like an advisory committee, subcommittee, or search committee, to do some of the screening. Some additional issues if you do create a separate committee is do you bring in outside folks such as former staff or former legislators and what role do you want this smaller group to play? Do you want them to just screen candidates or do you want that group to help participate in interviews? The other common element for all three offices is that the committees and staff that handle the search processes have always taken great efforts to follow the requirements of the open meetings law while maintaining the confidentiality of the applicants. In every case, the committees have gone into executive session to interview the candidates and the basis for that is in section 24-6-402 (3)(b)(I), C.R.S. That provides that all meetings held by members of a state public body to consider the appointment or employment of an employee shall be open to the public unless the employee requests an executive session. What has happened is we have asked the candidates if they would like to go into executive session because it's a personnel matter. For instance, in the 2003 search that this Office conducted, the candidates said that they wanted to go into executive session to do the interviews. That has been the case with the searches for the other offices. Procedurally, what would happen after you do those interviews in executive session is that the Committee comes back into session and one of

the members of the Committee will make a motion to recommend a candidate or candidates to be forwarded on to the Executive Committee. Then the Executive Committee has to decide whether they want to interview the candidate or candidates or decide to act on that recommendation without holding interviews. As a result, a number of persons that have been interviewed and the names of the persons who are candidates are kept confidential at the time and still are confidential. It's a little hard to give you a lot of detailed information about the past searches because of that. I do have a handout that gives you some information about the last four director searches that have been held at the General Assembly in the last 10 years. The information on the sheet is what was publicly known about these searches. As you can see, there have been two searches for the Legislative Council director, in 2003 and 2008. There was a search for the Joint Budget Committee in 2002. For this Office, the search was in 2003. The Legislative Council searches have been statewide and internal searches. The Joint Budget Committee search was limited to staff internally at the Joint Budget Committee and then it was also made known to other staff of the legislative service agencies here at the General Assembly. That was a more narrow search. I've provided information to let you know that all the interviews were in executive session, similar elements, and the length of the searches. The Legislative Council had a search committee in 2003, and in 2008, they created an advisory committee, which included four current legislators and four nonmembers of the General Assembly. With the Joint Budget Committee, all six members handled that search and did the interviews. Turning to the search in 2003 when Doug Brown retired and Charley Pike was selected, at the time that Mr. Brown indicated he was retiring and the Committee met to decide what to do about the search, it was toward the end of March. The Chair had some discussions with leadership and leadership indicated that they wanted us to do a national search. When the Committee met, the Committee made a decision to do a national search as well as advertise it to the Office. At that time, we placed ads in *Governing* magazine, in *The Colorado Lawyer*, and through the National Conference of State Legislatures. The Committee received 41 applications, seven were from out of state and 34 were from Colorado. Six of the 41 applicants had legislative experience and that includes the internal candidates. The vast majority of the applicants were attorneys in private practice in Colorado who had very little experience with the legislative process. There were some applicants who worked in the public sector, but most of the applicants were in private practice. The Committee created an advisory committee. There were 12 members on it, six were members of the Committee at the time, two were former staff members, and four were former legislators. The advisory committee screened resumes and recommended to the broader group the candidates they thought should be

interviewed. All the interviews were held in executive session. I can't tell you how many were interviewed. I will tell you that the Committee did interview a candidate from another state who worked at another legislature. The Committee authorized the Office to pay for this person's travel expenses to come to Denver and that was paid out of the Office's travel budget. The Committee, after the interviews, recommended unanimously one candidate to the Executive Committee, and that was Charley Pike. That information was relayed in writing to the Executive Committee and about three weeks after the interviews were held with the Committee, the Executive Committee had a meeting scheduled, the Chair reported on the search, and the Executive Committee made its decision without interviewing Charley or going into executive session. The search took five months to complete, from the time when the Committee made a decision about the scope of the search and how they wanted to do that until the time the Executive Committee made its selection. That's what I can tell you about the search. I was the staff person at the time, working with the Committee during that previous search.

Representative Labuda said in 2003, our budget was in a little better shape then, wasn't it? Ms. Haskins said that was actually during one of our down times. It was not as bad as now.

Representative Labuda said my concern about a national search is would the Office have sufficient funds to pay for out-of-state applicants if we did a national search and found five people from other states who sound good and have done legislative work. I understand that in 2003 there was one person, but I just don't know what the budget situation is like and if that's going to be limiting in any way. Ms. Haskins said I think that's probably a decision for the Committee to decide. You oversee our budget. We do have a travel budget. If the Committee were to bring in five folks that would probably mean that we would not be able to send staff to any kind of meetings. I think the funds could be found but it might have some other ramifications.

Representative Gardner said I was on the advisory committee for the Legislative Council search in 2008. We did a national search. We had one, perhaps two, out-of-state candidates. I go back and forth about whether that was worth doing or not because, ultimately, we hired in-house. The discussion at the time was do we think the office or system needs a radical change? Do we want this office to go in a radically different direction, in which case, you go outside the organization? We ultimately decided no, rightly or wrongly we thought everything worked pretty well, so the idea was how do you energize the office and continue doing what you're doing. I thought there was value, at the same time, in seeing what was out there. I

don't think we interviewed the out-of-state candidate because, at the end of the day, he or she was unwilling to make a schedule change for what was an iffy proposition.

Senator Carroll said I'm leaning toward either looking at an internal search or an internal and statewide search. My preference might be informed by knowing the number of applicants. If for some reason we had zero internal applicants or one where it wouldn't look like there's a whole lot to review, it might make more sense to at least make sure we're sending it statewide. Given the confidentiality aspects we were talking about too, we may have a chicken and egg question because to me the scope of the search is pretty rationally informed by trying to get a sense of how many applicants and if we seem to have an alarmingly few number of applicants that would suggest expanding the scope. Can we get numbers or a sense of where we're at?

Representative Labuda said I can tell you that I think there will probably be between four to six in-house attorneys who will submit an application, and it may be more than that.

