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Colorado General Assembly

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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

June 30, 2017

The Committee on Legal Services met on Friday, June 30, 2017, at 9:09 a.m. in SCR 352. The following members were present:

Senator Cooke, Chair
Senator Gardner
Senator Guzman
Senator Holbert
Senator Kagan
Representative Herod
Representative Lee
Representative Willett
Representative Wist

Senator Cooke called the meeting to order and said before we get started I'd like to take a moment to thank Dan Cartin. I know he's not going to be here today but he's done a great job for us and I think he is going to be missed. Whoever we hire is going to have big shoes to fill and so I'd like to thank his staff and thank him for all the hard work that he has done and his service and dedication to the state of Colorado.

9:10 a.m. – Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed agenda item 1 – Selection and Appointment of the Director of Office of Legislative Legal Services.

Ms. Haskins said as the staff for your Committee this is the third time I have advised this Committee and worked with the Committee on the process for selecting and appointing a director for the Office. I will be referring to the May 30 memo from Mr. Cartin that was sent out to the Committee and the Executive Committee regarding the selection and appointment of the director of the Office. As you know, Mr. Cartin, our current director, has announced his resignation effective July 28, 2017. The Committee's role in selecting a director is governed by two statutes which are in Addendum A and B of the memo. The Committee's role in selecting a director is that you are the oversight committee for the Office and as that oversight committee you are directed to interview persons applying for the position of director as to qualifications and ability and to make recommendations to the Executive Committee as listed in section 2-3-503, C.R.S. The Executive Committee then, under section 2-3-303, C.R.S., is charged with the statutory duty to appoint the director upon receiving recommendations from the Committee. Section 2-3-503, C.R.S., also provides some statutory qualifications for the director of the Office – the director must be an attorney, the director must be appointed without regard to affiliation and solely based on ability to perform the duties, and the director is an employee of the general assembly and as such is not part of the state personnel system.

The next thing I want to talk with you about is the process that has been followed in recent director searches for legislative service agencies and actually our history goes back 17 years. I have compiled information on the last director searches that have been conducted by legislative service agencies at the capitol. Two were from legislative council, one was the joint budget committee (JBC) director, and then two were from the Office. That will give you a snapshot of what has happened in five previous director searches for legislative service agency directors. In general, the oversight committee for the legislative agency that is looking for a new director has several issues to decide. What qualities is the oversight committee looking for in a director? What is the scope of the search? Is it internal only, a local or statewide search, or a national search? And what process will be used for conducting the search such as obtaining input from an advisory committee, how to screen resumes, which is especially important if you are doing a national search and you have lots of resumes, and what is the timeline for your search? The other common element for all of these director searches is that the committees and the staff that have handled the search process 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 the open meetings law under section 24-6-402 (3)(b)(I), C.R.S., which says 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 or applicant requests an executive

session. Procedurally what happens is we talk to all the candidates and see if they want to go into executive session and generally they usually all want to do that and so the Committee goes into executive session and interviews the candidates and when you come out of the executive session then you can make a motion to recommend a candidate or candidates to be forwarded onto the Executive Committee. The Executive Committee will then have to decide whether it wants to interview the candidate or candidates and decide to act on that recommendation with or without holding interviews. As a result, the number of persons interviewed and the names of persons who were candidates for these searches that have been done in the last few years have been kept confidential at the time and still are confidential, but what I have put together on the handout is the information that I can share with the Committee about prior director searches here at the general assembly. The handout indicates the scope of the search, how the position was advertised, the number of finalists, if the number of finalists was made public, what the Executive Committee did in response to that recommendation, and the length of the search. The last two searches for the director of legislative council were statewide and internal searches of persons who worked in their office. The JBC search was internal only and they opened it up to staff from other Colorado legislative service agencies. The length of those searches ranged from two months to five months. I'm not going to go over each one of the Legislative Council and JBC searches, but in turning to the last two director searches for the Office, in 2003 our director Doug Brown retired and at that time the Executive Committee, upon recommendation from the Committee, selected Charley Pike. During the 2003 search, the Committee did decide to do a national search and an internal search. At that time there weren't online places to post ads so that added to the length of the search process. Ads were placed in Governing Magazine, the Colorado Lawyer, and through the National Conference of State Legislatures (NCSL). The Committee did select an advisory committee which was comprised of two former staff members, four former legislators, and six of the 10 Committee members. The Committee received 41 applications, seven were from candidates out of state, 34 were from Colorado, six of the applicants had legislative experience including the internal candidates, one candidate with legislative experience from another state was interviewed and the Office paid for this person's travel expenses out of the Office's travel line. The majority of the applicants were in private practice or worked in the public sector, but had no legislative experience. The advisory committee screened the resumes and recommended candidates to interview. When they did the interviews all 10 of the Committee members were there plus three of the advisory committee members sat in and participated in the interview of candidates. The interviews were held in executive session and the number of candidates interviewed was not made public. The Committee ended up recommending one candidate onto the Executive Committee, that was Charley Pike, and the Executive Committee

met later that month and made its selection. The search for that took five months. Turning to the search that was done in 2010 when Mr. Pike retired and Mr. Cartin was selected, the Committee met and determined to do an internal search only. The position was announced to our Office staff via office email. The Committee took testimony from Bruce Feustel from NCSL about the pros and cons of national searches and internal searches. They asked Mr. Pike to come in and had a conversation with him. The Committee decided at that time to do just an internal search and decided to not do a separate advisory committee. They met a second time to talk about the criteria for the director and review the questions, which was in executive session, and they reviewed the resumes of the candidates. At a third meeting the Committee met and interviewed all the internal candidates in 45 minute interviews, which were all in executive session. The Committee when they came out of executive session recommended one candidate to the Executive Committee and that was Dan Cartin. Following that, the executive committee met in executive session with the Committee's chair and then they met with Mr. Cartin and then they came out of executive session and voted unanimously to approve the recommendation of the Committee that Mr. Cartin be selected as the director. The length of that search was 2 months. One other thing that I should let you know is that the Office does have a policy that any time there is a position open in the Office we announce that through inter-office email to the staff. The open position for director has been announced to the attorneys in the Office and they were given a deadline of July 14 to apply. Just to recap your major issues here are the scope of the search, the process you want to follow, and the timeline. In terms of the scope of the search Mr. Cartin has recommended that you do an internal search only and Tim Storey is here from NCSL to give you some advice that they have and hearing from him is your next agenda item.

