

JOINT RULES RESOLUTION - LEGISLATIVE ETHICS

COMMISSION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: _____

LONG TITLE

General Description:

This resolution establishes a process for the Independent Legislative Ethics Commission to issue advisory opinions.

Highlighted Provisions:

This resolution:

- defines terms;
- establishes a process for the Independent Legislative Ethics Commission to issue advisory opinions;
- addresses House Ethics Committee or Senate Ethics Committee actions on an advisory opinion;
- provides that the filing or issuance of an advisory opinion does not limit the filing of an ethics complaint;
- addresses the circumstances under which the Independent Legislative Ethics Commission shall consider an advisory opinion to be binding precedent on the commission; and
- addresses a legislator's reliance on an advisory opinion.

Special Clauses:

None

Legislative Rules Affected:



AMENDS:

JR6-4-203

JR6-4-304

JR6-5-101

ENACTS:

JR6-7-101

JR6-7-201

JR6-7-202

JR6-7-301

JR6-7-302

JR6-7-303

JR6-7-304

Be it resolved by the Legislature of the state of Utah:

Section 1. **JR6-4-203** is amended to read:

JR6-4-203. Process for making a decision -- Deliberations.

(1) After each party has presented a closing argument, the commission shall, at the direction of the chair, begin its private deliberations:

(a) immediately after conclusion of the closing arguments; or

(b) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.

(2) (a) The chair of the commission shall conduct the deliberations.

(b) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote of the commission.

(3) (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating whether the allegation is:

(i) proven by a preponderance of the evidence; or

(ii) not proven.

(b) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.

59 (c) In evaluating an ethics complaint against a legislator, the commission may consider
60 a legislator's reliance on an advisory opinion issued under this title.

61 (4) (a) A count is not considered to be proven unless four of the five members of the
62 commission vote that the count is proven.

63 (b) A count that is not considered to be proven is dismissed.

64 (c) (i) Before the commission issues its recommendation under JR6-4-204, the
65 commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

66 (ii) A motion to reconsider a vote may only be made by a member of the commission
67 who voted that the allegation was not proved.

68 (5) At the conclusion of deliberations, the commission shall prepare its
69 recommendations as provided in JR6-4-204.

70 Section 2. **JR6-4-304** is amended to read:

71 **JR6-4-304. Process for making a decision -- Deliberations -- Voting in public**
72 **meeting.**

73 (1) After each party has presented a closing argument, the committee shall deliberate in
74 a closed meeting:

75 (a) immediately after conclusion of the closing arguments; or

76 (b) at a future meeting of the committee, on a date and time determined by a majority
77 of the members of the committee.

78 (2) The chair of the committee shall conduct the deliberations.

79 (3) During the deliberations, committee members may:

80 (a) discuss evidence and testimony;

81 (b) discuss and debate whether an allegation was proven or not proven;

82 (c) discuss and debate what actions should be taken or not taken against the respondent
83 in relation to each allegation;

84 (d) discuss and debate any other matter related to the allegations in the complaint that
85 is before the committee; and

86 (e) conduct, at the call of the chair or a majority of the members of the committee, a
87 non-binding straw poll on any matter related to the complaint.

88 (4) In evaluating an ethics complaint against a legislator, the committee may consider a
89 legislator's reliance on an advisory opinion issued under this title.

90 ~~[(4)]~~ (5) (a) Notwithstanding JR6-2-306, and except as provided in Subsection ~~[(4)]~~
91 (5)(b), from the time of completion of closing arguments through the time that the written
92 finding and order are publicly issued, a committee member may not discuss any of the
93 following matters with any other person outside of official committee deliberations:

94 (i) the substance or specifics of the allegations, testimony, or evidence of the complaint
95 under review;

96 (ii) a committee member's intended vote;

97 (iii) a committee member's recommendation for actions to be taken or not taken against
98 the respondent in relation to the complaint; or

99 (iv) any other non-administrative matter related to the complaint.

100 (b) During deliberations, committee members may privately consult with staff for the
101 purpose of discussing legal, evidentiary, or procedural matters.

102 ~~[(5)]~~ (6) Deliberations shall continue until they are concluded or continued to another
103 date and time:

104 (a) at the direction of the chair, subject to JR6-2-302; or

105 (b) upon a motion approved by a majority of the committee members.

106 Section 3. **JR6-5-101** is amended to read:

107 **JR6-5-101. Senate and House action.**

108 (1) The Senate or House shall:

109 (a) consider the recommendations of the ethics committee; and

110 (b) by a majority vote of that house, either accept, dismiss, or alter these
111 recommendations.

112 (2) In considering the recommendations of the ethics committee, the Senate or House
113 may consider a legislator's reliance on an advisory opinion issued under this title.

114 ~~[(2)]~~ (3) If the committee recommends expulsion of a Senator or Representative,
115 acceptance of this recommendation requires a two-thirds vote of all the members elected to the
116 Senate or to the House.

117 Section 4. **JR6-7-101** is enacted to read:

118 **CHAPTER 7. INDEPENDENT LEGISLATIVE ETHICS COMMISSION**

119 **ADVISORY OPINIONS**

120 **Part 1. General Provisions**

JR6-7-101. Definitions.

As used in this chapter, "requestor" means:

- (1) the Executive Appropriations Committee;
- (2) the Legislative Management Committee;
- (3) an appropriations subcommittee;
- (4) an interim committee;
- (5) a standing committee;
- (6) the House of Representatives;
- (7) the Senate;
- (8) the House of Representatives majority caucus;
- (9) the House of Representatives minority caucus;
- (10) the Senate majority caucus; or
- (11) the Senate minority caucus.