Senator Morse said I think we should do an internal search. I think we can look at this in a little bit different way and that is do an internal search and if that falls flat, which I cannot imagine it would, then we can expand it to statewide because of the budget concerns, and if that falls flat, which I can't imagine it would, we could go national, and if that fell flat, then we know we have a real problem. I think we can go with that approach and even then if the four to six applicants inside turn out to be one to two that aren't really qualified, we can adjust for that. I just don't see that happening. I've sort of dreaded this moment because I think we will have four to six very good people and to say yes to one and no to three to five is just going to stink. I think that's going to be more the problem here.

Representative Levy said I generally concur with Senator Morse's sentiment, but I'm wondering if Ms. Haskins could give some ballpark idea of the number of attorneys who have left the Office who are in private practice in the state that may have very good experience, they know the Office very well but for whatever reason elected to leave, that maybe could bring a combination of under-the-dome and private practice experience. Ms. Haskins said that's an interesting question. If you look at our letterhead, we have a lot of senior staff attorneys in the Office right now, as well as four senior attorneys. We have not had as much turnover in the last five or six years as we used to have. Yes, there are some former attorneys from our Office that are out in the community. My guess is that they're probably pretty happy where they are, but I can't rule

it out that they wouldn't want the position.

Representative Levy said it seems like there hasn't been a lot of turnover. The other question I had is how similar our structure is in Colorado for Charley Pike's position to the way other states run their legislative legal services agencies? Ms. Haskins said I would suggest you bring Bruce Feustel from NCSL to the table. He's the next person to talk. I think that Mr. Feustel could probably answer that question. He has been contacting other states to find out what other states have done recently with searches and I think he can give you some of the pros and cons about why you might want to do a national search versus why you might want to keep it internal or statewide.

10:29 a.m. -- Bruce Feustel, Senior Fellow, National Conference of State Legislatures (NCSL), addressed agenda item 2 - Hiring Procedures for Nonpartisan Legislative Legal Services Directors: Experiences from Other States.

Mr. Feustel said I have a handout [see Addendum A]. I've been working with legislatures for about 35 years now, 20 years as a legislative attorney in Wisconsin and I've worked the last 15 for NCSL and the legislative management program. Part of what we do is management studies in states and I've been on most of the studies involving legal departments. We have 10 recent examples, including Colorado, of the last 10-15 years of having done at least one, sometimes two, hires. The states are Arkansas, Colorado, Connecticut, New Mexico, Ohio, Oregon, Tennessee, Vermont, West Virginia, and Wisconsin. I split this into national searches and then combined internal/local searches because sometimes they're a bit mixed. Most states saw that as a primarily internal focus. About half of them searched nationally and half the internal approach. Some of those that had two hires within a 10-year period, like Arkansas, did a national search first. So, they got an assessment of how their internal candidates stacked up, and then did the second search internally. The vast majority of all those, except for Wisconsin and West Virginia, chose internally or someone who had vast experience with the legislature or with that particular agency. Pros and cons are pretty straightforward and pretty similar to what's been mentioned already. The national search gives you a wider range of candidates, it opens up the possibility to make major and innovative changes, and it also gives you that sense of how your internal candidates stack up with a wider range of folks. The local/internal search reflects how important it is to know Colorado legislative culture, procedures, and the law, shows confidence in the Office - a vote of confidence in the people who are there - and saves time, effort, and money. I did talk to people in those 10 states and I also participated in

Vermont as they went through a national search, and there's a bit of advice coming from those states. One is to not make the automatic choice. It isn't always national is always better or internal is always better. There's a thought process you have to go through, much as you've been talking here so far. It does require that you think long and hard about the Office and how it's been doing. Think of the things that it does well, where it needs to improve, the values and traits you see as most important in the next director, what kind of changes and how major they are, and where you want to be in the next two to five years. You need some sort of assessment process with the interview committee or decision-makers. It's unclear how much leadership needs to be in on it, how much the committees can act on behalf of the entire legislature, but deciding who really needs to make the decision and then going through that assessment of what do you really want in the next director. The Vermont legislative leaders actually had me come in and interview them. They came up with key values and traits. Nonpartisanship/trust, which is borne out in the rest of the interviews with other states, was at the top of the chart. Both sides, Republicans and Democrats, said that they absolutely had to have somebody that they both felt confidence in. Management skills, often states go along by taking a great drafter, someone who provides wonderful advice but just doesn't have the management skills or experience. They were looking for personal qualities like calm and decisive. Again, the key was they went through and identified across party lines what do they really want in the next person, and the decision about whether to go national or local really depends on your shared values and views of what the next director should be. My main point, and what got whittled down from all the interviews, is to only go national if you want to see a major change in the Office or if you don't believe there are at least two well-qualified internal candidates, the idea being you ought to have at least two for some sense of comparison. That came even from those states with a new, out-of-state hire coming in, saying the only reason I'm here is we needed major change, and it was too hard for some on the inside to hear that. Some basic, additional tips are to really decide on the director skills, but really look to those management skills that you're expecting. You do have the advantage in Colorado of having teams and other aspects where the senior management from the Office has had those kinds of experiences already. Really try to project out through the five years and not just think of the transition this person will have to make but the qualities this person can bring in once up to speed. There's a strong sense from people who've gone through this experience to remember that the candidates are always evaluating you as well as you evaluating them and part of that is basic decency and respect and answering their questions, but particularly if someone is asking for some information from the Committee that you're responsive to the candidate much as you expect responsiveness from them. The idea that

integrity is a priority and the idea that you're really picking someone that both the Republicans and Democrats feel very comfortable with, and then that sense of backing the new director you hire. Even in the best of circumstances people are going to be testing that person both internally in the Office and legislator-wise, just to see what they can get out of that person, and the idea that you back that person as solidly as you can is real important for the long-term function of the Office. Again, the best suggestion is that internal sense of what's important, what's valuable to you, but that idea, especially in these hard economic times, to only go national if you're really looking to shake up things. Three other Colorado-specific points I'd mention. One is with term limits, it's all the more important to have the Colorado-specific information in your head with the director. Two, you've done a relatively recent national search in 2003, so you have a sense of how things stack up with the internal candidates. With the team structure you have some experience for the candidates in place to show their budding leadership abilities and to give you a sense of how that would project forward.

