

COMMITTEE ON LEGAL SERVICES

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Sen. John Morse, Vice Chair
Rep. Bob Gardner
Rep. Daniel Kagan
Rep. Claire Levy
Rep. Ellen Roberts
Sen. Greg Brophy
Sen. Morgan Carroll
Sen. Shawn Mitchell
Sen. Gail Schwartz

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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

August 17, 2010

The Committee on Legal Services met on Tuesday, August 17, 2010, at 1:04 p.m. in HCR 0111. The following members were present:

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

Representative Labuda called the meeting to order. She said we're going to talk about the sheets that Ms. Haskins sent us on the traits we're looking for and the description of the requirements for the director. After we discuss that to our satisfaction, I will ask for a motion so that we can go into executive session.

1:06 p.m. -- Debbie Haskins, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1 - Review criteria and job description for the OLLS Director position.

Ms. Haskins said I made one change at the Committee's request on the ten traits for the director document, which was to add a trait regarding responding to ethical questions. Then, there were also some changes to Addendum C, which was the job description that the Office has for the director. One of the things you had asked was for me to review the law to see if there were other things that needed to be added to the job description. There were a couple

things that were added on the second page. One is that the director is supposed to serve or appoint a designee to the legislative emergency preparedness, response, and recovery committee. The other additional responsibility is that there was a bill, I think it passed this year, relating to review of contracts involving the General Assembly for the legislative branch. Our Office now reviews those instead of the Attorney General's office. Also, at the last meeting, you asked us to add some things regarding the use of computers. Also, the language that we had about "see, hear, and speak" caused some concern about ADA issues and so I have rewritten that. The other change was to highlight the director's responsibilities in advising the General Assembly, legislative leadership, or ethics committees about ethical issues. All of the changes on those two documents are double underlined and I want to make sure you all were happy with those or if you had anything else that you wanted to have added.

The Committee indicated they had no other changes to the two documents.

Representative Labuda said another paper to look at is the sample director applicant ranking form. We talked about it a bit last time, too. This was one that was drawn up when the last search was done. That was because they had 40 applicants from all over the country and they needed some way to rank them. The first trait on the form is "Can demonstrate knowledge about and has relevant legislative experience at the state level". Since all of our applicants are in-house, we don't need to rank in that way at all. As for the other items that are on that ranking form, how does the Committee feel? Would something like this be good with a 1 through 10 ranking on the side? Is there something else that we should consider besides what is on here? Would you like to go through these one-by-one because maybe the public would like to hear what we're considering for ranking? What is the feel of the Committee?

Senator Carroll said I think it's a useful form, with the first trait off because it's not relevant.

Senator Morse said I'm a little bit concerned that if we were to interview five applicants, they would all come very close using this kind of scoring system, especially with only four categories. I think this is going to be much more of a judgment call that's not going to lend itself to this kind of thing. It's going to be tricky, there's no doubt about it. Jumping ahead slightly to questions for the director candidates, this was something that we used the last time or that we used at some point. Some of these are great questions and there are a question or two that I would tweak and add, but I'm not sure that the answers

to these questions are really adequately shown in the sample ranking form to really be able to distinguish between each candidate.

Representative Levy said I agree it's going to be hard to differentiate. In looking at the last trait, "Has knowledge of and can demonstrate some experience in litigation, etc.", there's a lot in there. As I was reviewing the resumes and thinking about the qualities I would be looking for, one of the things that may be most important to me is the quality of the advice I get, pros and cons. I think we could get out of this last box some of that. You've got "providing general legal advice and assistance", which is going to be key and maybe we can separate that out and we'll see some greater divergence among our candidates on that because I think some of these are very different qualities. Litigation I think belongs in its own category.

Senator Brophy said to expand upon what Representative Levy was talking about, one of the things I'm going to be trying to figure out how to ask these people is how they will respond to a question regarding rules of the House or Senate and whether an action taken by a majority party is contrary to the rules and the history of the chamber and for an example of when they have told a legislator that they can't do whatever it is they want to do for some reason. I want to check their spine, because I do think that has been lacking a little bit over the past few years. This could go either way: You could be in the majority or the minority. I want the chief attorney to have enough spine to look his bosses in the eye and say you cannot do that or that has never been done here before and I haven't seen that over the last few years.

Representative Labuda said when I read through this applicant ranking form, I think the numbers two, three, and four questions, and to some extent number 5, are covered in the resumes. In the resumes you can find their experience, their publications, their history of giving speeches, so you have all of that. I don't know for that matter that those questions would be pertinent, which would lead me to say that some of these might be taking up time and wouldn't be necessary.

Representative Kagan said I'm curious to know how is it proposed that we use this? Is this just for us to use as a guide for our thoughts or is it planning to be handed in? Representative Labuda said this would just be a working sheet for each of us to use. Even if we decide as a group not to use it, any of us who wants to take it out and mark on it can do so.

Representative Roberts said what isn't on this form that I think would be important is the references. I know some of the resumes included references

and others said available upon request. I'm wondering do we have access to peer reviews within the Office? It's one thing for what happens in the interview and it's another as to how someone works day-to-day. I'm just trying to figure out how do we get that information incorporated into this.