Senator Cooke said just out of curiosity since I wasn't here in 2003, was Mr. Pike internal or did he come from the outside? Ms. Haskins said he was internal; he worked for the Office for a very long time and had been our Revisor of Statutes.

Senator Guzman said I wanted to ask about that third meeting under the 2010 search where it says that all internal candidates received a 45 minute interview. Can you tell us how many internal candidates there were? Ms. Haskins said I'm not allowed to tell you how many internal candidates they interviewed. I can tell you it was a full day. Senator Guzman said that's what I wanted to know because we are talking about almost an hour per person. All of those were done in one day? Ms. Haskins said yes and we brought in lunch and took a break or two. Senator Gardner and Senator Kagan were on the Committee at that time so they may be able to shed a little light on some of that process.

Senator Kagan said could one do an internal search but not restrict it to attorneys in the Office but including attorneys from legislative council? Ms. Haskins said yes I think that is an option of the Committee. I don't know if there are attorneys in their office, but yes, that's a possibility. It's up to the Committee.

Senator Gardner said as Ms. Haskins said, Senator Kagan and I participated in the search for Mr. Cartin. I also participated in the search and interview process for Mike Mauer in 2008. One of those was internal and one was external and just to comment to the Committee, we ought to discuss and decide what we want to do about that. I don't think there's a right or wrong in my view having done both of those, but it is about what the Committee wants to do and how wide the search is to be made.

Representative Herod said can you tell me the diversity makeup of the Office? Ms. Haskins said I don't know the break down between women and men, but we have many female attorneys in the Office and our two deputy directors are women. We have two African-American attorneys in the Office. One is a bill drafter and another works on our publications. The other thing I can tell you is that there are 25 attorneys in the Office and there are 20 legislative editors and support staff, so we have 45 staff members, and the experience level of the attorney staff is really quite high. The average length of experience in the Office of the attorneys is 18 years so you have a very experienced staff. We have not had a lot of turnover with our attorney staff. You have a good bench.

Representative Wist said my frame of reference here is really on the judicial selection process, which I think works quite well, where the committee interviews candidates, which is a confidential process, but the three that are designated as finalists and sent to the Governor are known. I noticed from looking at this list that in almost each instance there's only one finalist that's ultimately identified. Can you share with us the thoughts of could we deviate from that and have more than one finalist? And are the identities of the finalists made public? Ms. Haskins said I think it's up to the Committee how many finalists you want to forward on to the executive committee. Regarding the confidentiality of the number of candidates, I can tell you that in all of the searches that we researched and talked with the staffs that have dealt with legislative director searches they've always been confidential. The open records law does talk about finalists, but our feeling was in researching it that that didn't necessarily apply to the legislative branch. I think that's really a decision for the Committee to decide and I can do some research before the next meeting. Representative Wist said if it's an internal search I could see some logic as to why we would make finalists known. As to if they're external candidates who

are currently employed elsewhere where that might be a consideration, so I just throw that out there for the Committee's consideration.

Senator Gardner said to my recollection, and it's just a sample of two, the discussion of how many finalists we wanted to forward in the searches that I participated in was one of the things that the Committee discussed based on how the interviews shaped up and how strongly the search committee felt about its finalists at the end of the day. There was some discussion back and forth about sending one or two. I actually don't recall what we did with legislative council. I know we had at least two really strong finalists and there was some discussion about forwarding one or two and I don't remember what we did.

Representative Willett said I noticed one of these searches took five months and one took two months. Do we have any time urgencies? I assume Ms. Eubanks as the deputy director would take over when Mr. Cartin leaves in July. Give us an idea of what happens in your Office and how soon we need a director or can we bump along if this takes quite a while? Ms. Haskins said we have two deputy directors for the Office, Sharon Eubanks and Julie Pelegrin, and they are very competent and well qualified to run the Office. When Mr. Cartin is not here they have handled the Office and dealt with things that come up when he was on vacation. They are currently sharing those responsibilities right now while he is out for a week. The Office can manage fine without a director after July 28 and I would be very surprised if you had a director selected within that time frame because you have to meet and then it goes to Executive Committee. I think you are looking at August or September and the Office will be fine.

Senator Gardner said there are two deputy directors so is it necessary for the Committee to designate one or the other as interim director or will Ms. Eubanks by seniority be the interim director? Who would be the interim director? Do we need to act on that? Because we're not going to have a director before Mr. Cartin leaves. Ms. Haskins said that's an interesting question. Ms. Eubanks has been the deputy director longer than Ms. Pelegrin and Ms. Eubanks is the person already lined up procedurally to handle the vouchers and that sort of thing. I think they can share it. If the Committee thinks it's important to have an interim director I think that discussion could be had. Senator Gardner said I'm just wondering if there are any statutory duties or things that might call for that designation to be made or whether within the Office it's already essentially made and we don't need to formally act. Ms. Haskins said I think that we have everything in place so that the deputy directors have the authority to act in the absence of a director. But if that's something the Committee feels needs to be addressed we can look into that.