Representative Gardner said when we did our Legislative Council search a couple years ago, we had an advisory committee of legislators and we had a former member of the legislative Council staff as well as someone from NCSL. Do you have any sense from the states of which of those has been pursued and which is preferred? Mr. Feustel said it's not necessarily one is better than the other. The key is whoever you have really devotes the time and energy, gives a lot of time just in going through resumes. One of the responses we got from people who had been candidates is they can really sense when people are engaged or not and sometimes half the people on the committee weren't really tracking. Either one of those can work wonderfully well, but the key is everybody is there who wants to be there and is taking it seriously.

Representative Kagan said in other states when these searches have been done and subcommittees have been formed, is it usual to have the outgoing person on the committee? Mr. Feustel said that too has run the gamut. It somewhat depends on the culture and how, frankly, the outgoing director is viewed. Almost all of them use it in some preliminary fashion and then the committee takes charge and does the interviews or so on. Essentially, they want to devise some system to milk the brain of the outgoing director. I think it's also more common that the longer the director has been in there, the more involved that director is in the process. Typically, they use the director in some sort of preliminary advisory capacity, but states have done everything including having the person doing interviews and almost up to the final decision stage.

Representative Gardner said just a comment on the Legislative Council search. We didn't use the incumbent, but we used the incumbent prior to that. He was highly respected and that gave us a sort of distance and at the same time some institutional knowledge. I don't know if it was right or wrong, it's just what was done.

Representative Labuda said it might be a good idea to have Charley Pike come in to give us a description of what is needed. I know there are four to six internal candidates, and if we're going to go externally, Mr. Pike might give us an idea of what help might be needed. Let's ask him to come in. He went through this process several years ago and he can maybe give some insight as to adjustment or whatever he would like to say. When he first spoke to me he did mention that there were several people in-house who were interested and the names he mentioned to me are some stellar candidates in-house. I'm leaning very strongly that way.

Ms. Haskins said one thing we might do while waiting for Mr. Pike is the handout on the issues the Committee needs to decide about the search process. This is to give you an idea about how we can walk through some of the key issues the Committee wants to talk about. Also, the Committee has the 10 traits for the director handout. The 10 traits were created in 2003 for the last search and we had input from the staff in putting that together. At some point you may want to go through that as well.

Representative Gardner said I hate to keep falling back on this, but I went through this process for the director of Legislative Council and the inside/outside thing I've thought a lot about it. As we did the process and did a national search, the reality was, and my sense of the committee which was a broad-based advisory committee, we ultimately seriously only considered one outside candidate. It was a Colorado candidate. It was a candidate with a lot of experience in Colorado state government. He was highly qualified and at the end of the day, we ended up with two candidates, one internal who was highly qualified, and one external who was highly qualified. My own sense was the outside candidate was kind of a nonstarter, not because any of his personal qualities, but because everybody was fairly satisfied that Legislative Council was doing a good job, the office was running well, and any kind of sense of what did we want going forward was about what's your vision for Legislative Council from where it is now to where it's going to be 5-10 years from now. I thought after the fact, was it fair to those candidates from outside the organization to sort of bring them in, put them through the gauntlet to some extent, perhaps raise their hopes, when we almost had a foregone conclusion, not about a particular candidate because we had some

very highly qualified internal candidates, that that's the way we were going to end up. It became clear to me when we got done that's where we were always going to end up.

Representative Labuda said let's talk about this part a bit longer because if we can decide whether to go inside or outside from the get-go that would help us all. How does the rest of the Committee feel about internal versus statewide search?

Senator Carroll said I could go internal or internal plus state. It sounds like we have a good variety of choices, but my opinion may change depending on what Mr. Pike has to say. Since we've brought him in, maybe we could just get his input on the Office and overall what has worked well and what else we might look at.

10:46 a.m. -- Charley Pike, Director, Office of Legislative Legal Services, addressed the Committee. Mr. Pike said I think my view is no secret. I at least hinted at it in the memo that I gave to the Committee and to leadership. My preference would be that you look within the Office first. That's based on a couple things. One, I really believe the Office is operating at a pretty high level. I think that the quality of the people is pretty high. Both of those things lead me to that conclusion, but you have to understand that I'm looking at it from the inside. I've been here for 38 years, so my focus is on this Office and on this legislative process. In terms of my reaction when I went through it, I was a bit taken aback by the national application of the process. I wasn't quite sure what that meant, or if the Committee was thinking there weren't adequate candidates within the Office. To me, it seemed like that was more effort than I would have anticipated the Committee would have thought necessary. Those are my preliminary reactions. I'd probably be more comfortable responding to questions and trying to be careful of not going any further than necessary.

Senator Carroll said I know you're really going to be missed. I think I speak for all of us when I say you've done an extraordinary job. My question is at the time when you were applying for this position, was there a subcommittee that was searching and do you have any thoughts about bringing in a mix of legislators and nonlegislators and current or former staff? And, most pointedly, about your potential role if there was such a committee, would you feel comfortable being on that or not? Mr. Pike said reacting to a subcommittee, I think there was a subcommittee, an advisory committee, that at least went through resumes and did some preliminary work. Ms. Haskins would probably remember that better than I do because I was only catching

bits and pieces as a candidate. Whether or not that's a good idea for you all I think depends a great deal on the direction you ultimately decide to go. If you're inclined to do a wider search, then I think you need a few people to scan resumes and/or maybe even conduct some preliminary interviews. I honestly don't know at this point how many folks internally are interested. I kept getting some folks dropping in my Office and chatting with me about what I do and that kind of thing and it ended up that I said let's all go to breakfast and we ended up with quite a few people at breakfast, but I don't know that all of those folks will apply. If something like that transpired and the Committee was comfortable among yourselves selecting some candidates that you want to have interviews with, I think the whole Committee might be able to do that. Again, that depends on how many you actually want to talk to and what your individual time commitments are. Even in that scenario, you may want to have a subcommittee do some more definitive interviewing if that's the direction you want to go. As far as assisting the Committee in that respect, I don't know that I would be entirely comfortable doing that simply because I've worked with all these folks for so many years. It would be very difficult for me to make a recommendation to you with regard to the qualifications of people in the Office. I might be able to assist in helping you figure out some things that you might want to focus on, but even that has some potential difficulties in terms of even a subliminal bias that might come out from me. I'd worry about that.