Section 5. **JR6-7-201** is enacted to read:

Part 2. Request for Advisory Opinion**JR6-7-201. Submission of request for advisory opinion.**

(1) A requestor may request that the Independent Legislative Ethics Commission issue an advisory opinion.

(2) The requestor shall file a signed written request for an advisory opinion with the commission that includes:

- (a) the date of the request;
- (b) the facts and circumstances that serve as the basis for the request, except that the facts and circumstances set forth in the request may not identify a specific legislator by name;
- (c) the particular rule or rules of conduct that the requestor believes applies to the facts and circumstances; and
- (d) a question as to whether particular conduct described in the facts and circumstances set forth in Subsection (2)(b) violates the Code of Official Conduct under JR6-1-102.

(3) The request shall be signed by:

- (a) the legislator if the requestor is an individual legislator;
- (b) a chair of the subcommittee or committee if the requestor is a subcommittee or committee;

152 (c) the speaker of the House of Representatives if the requestor is the House of
153 Representatives;

154 (d) the president of the Senate if the requestor is the Senate;

155 (e) the majority leader of the caucus if the requestor is a majority caucus; or

156 (f) the minority leader of the caucus if the requestor is a minority caucus.

157 Section 6. **JR6-7-202** is enacted to read:

158 **JR6-7-202. Acceptance or dismissal of request.**

159 (1) Except as provided in Subsection (2) or (3), after receipt of a request for an
160 advisory opinion, the Independent Legislative Ethics Commission shall accept the request.

161 (2) The commission may dismiss a request if the commission determines that the
162 particular conduct that is the subject of the request is substantially similar to conduct addressed
163 by the commission in a previous advisory opinion or ethics complaint.

164 (3) The commission shall dismiss a request:

165 (a) if the commission determines that the request does not meet the requirements of
166 JR6-7-201; or

167 (b) if an ethics complaint has been filed that encompasses the particular conduct that is
168 the subject of an advisory opinion that has not yet been issued.

169 (4) Within 14 days after the commission dismisses a request, the commission shall:

170 (a) provide notice of the dismissal to:

171 (i) the person who signed the request; and

172 (ii) each member of the House Ethics Committee and the Senate Ethics Committee;

173 and

174 (b) for a dismissal that is the result of a determination that the conduct is substantially
175 similar to conduct addressed by the commission in a previous advisory opinion or ethics
176 complaint:

177 (i) a reference to the previously issued advisory opinion that addresses the particular
178 conduct that is the subject of the request; and

179 (ii) if the previously issued advisory opinion finds that the conduct addressed by that
180 advisory opinion violates the Code of Official Conduct under JR6-1-102, a statement of the
181 specific provisions of the Code of Official Conduct that are violated.

182 Section 7. **JR6-7-301** is enacted to read:

Part 3. Advisory Opinions

JR6-7-301. Issuance of advisory opinion.

(1) If the Independent Legislative Ethics Commission accepts a request under JR6-7-202, the commission shall issue an advisory opinion on the request no later than six months after the date of the request.

(2) (a) An advisory opinion under this section may overrule or distinguish a previously issued advisory opinion.

(b) If an advisory opinion under this section overrules a previously issued advisory opinion, the advisory opinion shall:

(i) reference the previously issued advisory opinion; and

(ii) specifically state that the previously issued advisory opinion is overruled.

(3) An advisory opinion issued under this section shall state:

(a) the commission's finding as to whether the particular conduct that is the subject of the request violates the Code of Official Conduct under JR6-1-102;

(b) the specific provisions of the Code of Official Conduct that are violated;

(c) the reasons for the finding; and

(d) the number and names of commission members that concur with the finding.

(4) If a commission member does not concur with the finding under Subsection (3)(a), the commission member may include a statement in the advisory opinion stating the reasons that the commission member does not concur with the finding.

(5) The commission shall ensure that an advisory opinion under this section does not identify the name of a specific legislator.

(6) The commission shall ensure that an advisory opinion issued under this section is made publicly available and promptly provided to:

(a) the person who signed the request; and

(b) each member of the House Ethics Committee and the Senate Ethics Committee.

Section 8. **JR6-7-302** is enacted to read:

JR6-7-302. House Ethics Committee or Senate Ethics Committee action on advisory opinion.

The House Ethics Committee or Senate Ethics Committee may:

(1) place an advisory opinion issued under this chapter on an agenda for review and

214 consideration by the committee; and

215 (2) by a majority vote of the committee, agree with or disagree with the Independent
216 Legislative Ethics Commission's advisory opinion finding.

217 Section 9. **JR6-7-303** is enacted to read:

218 **JR6-7-303. Request for or issuance of advisory opinion does not limit filing of**
219 **ethics complaint.**

220 The filing of a request for an advisory opinion or the issuance of an advisory opinion
221 does not limit the right of an individual to file an ethics complaint if authorized to do so under
222 this title.

223 Section 10. **JR6-7-304** is enacted to read:

224 **JR6-7-304. Circumstances under which advisory opinion is considered to be**
225 **binding precedent.**

226 The Independent Legislative Ethics Commission shall consider an advisory opinion
227 issued under this chapter to be binding precedent on the commission if:

228 (1) a majority of the members of the commission concur in the advisory opinion; and

229 (2) the commission has not overruled the advisory opinion.

Legislative Review Note
as of 2-16-11 10:02 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.J.R. 5

SHORT TITLE: Joint Rules Resolution - Legislative Ethics Commission Amendments

SPONSOR: Chavez-Houck, R.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.