Senator Kagan said just for the information of the Committee, in the last director of the Office search that we did we discussed how many recommendations to forward and we concluded that it would be advantageous, if it were possible, to recommend one person to the Executive Committee and it was discussed that it would be advantageous if we could settle on a unanimous recommendation. It was thought that would be the most helpful to the Executive Committee, to come down with one unanimous vote, and that's what we determined last time and it seems to have worked well.

Senator Cooke said I have a question as long as we're talking about time frame. I noticed when Mr. Cartin was selected there were three meetings. The second meeting was when the Committee reviewed the job description and resumes and developed questions. Is there a need to come in and do a meeting on that? Do you see problems or issues if the resumes are emailed to the members and we review them and not have an official meeting and we can just respond back with any questions we might have collectively and then only have two meetings out of respect for everybody's time? Ms. Haskins said I think that's a decision for the Committee to make. I think it might depend on the scope of your search, whether you need to have second meeting or a third meeting. You may want to leave that until we get to agenda item 3. We have questions that were developed and sent out individually to each member for them to review. I have received a response back from Senator Kagan about his thoughts but nothing from anyone else. I think it depends on how big your search is. The other option might be for the Committee to appoint a subcommittee of the Committee members to look at the resumes and work on the questions. That might be a little easier. It took over a month to get this meeting scheduled. You all are very busy people so I would probably say that maybe a subcommittee might be a better way to go to expedite your search process. Senator Cooke said just a little follow-up, when I say security I don't mean IT security issues, but you don't see any security challenges or anything like that by sending the resumes and us responding back? Ms. Haskins said I think we could handle that with our IT person in a good way.

9:36 a.m. – Robert Chase, Colorado Coalition for Patients and Caregivers, testified before the Committee. He stated his feeling that the Office and the general assembly had allowed unconstitutional bills to be passed into law concerning medical marijuana under the leadership of Mr. Cartin and that the Office should be an independent agency.

9:46 a.m. – Tim Storey, Director for State Services, National Conference of State Legislatures (NCSL), Denver Office, addressed agenda item 2 – Hiring Procedures for Nonpartisan Legislative Legal Services Directors: Experiences from Other States.

Mr. Storey said I wish I had some sort of magic device to measure all of the decisions that are made. I have been working for NCSL for nearly 30 years. I have done studies in probably at least half of the states on staff organization, staff management, staff classification and compensation, and so I spend a lot of time in legislatures. You make a lot of decisions that are really important as you know, but this is one of the most important that you're going to make because this is an institutional decision. To sort of preface what I am going to share with you, I want to say that I appreciate that you are all here today. You're taking this very seriously and I think this is one of those fundamental institutional decisions that is maybe bigger than the day to day things that you do as legislators, so thank you for putting your time and effort into this. Thank you for inviting me. I know that my colleague Mr. Feustel spoke to the Committee last time you did this so I'm happy to be playing the role of Mr. Feustel in this iteration and Ms. Haskins asked me to do a little revision of what was shared with the Committee a number of years ago. A quick background, I have been at NCSL for 30 years. My title is director of state services so I sort of run the group where we do a lot of these institutional studies where we study the legislative institution and the staffing patterns and structure and all that. We also coordinate all the staff groups that exist within NCSL in addition to the legislative activities that we do. NCSL is a bipartisan organization formed in 1974 and headquartered in Denver, Colorado, unlike our similar organizations that are all in Washington, D.C. We are very happy that we are headquartered in Denver so thank you for also being the host state for NCSL, your organization. Over the last five to eight years, succession planning for key senior legislative staff within legislatures throughout the country, and the territories for that matter, has been probably the number one issue for legislative staffing. IT was a big issue, the changing nature of legislatures, and polarization and partisanship are big issues that have affected staffing, but this notion that many senior staff are retiring is a common issue so I sat down with my colleague Brian Weber who I work with closely on this and just over the last three to four years we identified at least 20 senior directors who have turned over. We tried to look at some patterns in that in terms of external versus internal hiring because I know that was an issue that came up several years ago. Let me just share a few things with you about that and a few tips that we got from legislative hiring from staff directors around the country about hiring for senior director type posts. Of the roughly 20 senior director posts that we could identify that have been filled most recently, nearly half of them did sort of a national search in name. Some of those were fairly minimal, but were sort of technically national in that they posted them nationally. Roughly half of them were local, internal searches. But what's probably most interesting about that is 80-90% hired locally so it's really the exception to hire someone who is not within the community. When I say locally I would say the vast majority of those, 80-90% of the first 80-90%, were

from within the office or the legislature itself. That is far and away the most common way legislatures fill these kinds of positions. Having said that, I think it's also interesting to look at the two cases that are the standout cases of where agencies went externally in the last three years. I will say that both of those were sort of unique situations, one in South Dakota and one in Kentucky. NCSL was involved deeply in both of them so we are intimately acquainted with the circumstances that surrounded these particular exceptions to the rule. Both of them were places that had some serious internal issues that had come up and had resulted from NCSL studies where the leadership in the legislatures both in South Dakota and Kentucky contracted with us to come in and do major studies about the staffing operation. In one case there was a pretty strong disconnect of communication between the leadership and the senior staff and in the other case they frankly had had a major internal staff cultural issue that involved some scandal that was widely reported in the media and they needed a big cultural change and they hired outside someone from Nevada who had worked in the Nevada legislature and in the other case they hired someone from Idaho. So I think in the cases where they have done external hires there've been a fairly unique set of circumstances where you had major, major cultural problems internally that they thought they needed a true change agent. I think that's kind of interesting.