Representative Levy said one of the things I'm struggling with is the particular skill set, the work environment. The job duties of a person in your position seems to me to be very unique. I guess I'm wondering to what extent anybody in the private sector who has not been working in this environment would really have transferrable skills. The answer to that question kind of indicates whether we look statewide at somebody in the private sector. That doesn't tell us whether we look nationwide for other people who've worked as legislative counsel in those roles. To what extent do you think there are transferrable skills and how similar is the Office and the way you relate to the legislature to those of your peers? Mr. Pike said that varies widely. In conversations with other people about their environment, you get mixed messages. I think a lot of it depends on the personal style and skills of the individual. I think some states have different perspectives on the expectations of the kind of people that they want handling their work for them. Whether or not a particular skill set would be transferrable, there's probably some things in a general skill set that would be transferrable. I think there's an awful lot in what I think I'm expected to do for you all, and more particularly for leadership, that is more based on the particular environment you all operate in, particularly with regard to the rules, the unwritten common practices that

are prevalent here, to some extent the statutes and the laws that apply in certain circumstances - all of those things I felt like were of particular help to me as I first started doing this. I think I had developed some of that in working with Doug Brown and assisting him with working with leadership initially. The 10 traits that the prior Committee had developed are helpful. There's probably some in there that I would rank not in the order they're listed. I don't know if that was intended to be in any particular order. There are some of those I think if I were to have an individual conversation with some of you I might emphasize as more important from my perspective than others. Whether or not any or all of those would be transferrable, probably some of them would, such as general management skills and perhaps a good acquaintance with Colorado law. Once you start digging in a little deeper, I'm not sure that all of those would transfer.

Senator Morse said you're hoping to resign your position as director the first of October and then leave the first of February to give us those four months worth of transition. Mr. Pike said it may be a little shorter than that based on some conversations I've had with PERA.

Senator Morse said we're talking about do we do this internally, do we do this externally, and do we have a subcommittee that helps if we decide to do any of those things, which is going to lengthen the time and put at risk the possibility that we can actually appoint somebody by October 1. How important is it from your perspective, having gone through this process, that there be a transition period that may be as few as three months or even less, such as if we don't get somebody appointed until the first of November and you leave on December 31 or something like that? Mr. Pike said my direct answer to that is it depends on who you pick. If you pick somebody from out-of-state, I would think the transition period would necessarily be longer. If you pick from within the Office, the transition period would necessarily be shorter most likely. One of the things that I found I had to work through myself was making decisions, the decision-making process. You always think about that as I can handle that, but when you actually get into it, when you're the last one, you can go consult with folks, but ultimately you do have to decide to do it. I'm not sure there's anything anyone can do to help you through that, you've just got to do it. In that regard, perhaps being available for consultation might be helpful to the person and I would certainly do that, whether I'm still here formally or not. I also would worry that I don't want to be in the way of a new director. There would be a balance there that you'd have to be careful about. I suspect the more difficult situations are more likely to occur during the next legislative session and perhaps leading up to it, depending on the results of this election that's coming up. That may or may

not complicate things in terms of the transition.

Senator Morse asked when you took over, how much transition overlap did you get? Mr. Pike said not much.

Senator Morse asked was that an asset, because you were in the pilot seat without somebody backseat driving? To what extent was that an asset in that regard and to what extent was that a detriment that you really needed somebody to help you make the transition? Mr. Pike said I had been deputy director with Doug Brown for a long time. He and I had worked together fairly closely for a substantial period, so I was fairly comfortable in making the transition. At least for me, it didn't make much difference whether Mr. Brown was available or not. I think he decided that he wasn't going to be around as much or appear to be still hanging around. I'm fairly ambivalent about that.

Representative Levy said I respect and understand your desire not to weigh in on prospective candidates and I appreciate where that's coming from. On the other hand, you do some sort of performance review of your staff. We don't have the benefit of that. We have the benefit of interacting with them on a hit-or-miss basis and a fairly narrow range of areas and I guess I would ask that you remain open to some very confidential executive session input on candidates if we decide to hire from the inside, simply because we don't have the benefit of your knowledge. Mr. Pike said I've always tried to be responsive and I would continue to do so to the extent I was comfortable and not go too far. Certainly, if you all asked, I'll try to do as much as I'm comfortable doing.

Mr. Pike said the way I put it in the memo was October was the date I would resign or such period as necessary until you all appointed someone else. That is somewhat flexible, but based on the PERA conversations, it may need to happen before the end of the calendar year. There is some magic to that that I was unaware of.

11:04 a.m. -- The Committee addressed agenda item 3 - Discussion of OLLS Director Search - Issues for the COLS to Decide About the Search Process.

Representative Labuda said the first item of discussion will be whether we need to stay inside or go national. I think we heard a pretty good argument for staying internal, but I also remember Ms. Haskins talking about internal to the state or internal to the Office. Does anybody want to talk about going outside the Office, keeping in mind that we have some very well-qualified candidates

within the Office?

Senator Carroll said knowing that there does appear to be at least a threshold of some of our internal folks who are qualified, I like Senator Morse's suggestion about having a tiered option. Let's start there and if for some reason we don't see it there, we can maybe expand the scope. I think that is probably the most efficient way, where we know people who are already qualified with the experience. Time and money matters here. For whatever it's worth, I'm intrigued by that, that it's the first place we start and if for some reason that fails, or if we didn't get as many applicants as we thought from the Office, we can expand that to statewide.

Representative Kagan said I agree with the Carroll/Morse position.