Ms. Haskins said first, if the Committee wants references from all the candidates, you can tell me today and I will go talk to each one of the candidates and ask them to supply them where we don't have them, so that you have those in place for the next meeting on August 23. Second, Charley Pike is available upon your request to come in today after you go into executive session to talk about the strengths and weaknesses of the candidates, and if you want to do that you can call on Mr. Pike and ask him to come down. In terms of peer review, we do performance evaluations of the employees of the Office, but that hasn't generally been done on as regular a basis for the folks that are a little higher up as it is for all the staff attorneys. And it is a personnel matter, so I think the best we can give you at this point would be to have Mr. Pike come in while we're in executive session and he may be able to answer some of the questions.

Representative Roberts said I would like to hear what Mr. Pike's thoughts are. I think this is a very, very important position. I would like to think that members of the Committee have some other mechanism to go on beyond just Mr. Pike's perspective because, as valuable as that is, that's one person. You've got to probe a little bit if you're going to put somebody in this position. I would like each applicant to at least give us something. It's easy to put names down to give references, or maybe it's not easy, but I have nothing to put that into context with.

Representative Levy said I'm wondering how we go about getting information from these references. I know when I've checked references on prospective employees in the past the questions I ask are very particular to what I'm looking for and I'm sure what I hear is very subjective. I'm not sure how we do that in a way that all of us get the same information and get each of our questions and concerns addressed.

Senator Morse said I'm very familiar with each and every one of these people. I was sort of thinking that references aren't really going to do me any good from the standpoint that I have a lot of personal experience with each one of them and that's what I'm going to be relying on in that regard. Does Representative Roberts feel differently? Representative Roberts said after four years, I think to some degree I do too, except that, as a legislator, I think the working relationship is a lot different. What I see this person doing is not

only working with legislators but also with those within the Office. That I'm not sure you would know from what you experience of these folks.

Senator Morse said so you're talking about how they're actually viewed within the Office and how they function within the Office, more of the manager? Representative Roberts said their ability to lead or delegate or be nice to everybody.

Representative Labuda said we might be able to discuss that with Mr. Pike when he comes in because when he first told me that he was looking to retire, he gave me some information that was supposed to go no farther. If we're looking for that kind of influence in the Office, or who gets along with whom, I think he can be a very good source for that. Representative Roberts asked about peer reviews. I've always considered that a private personnel matter and it may be something that we can have access to, but I don't know that I want to have access to all of that since I'm going to be working with all these people next year. Sometimes what we don't know is better than knowing at all.

Representative Labuda said let's go back to the ranking form. Those of us who want to use it can certainly use it. It might be a good guide. As I said, a lot of it is going to be repetitious when we look at the resumes and can pick out some of the answers. For the revised job description, do we need to vote upon adopting that or how do we go about it? Ms. Haskins said I don't know if you need to vote on it. I just wanted to be sure you all were comfortable that it reflected the changes you requested at the last meeting. I don't think we heard any objections about that. I would think it would be okay to use the revised one.

1:24 p.m. -- The Committee addressed agenda item 2 - Review resumes for the OLLS Director position.

Representative Labuda said for the purpose of going into executive session, I am announcing now that the Committee should conduct an executive session in accordance with section 24-6-402 (3)(a)(III), C.R.S., for the purpose of conducting a discussion on matters required to be kept confidential by section 24-72-204 (3)(a)(XI)(A), C.R.S. That section says that the custodian shall deny the right of inspection of records submitted by or on behalf of an applicant or candidate for an executive position with a state agency who is not a finalist. Is there a motion to conduct an executive session?

1:24 p.m.

Senator Morse moved that the Committee go into executive session in accordance with section 24-6-402 (3)(a)(III), C.R.S., for the purpose of conducting a discussion of matters required to be kept confidential by section 24-72-204 (3)(a)(XI)(A), C.R.S. Representative Levy seconded the motion. No objections were raised to that motion and it passed unanimously.

The Committee went into executive session. The Committee met with Charley Pike to discuss the candidates for the director position, and the Committee discussed the candidates' resumes, the interview process, and interview questions.

3:04 p.m.

The Committee returned from executive session. Representative Labuda said the executive session has been completed and the Committee will return to our regular agenda.

3:04 p.m.

Senator Morse moved that the Committee interview all five candidates on August 23 beginning at 9:00 a.m., that we select the order of those candidates by drawing from a hat, and that we allocate 45 minutes per interview with five minutes for the Committee to take notes afterwards and with breaks set during the morning and afternoon and a 45-minute-period for lunch. Representative Gardner seconded the motion. The motion passed on a 8-0 vote, with Senator Brophy, Senator Carroll, Senator Morse, Representative Gardner, Representative Kagan, Representative Labuda, Representative Levy, and Representative Roberts voting yes.

Ms. Haskins asked the Committee if they would like her to ask for references from the folks who did not give you references?

Representative Labuda asked what is the benefit? Are we actually going to go and contact the references or are we just curious to see what kind of references come forth?

Representative Roberts said I think we should ask for them in case it comes down to a split vote or we need some next step to decide. I think Mr. Pike has given us a good sense from the discussion earlier, but I did not hear from Mr. Pike a clear delineation between the candidates. I think we may need to go a next step and that would help.

Representative Labuda directed Ms. Haskins to get references from everybody.

3:09 p.m.

The Committee adjourned.