Mr. Storey continued discussing the differences between external versus internal. Some of this is fairly obvious, but when we talk to legislative staff directors about the direction they've taken, and I've actually talked to a couple of leaders as well, it was pretty clear that it was a very strong consensus that you really focus externally and broaden your search when you see a strong need for a new director or change within a staff agency. Where you need fresh ideas you need to stimulate a new culture and bring in major innovation and that's certainly what happened in Kentucky and South Dakota, the most recent examples. It's certainly a higher risk to go externally because culture trumps just about everything. I think if you're business people you understand this or it doesn't really matter what organization you're in, culture is vitally important and if you have a strong internal culture there is certainly an element to "if it's not broke, don't fix it". But on the other hand, there are good reasons for bringing in some new ideas and somebody who has experience from other places. Certainly going externally and nationally gives you more options, more candidates to look at, and a more diverse pool of candidates probably so there's a little bit of advantage in terms of the diversity of the applicants that you have in that regard. By the way, we have seen both of these in terms of the culture clash, we have seen external candidates come in who were not of the culture of the agency and had serious, major problems and didn't last very long, but we've also seen candidates come in who brought in innovation and change from their past experiences who have done quite well, so there's no guarantee. I will say

the academic literature definitely leans towards internal candidates and how important the cultural fit is. Internally, one, it's a smooth transition, it can happen more quickly if time is a factor. They know the systems that are in place so you don't have to spend a lot of time figuring out the internal systems, getting to know the personnel, that kind of thing. Then there's just the cultural fit and they know if the place is going in the right direction and if the office is responsive to the legislative leadership and the legislators, which is kind of the key. If you're satisfied with that, that's when you go in the internal director search.

Mr. Storey closed with the following tips. I think you've got to think really hard about this, it is a big decision and you've got to get it right. These jobs are really important for the legislature to move about its business because you don't have a lot of time, especially when you're in session, handling personnel issues with your top staff directors. Qualifications matter, and when I say that I mean that we have definitely seen when you bring someone in from outside the legislative culture, not necessarily inside the building, it's challenging for that person. Having someone who is really familiar with legislative drafting and the work of the legislative legal counsel, I'd put an extraordinary premium on that. Just because you're a practicing attorney does not mean you understand how the legislative environment works and what bill drafting is all about. They're very different jobs and again we've seen examples of that. The other thing is don't hire the best bill drafter necessarily. You really have to look for management skills and in every legislative study we've done usually when there's a problem there's the thought that agency needs someone from out of town to come and help. We have a cliché that your problem is communication so why don't you hire us and we'll come in and tell you that your problem is communication. I think when you're hiring you want somebody that's a good communicator, who's a good people person, who can relate to personnel, who can relate to legislative leaders, who has political savvy, and high EQ. These are some of the qualifications that we've seen that have led to successful staff managers in the time that I've worked in legislatures. Someone who knows the culture, thinks about culture, thinks about people, but also thinks about the institution of the legislature and why you're here and what the big job is. Bipartisanship is another thing. I guess I don't have to say it, but obviously this is a nonpartisan office and you have to have somebody who is truly trusted by leaders from both parties. That's vital. You cannot function in this environment without it and we all have keen political radar so you need somebody who has those kinds of impeccable credentials, who can have the trust and respect of people from both parties. It has to be a transparent process. I appreciate what I've heard thus far. You lay out the process and you stick to it, whether it's two months or five months. Just make sure it's not indefinite. Put a strong deadline on it somewhere. You asked about the deadline, Representative Willett, and I think

you've got to think hard about when is the ramp up to session. You've got two very qualified senior staff who can handle the Office, but you probably want someone in place before things get serious would be my opinion on that. And you have a prefile bill deadline in December, so that's a deadline you want to work back off of. Finally, you've got to give the person room and you have to support this person. I love that Senator Kagan said it was a unanimous decision last time. You've got to back them. Anytime there's a change in senior leadership, there may or may not be here, but oftentimes there are people who carp and people who didn't quite get the person they wanted necessarily, so it's really important that this is a unified, supportive body of legislators and body of members that gives the new director the room to get in there and have a chance to be a good director and a good boss. It's a really important decision. NCSL's mission is to strengthen the legislative institution, to provide a network for legislators to share ideas and learn from each other across state lines, and to advocate for the states to the federal government. But number one is to strengthen the institution and this is all about a strong institution and we're all kind of stewards of these places. I've been super lucky to be in at least 45 state capitols and I always see those pictures downstairs of the legislature of 1926 and they all look exactly the same back in those days, so we're all sort of stewards and these are the big decisions you want to get right. Having said that, thank you so much and don't screw it up, I guess.

Representative Lee said can you comment on the comment made by the public citizen who testified in front of us who basically said we need a strong, strict constructionist, and if I could paraphrase what he was saying, someone who will hold the legislator's feet to the fire on not violating the constitution and the validity of the presumption of constitutionality by the legislative enactments. Mr. Storey said it was an interesting comment; obviously that's not how these kinds of offices work around the county in state legislatures. Your legal counsel are at some level obliged to advise the legislature in what they feel is constitutional or not constitutional, the pros and cons of legislation. That's usually in a confidential matter with the drafter or people who ask that office and then if those people want to submit that throughout the process. Those decisions of what you pass and what you enact, that's the legislature's responsibility. It's also interesting that it was said they shouldn't work for the legislature. Well there's no example of a legislative bill drafting office not working for the legislature in the United States. And I by the way have done a lot of international work and I think that's true around the world as well. I think the legislature has to consider the constitutionality of everything, every statute that comes before them, be it in committee or on the floor, and it's up to the staff to give that advice when asked, but you make the decisions about what legislation you move forward and of course we have a system that reviews legislation for its constitutionality.