Representative Gardner said let me suggest, just for consideration - I don't know that I feel strongly about it - that one intermediate way to deal with this rather than having a statewide search and having hundreds of lawyers out there submit applications who really are probably not in the ball game, might be to set a requirement that one have prior Office of Legislative Legal Services experience as an applicant. I'm interested in Representative Levy's earlier question about are there former members of the Office. I think for my own part, I do feel that experience in this Office is pretty important and I think we have a lot of great qualified candidates. Again, I also hesitate in this process to exclude people if there is some experience level out there. That's just a thought and maybe we make that a threshold requirement and that way every lawyer in the state would not feel compelled to see if they can go into government service.

Senator Brophy said since we are discussing hiring a person to work for the state of Colorado, I suspect that we are required to make a certain amount of advertisement about the availability of a position. We may not have the luxury of only being able to look in-house for a public position.

Ms. Haskins said the legislative branch employees are not part of the classified personnel system, so we do not have to follow the requirements for advertising that would be the case for the personnel system. The search that was done through the Joint Budget Committee was very narrow. It was just the people who worked at the Joint Budget Committee at that time or who worked for some other legislative service agency in Colorado. There is precedent for having a fairly narrow search. Again, it's up to the Committee to decide how you want to handle this.

Senator Brophy asked does that make the employees of the legislature at will?
Ms. Haskins said yes.

Ms. Haskins said one other thing, with discussions with Representative Labuda, we already have announced the position internally to the attorneys in the Office and they were given a deadline of August 2 to apply. It has already been announced to the Office attorneys, but nowhere else.

Representative Labuda said based on that internal announcement, we have four to six applicants? Ms. Haskins said potentially and possibly more.

Representative Labuda said I say four to six because some of them have contacted me and I don't know how many are really going to apply. I feel comfortable with the four to six number. Ms. Haskins said I think that's a pretty safe number.

Senator Morse said with Representative Gardner's idea, I think it's interesting to think about. Mr. Pike had 31 years of experience, so we might find some people throughout the state that did three to five years here. Would we really find somebody with 25 to 30 years of experience that we're probably going to be looking at to have somebody as the director that can think as fast on the floor as we need them to? If I had a nickel for every time I asked Mr. Pike the question "has this ever happened before", I'd be rich. I want somebody that has actually had some breadth of experience to say in the 25 years I've been here, as opposed to in the five years I was here 20 years ago, no. That's just my idea. I don't know if I agree or disagree with Representative Gardner's suggestion yet.

Representative Gardner said I appreciate that. When I came through the Legislative Council process I thought a lot about it after we were all done. We pretty much decided we really liked what we were doing, we really liked the way the system worked, we really liked everybody we had, and we continued on down the road. I'm not being particularly critical of that, I just think that the system very much opts for its own certainty and staying on the track we're always on. I don't know if we ever get any change that way or if that's only incremental. That could be a good thing. One of the questions I intend to ask is I always want to know in all candor what would you do differently today, what needs to happen differently in the Office. I think we can find that change. I think we're all afraid legislatively for reasons of our own self-preservation, having institutional knowledge, and keeping things going. We really don't want a radical change. I certainly don't. Well, there is one I want but we won't go there. I'm actually alluding to I have my own

reservations about nonpartisan staff, but I know I'm by far in the minority about that and it's not the tradition in Colorado.

Representative Labuda said I looked at the attorneys who are working on the staff and we have a lot of attorneys who have been here a long time, even before the economy got bad. They stayed here because they liked it here. If they want a promotion of any kind, the only possibility has been when something like this comes up. That's just a thought to throw out.

Representative Levy said I like Representative Gardner's approach. I think all of us feel institutional memory is a good thing and we do want to promote from inside generally, but I think it is worth it seeing who may be out there, who does have prior experience, not necessarily with the Colorado Office of Legislative Legal Services, but with a nonpartisan legislative legal services office. We may find somebody with outstanding legal skills, outstanding management skills, outstanding communication skills, etc., who, appreciating Senator Morse's concerns about institutional memory, can always rely on the institutional memory we've got here. I concur on Representative Gardner's approach, not because I don't have complete confidence in people who may be promoted from inside, but I just think it's always worth seeing how they stack up and taking a look at whether there might be a different approach that we might benefit from. I think the benefit of narrowing the scope and requiring that experience in the job description is that we won't get people who we would really never seriously consider looking at and who also don't know what they're getting into.

Senator Carroll said I'm not sure if there's a harm to going there, but I just wanted to articulate two thoughts out loud. One is that I think the uniqueness of the role of director matters. To me it would be more natural to start on as hiring an attorney and have them get familiar with the process and get to know the other personalities. I would find it fairly hard to contemplate bringing someone from the outside straight to the highest position here, who hasn't actually worked with our particular drafters. From a management perspective, I think it's just difficult personnel-wise to take someone who hasn't already been working in the Office. I'm pretty uncomfortable, but that doesn't mean we shouldn't include it in the scope. I just think you always have personnel issues when you take your top-most position and give it to someone who doesn't actually know the people in the Office they'd be managing. It's doable, but high-risk. It might work, but it might blow up. The other comment is the employer in me would also have this question: Why did someone leave before? If they're not still with us, there is some reason for it, and it may be the pay structures or the promotional opportunities were not there. They've

already been here and they've already ruled those out as something that didn't fit well with them and whether it was they chose to leave or whether they were encouraged to leave, it's just a question mark I would attach that if someone is not here anymore, there's some reason why they're not. That said, is there a harm to go there? I'm not sure there's a harm to it, but it would take a pretty unusual set of circumstances to bring someone from the outside to the very top of the organization, particularly with someone who has already left for some reason. There would be a pretty small chance of that.

Representative Labuda said I'd like to throw out another idea because Mr. Pike's memo says he's resigning October 1, even if it goes into other things, the discussions with PERA may indicate that October 1 is truly his last date. If that is his last date, I look at the time frames for the prior searches that were on the handout that we got. When we did the national search, it was five months, and we don't have that time. We could do it in three months, we could do it in two months. If we keep it internally, as Ms. Haskins said she asked for internal resumes to be here by August 2, sometime during the month of August, we or a subcommittee could review the resumes, and see if there is anybody we think should not be in the finalists. That gives us September to make a decision and recommendation to the Executive Committee by October 1. I think we need to remember the time frame we're operating in, too.