Representative Herod said my questions are going to be along the lines of diversity and recruitment. I wonder if you know how many of these positions across the country are filled by diverse leaders and second, you mentioned that having an external search does increase diversity, do you know by how much? And do you also know how much it increases the application pool of diverse applicants? I sit on a few different committees that are looking for pretty high level executives to fill the roles including at the Denver center for the performing arts and when we create categories of people who have certain experiences we leave out those who have not been able to access those type of leadership roles. When we look internally in an office that, while they're doing much better on diversity than they used to be, I want to make sure we're moving in the direction of not having those same photos that we have down on the first floor from 1920 reflect who we are today. Do we have any concrete information or data about how we can increase the diversity of the applicant pool for this position? Mr. Storey said unfortunately I don't have the answer to your question of the diversity in terms of racial and ethnic minorities or gender. To my knowledge we've not done that study so it's all kind of anecdotal I suppose. I can certainly think of a few examples, but I'm just not qualified to say it's in this ballpark percent or this ballpark percent. I don't know the answer to that. In terms of your second question about increasing the diversity of the pool, I certainly meant that in terms of whether you get more Latino or African-American candidates, also just diversity of experiences from around the country as well. I don't know of a study of that. I sort of was citing advice that I'd been given from other directors about searches that they had done so I can't put it in concrete terms and it's not my expertise. Representative Herod said just to follow up, and I appreciate your candid response there, when it comes to online applications and increasing the pool by going online, do we see that increase diversity and also cut down on the timeframe for searches? I know we mentioned in this memo that the searches have taken longer because there was no access to online databases. Now that there are, do we know if that really shortens down the time or if it will continue to be a barrier for internal versus external searches? Mr. Storey said I actually have a real answer for you on this one. It comes from the NCSL experience. We have recently shifted to a LinkedIn platform to post our internal positions. Some of them are very senior roles, particularly in our Washington, D.C. office. We have seen a dramatic increase in the number of resumes and the number of qualified resumes. LinkedIn is just one tool for this, there are many tools, I don't mean to endorse LinkedIn per se, but you can also target and use their tools to say we're looking for this kind of candidate and it has increased the diversity of the people applying to NCSL. We track this very closely and it's a concern of ours as it is for many offices and agencies. I think it's also cut down on our time in terms of submitting. We're now posting jobs, it varies by the post, by anywhere from 10

days to three weeks and getting a very healthy set of resumes over the electronic transom. I think that's really worked well for NCSL and we would be happy to share that experience with the Committee and with the staff. I'm not our HR director person for internal NCSL, but Diane Chaffin who is would be more than happy to talk about our experience and how we're recruiting through these platforms.

Senator Gardner said I am probably one of the members of the Committee, I'm sure I'm not the only one, driving this discussion about an internal versus external search because I have participated in both and I have struggled with the balance between our fairly unique legislative culture and legislative cultures that are pretty unique to states as I suspect you've observed and the importance of that and you've talked to that. The two instances that you mentioned of outside candidates, outside searches, were total breakdowns of a culture. But what I struggle about, and I'm just looking for your thoughts about, and I've been expressing this to the Committee through my dialogue with you, is that we may be missing out by sticking with our culture and always doing so and not opening the view screen simply by being too timid about looking outside. Now I would praise our current Office for being forward thinking, but it's a lawyer's office, it's a good lawyer's office, but one of the things I know about lawyers is the most liberal of lawyers is a very conservative person in an odd paradoxical way. The law is a very conservative institution, courts and laws and legislatures while they may have liberal social ideas and are led by liberal leadership you see them default to the conservative structures and so forth. I don't know if you have any thoughts about that. It is what I am struggling with, whether we seek wider for candidates. I note that we have done this in the past and we've ultimately defaulted to internal candidates far more often than not and then I've asked myself was there value to nevertheless still looking outside and seeing. I will say this, in the legislative council search that I participated in we had a very strong Colorado candidate who caused us to think a lot about what was the institution like and there turned out to be value. I'm sure that person would have preferred to be hired than to just give us the value of thought, but nevertheless there turned out to be value in that process. I don't know if you want to comment or not; there's not a real question there. Mr. Storey said it's a great thing to ponder and I've been thinking about it and I really have no context to the hiring process here. I know people in the Office, but I'm not familiar with who might apply or any of that kind of business, but I do have some thoughts and part of it is from the academic research and my familiarity with that. Internal does not mean you can't have a change agent, someone who is willing to look at the culture, bring new ideas, and be an innovator. There's really some sound research around that. I think that's part of your process. You ask what's your vision for the Office, what's your vision for the legislature, and find out if they are people who are saying we've always done it this way, and if it's great and it's a high performing

office then you really do want a smooth transition and more than likely that's going to default to an internal place, but internal doesn't mean you can't have someone who is willing to really consider where the Office needs to go and are there changes and things they need to look at and pay attention to. There is no straight answer, internal versus external. There are pros and cons to each and I do feel somewhat strongly that when it comes to culture, legislatures, as you pointed out, are all exactly the same and they're all completely different. This is one of our mantras at NCSL. It's fascinating how similar they all look and yet how different the cultures are. Someone who comes from a different legislative culture clearly has an understanding of how legislatures work and I think that's pretty dang important. It doesn't mean they have to have been in a staff agency, maybe they worked in the lobby. I can think of one example where someone was a partisan, this would run contrary to my advice, this was a partisan hire to a key legislative post, the top director of all legislative staff and it's been working pretty well. None of these things are absolutes. There's a value to looking, to seeing what's out there, and then deciding what are the values you want. Do you want continuity, strength in the work product, in the communication, in the satisfaction that the legislature has with the Office and its work or is there really a serious issue that may be cause for a substantial change.

Senator Kagan said I have a very nuts and bolts question about process. It's been discussed here today whether we should have a second meeting just to whittle down the resumes to a list of interviewees and it's been suggested also that we may not need to do that, we could distribute the resumes and proceed to an interview meeting as our next meeting. Has any process that you've been aware of gone directly from deciding whether internal or external to the next meeting being simply the interview process and the winnowing down of resumes to interviewees taking place without a meeting and if so, has it worked well? Mr. Storey said my experience on that is that it's definitely possible, but you have to have a mechanism where the entire committee has some input into that whittling down process. I think the key there is to go with a subcommittee and that's what I've seen before. This is a fairly large committee for this kind of decision so I think having a smaller group that can hone down the candidates for those interviews is probably the way to go and the one that I'm familiar with that states have done. Getting all you guys together and let's say you give all those resumes out and rank them, you're going to have a very wide range. I think you've got to find a way to get everyone's input and I think you can do that in an interim fashion. There are ways to do that, it might not be super easy, but can be done through communication channels staff has identified. And then you're going to have to have some small group of people to narrow it down or you're going to have to come back together as a full committee.

Representative Wist said I've appreciated your comments about culture and having a person enhance the culture, not do harm to the culture. As an employment lawyer I find myself often at the end of this process navigating out of when you don't have a culture/personnel match. I think sometimes there's a rush in these instances to go into interviews and to rush to the interview process to talk to candidates and I wonder if you would share with the Committee your recommendations and insight as to what things we should be looking for in the current makeup of the Office. What information we should be looking for to determine what exactly is the culture, do we need to improve the culture, or is it fine just the way it is? Mr. Storey said I think that gets in to values. Values tie very closely to culture. What are the values of the Office and I think you need to ask those questions of the internal people and even the external people. What do you think the values should be for not just the Office but the legislature, because it really is an agency of the legislature? I think the key things there are integrity, I mean legislative institutions rise and fall on integrity and trust and relationships. It is a people business and this director has to be a people person. I sort of alluded that you don't want the best bill drafter necessarily, they may not be the right fit to manage the Office and manage the relationship with this Committee and with the leadership. Integrity is key. Confidentiality is a huge value that I think the culture, if it's like every other bill drafting office I've spent time in, when that starts to erode, even the little aspects, if there's even a hint that that's violated it is just devastating to the culture of these kinds of offices so I think you want a leader who has a huge premium value on confidentiality. Then there are a lot of things that are less direct in terms of the tone of the Office and how it functions and how people are treated and I think you want directors who treat people well and respect them and respect the importance of the work that's done here. We're big believers of this at NCSL so I bring some of that to this as well. Integrity and confidentiality are two of the big ones, but the thing would be maybe there's an exercise that you could do and say what are the values of this Office we want to see embodied in the leader of this Office?

10:17 a.m. – The Committee addressed agenda item 3 – Discussion of OLLS Director Search – Issues for COLS to Decide About the Search Process.

Senator Cooke said as we move onto agenda item 3, about a month ago I talked to Senator Gardner and also Representative Foote on what we wanted to do and where we go forward and the three of us thought the time frame that Mr. Cartin put out was a little too aggressive and we wanted to get more of the feelings from the entire Committee on whether we wanted to just keep local or go national or statewide or just inside the capitol. I was in communication with Ms. Haskins and Mr. Cartin and that's why we came up with this and wanted to get the feedback from everybody and have an open discussion on the time frame and the process.

Senator Kagan said I have a preference and a recommendation for an internal search. I can think of several people who are in the Office now, not just one or two, but more than that, who would make excellent executive directors. I think the benefit of an internal search is that it does show that for those that perform loyal and effective service there is the solid prospect of advancement. I do take very much to heart, however, Representative Herod's implied concern that that might limit the opportunity that we have to recruit racially or gender diverse applicants and that is a countervailing consideration for me. I think that an internal search wins out for me simply because we have good people. I can't imagine anyone being better coming from out of state and for them understanding the culture my belief that we have an excellent Office now. We don't need a massive change so that's maybe my inherent conservatism coming out that the staff member from NCSL referred to, but those are my thoughts on it and I think it worked very well when we did the internal search before and I think we were well served by that. I would recommend an internal search, but I would ask the Committee to consider making it not only internal to the Office because there are lots of people who have such frequent interaction with the state government here in Colorado that they would be well qualified and should therefore be considered so I would say a modified internal search would be my thought. Internal within the state, restricted to people who have had dealings with the legislature, know the legislature well, know our culture well, and that might entail lawyers from outside the Office but would not to my mind be tremendously beneficial to go out of state on a national search.

Senator Gardner said I was on the legislative council director search and Office search. I don't think there's a right answer to this. Representative Herod raises an important issue of diversity in candidates as well and I think it's somewhat confining to stick within the Office or stick within maybe the state as well in terms of diversity. I am of the notion that we ought to seek resumes as widely as we can in this Internet age. It's not hard to get them. By the same token I wouldn't be surprised if we ended up with no more than one or two candidates from outside of the Office itself and maybe none. But I think we ought to cast the net fairly widely.

Senator Cooke said so are you talking about a national search or just statewide.

Senator Gardner said I would say a national search or a national call for resumes if you will. Then again, without any previous position that we need to have candidates from outside the state or necessarily outside of the Office, but I really would like to know what's there. We had an outstanding candidate for the director of legislative council that was someone from within state government that was considered very strongly. Mr. Mauer has been a great legislative council

director and I'm glad we hired him but there was competition there from someone outside of the legislative council office, outside of the Colorado legislative staff. I guess again my own predilection is ask widely, narrow to those who have a realistic chance because it's a time consuming process to do interviews, and it's a burden on someone to prepare and come to an interview if they don't have a realistic opportunity.