Representative Levy said I think that's a valid concern, although these days we post things electronically as opposed to having to put them in the newspaper. I think we could post it fairly quickly and have a very short deadline. I think those who left the Office because they didn't like the pay structure, the work environment, or for whatever reason will not apply. I think whether it's the Committee as a whole or a subcommittee that reviews the resumes they can sort through whether the person appears to be qualified or not. I think in terms of Senator Carroll's concerns, those would be concerns we would want to weigh or consider as we look at who we've got. I guess I wouldn't take those as a reason not to look outside at all, and again, it's not because of a lack of confidence in anybody, it's really because I think it's our obligation to this body and to the public to just see.

Representative Kagan said I feel we must be careful not to let the tail wag the dog. If it is better that we go with a wider scope, I don't think we ought to let the lack of time or the fact that it might entail a higher flow of work on us limit that scope beyond what we think is optimal. I'm just concerned about avoiding widening the scope in order to save time or effort on the part of our Committee.

Senator Morse said I have sort of a different twist on that. In thinking about Representative Gardner's comment about his experience with the last search, I really do think that if we just gut-check here, we're going to end up with one of the four to six people that apply from here. That just is what's going to happen. We could certainly err on the side of let's look at what's out there because there's never harm in that and I agree there is never harm, but there is cost. There is absolutely cost and we're going to need to interview these candidates. I think I'm going to be opposed to having a subcommittee do that or if I lose that battle I'm going to want to be on that subcommittee because this is a really important decision we're about to make that will have long-lasting repercussions for this organization and so it needs to be done carefully and I'm not really comfortable giving that authority to someone else. I think that's part of why I sit on this Committee and I actually, in the spirit of full disclosure, am on the Executive Committee so I'm going to make this decision twice and I'm actually happy about that. I'm not happy that I have to make the decision because I don't want to say no to the three to five people that don't get this job because I have a feeling all four to six are going to be outstanding and deserve the position. I'm not happy about that, but if it has to be done, I want to be at ground zero doing it, but I don't want to be inefficient about it. I still go right back to where I started which was let's start small and if that turns out to be wrong, then we'll take as much time with this as we can, but I think gut-check says it's not going to turn out to be wrong and we can do this very quickly internally and that will still take some time to interview those four to six people. I don't know that I'll support looking outside because while there's never any harm, there is cost. At this point that cost is our precious time to actually do the interviews the way they need to be done, which absolutely needs to happen, and I'm committed to doing that even if that means being here instead of on the campaign trail.

Representative Labuda said let me offer too that I've been in touch with the speaker and he indicated a preference for staying internal. I have not contacted the majority leader or minority leader yet. If you want me to do that, I can. From my past discussions with both of those individuals, they would probably prefer to stay internal too, but I can't speak for them. Could we have a motion to end this discussion?

11:25 a.m.

Hearing no further discussion or testimony, Senator Carroll moved that the Committee initially make a scope of an internal search with an August 2 application deadline. Representative Gardner seconded the motion. Senator Morse asked Senator Carroll if by internal does she mean internal to the

Office? Senator Carroll said yes. The motion passed on a 4-3 vote, with Senator Carroll, Senator Morse, Representative Kagan, and Representative Labuda voting yes and Senator Brophy, Representative Gardner, and Representative Levy voting no.

Senator Carroll asked if we need a motion on the job description as a separate item to take up because I did have one comment on that? Ms. Haskins asked if Senator Carroll means the 10 traits?

Senator Carroll said she was looking at the 10 traits. Is there a separate document? Ms. Haskins said there is a job description which was attached as Addendum C to Mr. Pike's memo. That was prepared quite a while ago and it's similar to other job descriptions that we have in the Office, so there is that as well.

Representative Labuda asked if Ms. Haskins knows when the job description was done? Ms. Haskins said it was prior to 2003.

Representative Labuda asked if Ms. Haskins thought it can use some updating? Ms. Haskins said I think it's just a basic look at the statutory requirements and then it has things that we have in similar job descriptions for the Office. I think the 10 traits would be the better focus for you all to look at.

Representative Levy said one comment on the job description and then a question for Ms. Haskins. I do wonder on the requirement that they be able to "see, hear, speak, and move" if that's consistent with the ADA? Ms. Haskins said we had a very long discussion in the Office not too long ago about that language. It was what we were using to meet ADA requirements several years ago. We did contact Mountain States Employers Council and I think we decided that it was still okay language. It's very hard to get a clear answer on that, but definitely the Office would need to provide reasonable accommodation for that if somebody had a disability. We did research it recently.

Representative Levy said I just asked the question to know whether some thought had been put into that. Let's not try to get a definitive answer right now, let's just say that will be looked at again. The question I have is what else do you need from us before we adjourn, given the decision to look internally?

Representative Labuda said I think the only things we need to look at now are

we might ask Ms. Haskins or the staff to look at the Addendum C job description to review that and see if there are any changes that need to be made due to subsequent changes in state or federal law. We also need to decide when we're going to meet next.

Representative Gardner said that presupposes this Committee won't use an advisory committee and we'll proceed with this Committee. I share Senator Morse's view of this that if you have an advisory committee I want to be on it. I don't favor an advisory committee at this point given the direction that we're going.

Senator Carroll said I'm inclined to have the Committee be the committee as well. I have three comments on the job description, though, because after we adjourn this is the description of what we're actually looking for. One big category that has been helpful through this Office has been some assistance with ethics, walking through 21c or 17c analyses and maybe that is captured within the scope of knowledge of the House and Senate and Joint Rules, but I think that's been an extremely valuable piece of advice and guidance to all the members. I personally would like to see a component listed about that. I know Representative Levy didn't really push to have it decided now, but now that she's raised it, I'm not totally comfortable with the ADA language as written. I think they need to be able to communicate with reasonable accommodations. They clearly need to be able to communicate but the details of how that should happen should be more disability-neutral. Move with some ability with reasonable accommodations. I think hearing and seeing is too specific as far as how that communication happens for my comfort level on the ADA. I would like a more neutral description, like you have to be able to communicate and move around, but with reasonable accommodation, which mirrors the ADA standard. Finally, I think I would update the job description from operating a personal computer to familiarity with the type of hardware and software that the Office is using right now. That may be moot since we're doing an internal search, but that's just screaming that it's dated.