Senator Holbert said I agree with Senator Gardner. I would be stunned if someone were to apply from outside of Colorado or outside of the Office who would exceed the quality, the experience, and the familiarity we have with our process by the folks we have down in the Office. But I'm not adverse at all. I'm curious and I don't want to limit that opportunity to find a stellar candidate from another state. That doesn't offend me at all; making this an opportunity that is open to people outside of the Office or outside of Colorado is okay with me. I believe that whether we have one finalist or multiple that those people are almost certainly going to come from the Office. I can't compliment Senators Kagan and Gardner enough for the selection that you made in Mr. Cartin. I admire him, he has been so accommodating, and if it was just an internal search that worked very well, impeccably well. But I don't have a problem in allowing people from outside of that environment to apply.

Representative Wist said I guess my frame of reference here is having recently served in an academic setting on a deans search committee and on that particular search we as a committee didn't necessarily know at the outset, and I kind of hear that in this discussion, whether or not an internal search or an external search would be best. I think we were well served at the outset of that process by doing a little bit of due diligence and perhaps this might be getting some feedback directly from the Executive Committee to get their thoughts in terms of how they see the Office functioning and working because I can certainly see advantages to us obtaining resumes from outside of the internal process. But I think that it's important that we understand how the Office is presently functioning and make a good, informed assessment about what kind of individual we're looking for and then make the decision on a search from there. I guess I see an interim step between today and initiating interview. I don't see that as a prolonged process, but just collecting a little bit more information.

Representative Herod said I appreciate members of the Committee addressing directly diversity in this hiring process. I think it's important that we are having this conversation and I value the members who have added to that. I will say that in this day and age when we can use online tools to receive applications and resumes within 10 days I think it makes sense to do an external search. I agree with Senator Gardner that's important that we not only look to Colorado but that we look to other states because if we're looking for someone with legislative

experience that might come from out of state. I agree, as someone who's worked very closely with the Office as a member of legislative council, that the Office is very well suited to position someone for this role who could move right into this position internally, but I think we're best served in Colorado by including an external search in this process. I agree with Representative Wist about ensuring that we really have an understanding of how the Office is functioning right now. I will say that their public face is very good and I am very happy with the work that they've done in this, my first session, and with the way they represent themselves and carry themselves in their interactions with us, but I think it's important we have that conversation with folks internally as well. I'd recommend that we do go the subcommittee route and that subcommittee also figure out how to address what the current climate and culture is down in the Office as we're looking to who we're going to hire for the position. My recommendations are definitely to look to a subcommittee. I know that we all have a lot of things going on, but also to include a short, time limited, external search, and then also for that subcommittee to look at and let us know what the climate is like in the Office.

Senator Cooke said I tend to agree with Senator Gardner in that there's no harm in looking. I was on a job search for the new police chief at UNC a few years ago and it was a national search and we got resumes from all over the country and after many, many meetings and many, many hours and days, low and behold the person was right there in front of us the whole time at the university and we did all this work and the person was right there. I kind of have mixed emotions about it, but I tend to agree that I don't think there's any harm in receiving resumes and opening it up and then the subcommittee narrowing it down a little bit for the rest of us and making some recommendations. Is that kind of the consensus?

Senator Gardner said I would even perhaps empower the subcommittee in screening resumes to do a little pre-interview as well in their screening process. Not a full interview, but for them not to feel constrained to only look at the paper. If they see someone they might have some interest in maybe they could set up a conference call or something and decide whether that's somebody that makes the cut or doesn't make the cut. Because we're allowing them to do that I don't want them to feel constrained about looking at the paper and only the paper. We had in the legislative council interviews at least one person who came from outside the state. It does seem to me though that when you ask people to travel far for an interview when there's not a realistic possibility of selection you've probably created hopes, incurred burdens and expense and so forth, so I think it's important for the subcommittee to have a pretty free hand in making their screen. I would think it would be good for all of the Committee to have the ability to look at all of the resumes and let the subcommittee know what they

think if they wish; some of us might want to play more strongly than others, in doing that. That's just my thoughts about the subcommittee, but otherwise I think I'm in agreement with Senator Cooke.

Senator Kagan said I just want to say that I've been very much helped by this discussion and I've been persuaded that an external search in terms of at least gathering resumes from people regardless of their place of residence is the right way to go. I've shifted my position as a result of this discussion and I just wanted to make that clear.

Representative Willett said I don't have anything to really differ with from what I hear as the consensus. I do have a question. You might have noted the last time they had one of these advisory committees or subcommittees it looks like was the Mr. Pike selection and that advisory committee, I'm not suggesting this, just pointing it out, included two former staff, four former legislators, and six Committee members. The question is do we have a subcommittee made up of just Committee members or do we bring in some other people that know about the Office and the culture that can maybe give some input?

Senator Cooke said that's a good question.

Senator Guzman said I was going to make a couple of comments and questions earlier, but on that I was thinking when Mr. Storey spoke about this that it meant a subcommittee of this Committee because of our work and our agenda, that would help all of us if a few took that on and then we would trust what they brought back for us and operate from that. That would be my thought that the subcommittee be made up of members of this Committee.

Senator Cooke said I agree.

Senator Kagan said as I listened to Representative Willett read out the list of the subcommittee that was formed in that other search it seemed to be nearly as big as this Committee is right now so it seems to be a big disadvantage.

Senator Guzman said the deputy directors that we have, how are those persons given that title? Were they appointed by a committee such as this or was that left up to the director? Just wondering how they were chosen as deputy director because that has a lot for me to consider in terms of what process that took place and their abilities. Ms. Haskins said the director appoints the deputy directors and also the assistant directors.

Senator Cooke said a follow up on that, are they in those positions at will, so a new director could replace them or not? Ms. Haskins said that would be my

understanding, yes. I will also point out that the director appoints members to the title board or the director can be on the title board. Right now Dan has appointed Sharon Eubanks and Jason Gelender to the title board and they've been serving in that capacity for several years.

Senator Cooke said from what I'm hearing we want to open up resumes for a national search but also we need to appoint a subcommittee here of maybe three or four people. I also like Representative Wist's idea of getting a little bit more information from the Executive Committee so we know what to ask. How long would that take to get the information that Representative Wist was asking about? Ms. Haskins said I think I heard Representative Wist say that he thought we should get information from the Executive Committee, from leadership, about what they are thinking and how the Office is functioning. Can I clarify that?

Representative Wist said I think that's fair. I'm not sure about the internal processes for the review of Mr. Cartin or the other staff or whether there's an internal review process for information that was obtained from staff in terms of Mr. Cartin's performance. Obviously there are confidentiality issues associated with that in the HR realm, but anything to give the Executive Committee or us guidance in terms of the current state of the Office is my goal. But I'm not envisioning some long, protracted process, just seeing what might be easily available. Ms. Haskins said I can work with the subcommittee to try to figure out a schedule for that. I know the Executive Committee is meeting on July 18 and I think on their agenda is the review of the staff directors. Perhaps Senator Holbert could give us a little bit of guidance on that?

Senator Holbert said that is correct. We're about to conduct reviews and because the Executive Committee has changed since the last election we have not conducted those reviews as a group. Senator Guzman may have more insight on that because she may have been in that environment when I was not. It would be a bit early to offer a perspective on that because those reviews will be done in about three weeks. Based on my understanding it is likely we would be having this discussion about one of our other directors in the next few years in the somewhat not too distant future.

Senator Guzman said I agree, I think that's the state of where we are right now.

Ms. Haskins said I think probably the thing to do is appoint your subcommittee and I can work with them on how to gather this information. It may be that part of what the subcommittee might want to do is have some individual conversations with leadership and report back to the subcommittee rather than having a formal meeting. I think maybe some offline personal conversations and

reporting back to the subcommittee might move things along in a way that gets the information that you need.

Senator Holbert said to Representative Willett's perspective and the historical information that we have, I believe I'm comfortable in allowing the subcommittee the authority and discretion of gathering input from the Office, having the numbers that were represented there. I also appreciate Senator Kagan's perspective that we might be building a group the size of this one, but I'm okay allowing, whether it's a three or four member subcommittee, to say they'd like to have meetings and gather input from staff. I'm fine with that. I'm not sure we need to appoint those people from the Office to that subcommittee.

Senator Cooke said the question then is who wants to be on the subcommittee?

Representative Herod, Senator Gardner, Senator Kagan, and Representative Wist agreed to serve on the subcommittee.

10:42 a.m. – The Committee addressed agenda item 4 – Next Meeting Dates for OLLS Director Search and for 2017 Fall Meetings.

Senator Cooke said the next thing is the time frame. Any input on that? Ms. Haskins said I would imagine it is going to take a couple of months here to get this going, to get to a point where we come back. And we're struggling with getting all of your calendars and figuring out a schedule and we do need to get to another matter on the agenda. Since we have a subcommittee let's get all the calendars and we'll look at what the results are and not discuss them during the meeting because I'm not sure that's going to be very productive. Senator Cooke said we'll let the four members of the subcommittee work out their calendar amongst themselves. Ms. Haskins said what I would suggest once the subcommittee develops a process that I can communicate that to the rest of the Committee and keep you informed about where we are.

Senator Gardner said with our subcommittee being two and two between the parties any way you look at it and an even number I don't know if we're going to elect a chair of our subcommittee. I'm wondering if we can just ask Ms. Haskins to ride herd upon the subcommittee to get us a date and kind of crack the whip which would be something a chair might do. We don't necessarily need a chair, but we do need somebody to kind of set dates and keep us on track so I would ask Ms. Haskins to do that for this subcommittee. Ms. Haskins said I am happy to shepherd the subcommittee through the process.

Senator Holbert said it seems to me that August 1 is highly optimistic. I'm just wondering if we can agree that having a decision made by September 1 would

at least be a tentative target. Ms. Haskins said remember we have to have the subcommittee meet then it has to come back to this Committee then onto the Executive Committee. There are several steps here. Senator Holbert said would October 1 better? Ms. Haskins said I think that's a realistic, smart goal.

10:50 a.m.

The Committee went into recess.

10:57 a.m.

The Committee returned from recess.

10:59 a.m. – The Committee addressed agenda item 5 – Executive session pursuant to section 24-6-402 (3)(a)(II), C.R.S., for the purpose of conducting attorney-client discussions and receiving legal ad-vice on pending and imminent legal matters.

Senator Cooke 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)(II), C.R.S., for the purpose of conducting attorney-client discussions and receiving legal advice on pending and imminent legal matters. I am requesting a motion so that we can go into executive session.

10:59 a.m.

Senator Gardner moved that the Committee on Legal Services meet in executive session in accordance with section 24-6-402 (3)(a)(II), C.R.S., for the purpose of conducting attorney-client discussions and receiving legal advice on pending and imminent legal matters. The motion passed on a vote of 8-0 with Senator Gardner, Senator Holbert, Representative Herod, Senator Kagan, Representative Lee, Representative Willett, Representative Wist, and Senator Cooke voting yes. The Committee went into executive session.

11:47 p.m.

The Committee returned from executive session. Senator Gardner moved that the Committee on Legal Services retain counsel on behalf of Senator Marble for the defense of her case before the Independent Ethics Commission, that the Office be directed to present a list of potential attorneys and firms to the Committee, that the Office consult with the Committee as to who to retain and ultimately make that decision after consultation, to give authority for the Office

to enter an appearance and file a request for an extension of time, and emphasize that the retention is for the member. The motion passed on a vote of 8-0 with Senator Gardner, Senator Holbert, Representative Herod, Senator Kagan, Representative Lee, Representative Willett, Representative Wist, and Senator Cooke voting yes.

11:54 a.m.

The Committee adjourned.