Representative Labuda said we do need to have something in there that says you have to be computer-literate in some way.

Senator Carroll said yes, they're using drafting software and WordPerfect, and there's probably some internal software as far as tracking and logging that would be a beneficial skill-set.

Senator Morse said I don't know exactly how I would do it, but I would add to that that the only thing I'd want to change about the Office as we go

forward is we've got to get to where we are making use of the latest and greatest technology. Last year we did one of those tweaks, which was to update the bill summaries, and so those kinds of things that we really need the director to be thinking about. How can we make use of emerging technology, just not current technology?

Representative Labuda said one thing I'm not sure of when I'm looking at the beginning of it and seeing those statutory references, have we passed any laws in the past several years that give more direction? Ms. Haskins said no. I think that's still up to date, but I will check that.

Senator Carroll said I also see there looks like a quasi-formal decision item on communication or input with the Executive Committee. I've seen the e-mail trail for the Senate president, Senate majority leader, and Senate minority leader. I'm not sure we need any more formal process than that, at least with the Senate. Speaking for the Senate side, I feel like we frankly already have the channels open.

Senator Morse said but that raises a good point from the standpoint of the Senate. Shaffer, Kopp, and Morse are all returning next year as opposed to the three in the House, none of whom are returning next year. I'm not sure formally what we need to do. We can do our work and then formally notify them of what's happened, but I do think it's interesting to note that all three from the House that will be making this decision aren't as necessarily plugged in right this minute because they're not thinking about next January as well as the Senate side still is.

Representative Gardner said perhaps they have more time and they probably have the deepest experience level you're going to have here. There could be some advantage to that if they're willing to serve.

Representative Levy said they won't be leaving before the election, so they'll still be on board and they're all dedicated public servants.

Representative Labuda asked Ms. Haskins if she has enough ideas about areas we might want you to look at in the job description to get more detail or changes? Ms. Haskins said yes.

Representative Gardner said I'm wondering what this process looks like in terms of meeting. Do we have a meeting to discuss resumes and cull them? Do we have a meeting to interview candidates considering that we really are probably talking a manageable number? Do you want to wait and see?

Representative Labuda said I would propose to wait and see how many resumes we get in by August 2. Right now we have four to six. I think all of us could agree that we could meet, distribute resumes, read them for 20 minutes or whatever, and then call in the person to interview. I don't know if that's the way you want to go. If we have twice that many candidates, I think we need a meeting to look at the resumes, with input from the current director, and see who we would want to go forward with before we go to interviews. Maybe we'd want to do that anyway. What's the feel of the Committee?

Senator Carroll asked if the Committee can get the resumes that come in by August 2 predistributed to us? I think having some time to look over those before we convene is more efficient so that we all will have essentially done our homework. Since we are the committee and we're not having a subcommittee, what's the first post-August 2 date where we'd all be available to reconvene enough time after August 2 so that the resumes can be predistributed to Committee members and then I think at that point it makes sense to review and see if at the end of that we have enough to make a recommendation or whether we go in stages like there's a first cut and a second cut.

The Committee and Ms. Haskins discussed possible meeting dates and decided to meet at 1:00 p.m. on August 17, 2010.

Ms. Haskins said just so I'm clear, you would like the resumes distributed to all the members of the Committee, and then what are you wanting to do on August 17? Representative Labuda said send the resumes by mail and marked confidential. On August 17 what we want to do is first to review again the job description so we know what we're looking for and any changes that have been made, and then we could schedule them all for interviews. Before we interview them, I personally would like in executive session to call Mr. Pike to give any insight he might be able to give us.

Representative Levy said I would wait on Mr. Pike until after we've done some interviewing. I think it would be very important before we actually interview the candidates to have a conversation about our priorities, our criteria, how we're going to do this, what the methodology is going to be. I've seen a number of different processes, including every person asks the same question of each candidate so that you're sure it's completely consistent and objective. I've seen it done many different ways and I think we need to have a conversation about exactly the methodology we're going to use to conduct the interviews and to do the ranking and the selection.

Representative Labuda said I think I would rather look at the resumes first to get an idea of some of the questions I might want to ask.

Representative Gardner said when we did Legislative Council, we had a set of questions. What I found about that was it was a pretty good guide and it created some commonality of information that one received so it was worthwhile. It started as a straightjacket early in the day and I think everybody figured out that's really not going work so it needs to be a thing that all of us as a committee would like addressed and it was the responsibility of people who wanted to hear about those things to do them, so you weren't willy-nilly with the process, as it could be too free-wheeling. We need to have that discussion of what that list looks like and what that information is so that at least we have some common understandings. For instance, despite an internal process, which I'm not uncomfortable with, I really want to hear from people about what's wrong with the Office. I don't mean that in a negative way. As Senator Morse said we've got to get up on the technology edge and I have some notions myself. What would you change? How do we get there?

Representative Labuda asked do we want to each think of some ideas of questions and e-mail them to Ms. Haskins ahead of time so she can organize them? We'd probably be better off doing them individually. Senator Carroll said we could merge them and then have a suggested set that we're not bound by.

Ms. Haskins said there are in my computer questions from last time, so I can also share those with the Committee. We did have a ranking chart that was based on the traits, so I have something that was used in the past. I guess what I need to be sure I'm clear about is the next meeting you will not be doing interviews. You'll be looking at the resumes and the methodology and figuring out what your questions are. Then we would schedule another meeting for the interviews. Is that correct? Representative Labuda said I think to be fair to those who are being interviewed we should do it that way, but since we're only meeting at 1 o'clock in the afternoon it may take us three or four hours to come up with our questions.

Representative Levy said just looking at this suggested timeline, and given that we're meeting fairly late in August, I wonder if we could take a stab at circulating electronically these existing questions and see if we could have that in place and actually do the interviews that afternoon. I'm just concerned that we're going to push the timeline out if we don't do that.

Senator Carroll said one thought is three meetings total. One would be we've

predistributed the resumes and we could have some discussion of the resumes. We precirculate our pool of questions so that by the next time we meet we can consolidate, with the benefit of the prior questions and an electronic circulation of what anyone had here. We create a ranking chart and maybe even decide does everyone get an interview, do we take first cut, second cut, and make a decision about what our interview process will go by. Meeting two would be essentially the interviews, with the questions, with whatever criteria we're using, so that meeting three would be essentially a final decision after the benefit of the questions, or maybe interviews haven't been completed. Can we logistically get three meetings in between now and whenever the Executive Committee meets again, with enough time before October? Ideally, maybe we'd get late August to September meetings and be ready to go by September with the recommendations.

Senator Morse said Executive Committee meets whenever they choose. The trick is getting those six people together, but we do not have regularly scheduled meetings, so as soon as this Committee is prepared to make a recommendation, whether it's one person or two or three, then the Executive Committee will have to go through its own process at that point to figure out what's going on. The faster we can do this the better because if we give them two candidates and we recommend them on the 15th of September, now the Executive Committee has two weeks to try to figure out when to meet, to figure out our process, and then actually execute the process.

Representative Gardner said I think we can do two meetings in this way: A meeting to sort out all these things and a meeting of interviews. It may be six interviews at 1/2 hour each. For Legislative Council we did a bunch more in one day, but we were ready at the end of that day to, in executive session, kick it around and discuss it. We talked about this issue of do we send forward three or send forward one and we ultimately sent forward one, but we got it done and everybody was ready. It was as fresh as it could be, everybody had their impressions. I think if we walk out, then everybody starts lobbying each other.

Senator Carroll said that's a good point. Actually, I think we could do it in two. We would probably have to block out a day for that second meeting.

The Committee decided to meet on Monday, August 23, 2010, at 9:00 a.m. to do interviews all day.

Ms. Haskins said for you all to go into executive session, you need to have seven members present to vote to go into executive session so it's really

critical that you be here.

Representative Levy said one more question on this process. Will we send a name to the Executive Committee or could we potentially narrow it down and say here are two names? Ms. Haskins said it's up to the Committee. You can send one candidate or you can send more than one recommendation on candidates, and then it's the Executive Committee's decision of whether they want to interview those folks or not.

Senator Morse asked if it's up to Executive Committee to decide between whatever we send them, or can they decide outside of that if they choose? Ms. Haskins said I'm not the staff person for Executive Committee. I think it's Executive Committee's decision to look at the recommendation or recommendations from the Committee and decide how they want to proceed.

Senator Carroll said I don't think our recommendations are binding.

Representative Gardner said I have to believe that, based on my prior experience and the fact that a member of our Committee will participate in that decision, that's it's fairly persuasive that that is not going to happen.

Representative Labuda said to summarize, when we come back on August 17 at 1:00 p.m, we will all have received resumes and have read them and we will spend the afternoon going over the job description, discussing the resumes, and coming up with a set of questions that we have previously decided upon. We will take care of those three things, then we'll be well able to go into interviews beginning at 9:00 a.m. Monday, August 23. On August 23, we will interview individuals and we can decide on the 17th whether we want them to be 15 minute interviews each or 30 minute interviews each or however long they will be and at the end of that meeting on August 23, we'll continue in executive session, have our own discussion, and take a vote to make recommendations to the Executive Committee.

Representative Kagan said that depends on how many people we get. Obviously, if we get 10-15 people that we interview, we won't be able to do it all in that one day. Representative Labuda said we will if we decide on 15 minutes each. That's one of the things we'll have to look at.

11:56 a.m.

The Committee adjourned.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Hiring Procedures for Nonpartisan Legislative Legal Services
Directors: Experiences from Other States

Bruce Feustel, Senior Fellow
National Conference of State Legislatures, Denver Office

1. Recent Experience in Other States
 - a. Recent examples: Arkansas, Colorado, Connecticut, New Mexico, Ohio, Oregon, Tennessee, Vermont, West Virginia and Wisconsin.
 - b. Roughly half searched nationally and half internally/locally.
 - c. Vast majority chose internally/locally.
2. Pros and Cons
 - a. National search provides wider range of candidates, opens possibility for innovative changes and gives you a sense of how internal candidates measure up.
 - b. Local/internal search reflects importance of the director knowing Colorado legislative culture and procedures, shows confidence in OLLS, and saves time, effort and money with focused search.
3. Advice from Other States
 - a. Don't make automatic choice that one approach (national vs. internal/local) is better than another.
 - b. Interview committee or decision makers:
 - i. What is your opinion of OLLS?
 - ii. What does OLLS do well?
 - iii. What does OLLS need to improve?
 - iv. What values or traits are most important in the new OLLS director?
 - v. What changes in OLLS need to be made in the next 2-5 years?
 - c. Committee or decision makers should go through assessment process like Vermont to determine priorities. Vermont legislative leaders noted factors like nonpartisanship/trust, management skills, personal qualities and decisiveness.
 - d. The decision about whether to search nationally depends on what the decision makers want and how they answer the key questions.
 - e. Basic advice: only go national if you want to see major changes in OLLS or if you don't believe there are at least two well-qualified internal/local candidates.
 - f. Additional tips:
 - i. Decide based on the director skills-not enough to just be a great drafter and committee staffer.
 - ii. Look ahead past the immediate needs-who will be the best for the agency 2-5 years from now.
 - iii. Realize candidates are evaluating you as well as you evaluating them.
 - iv. Make integrity a priority.
 - v. Choose a candidate who is trusted by Republicans and Democrats.
 - vi. Back the new director you hire and give him or her the chance to succeed.