

**MINUTES**

**HOUSE INVESTIGATIVE COMMITTEE ON  
LEGISLATIVE AND JUDICIAL COMMUNICATIONS**

July 6, 2006  
Room 313-S—Statehouse

**Members Present**

Representative Mike O'Neal, Chairperson  
Representative Mike Peterson, Vice-Chairperson  
Representative Richard Carlson  
Representative John Faber  
Representative Geraldine Flaharty  
Representative Becky Hutchins  
Representative Lance Kinzer  
Representative Janice Pauls  
Representative Arlen Siegfroid  
Representative Jim Ward

**Staff Present**

Jill Wolters, Senior Assistant Revisor, Revisor of Statutes Office  
Athena Andaya, Research Analyst, Legislative Research Department  
Martha Dorsey, Principal Analyst, Legislative Research Department  
Heather Klaassen, Research Intern, Legislative Research Department  
Matthew Stromberg, Research Intern, Legislative Research Department  
Karen Clowers, Committee Secretary

**Others Attending**

See attached list.

The meeting was called to order by Chairperson Mike O'Neal at 10:10 a.m. on July 6, 2006, in Room 313-S of the Statehouse. Chairperson O'Neal noted that a number of witnesses were invited to testify but had either declined to appear or had other commitments which precluded their appearance. Chairperson O'Neal stated that Senator John Vratil, who is providing legal counsel to Senators Stephen Morris and Pete Brungardt, informed him that the Senators are alleging that their communications are protected under the Constitution's Speech and Debate Clause. The Chairperson pointed out that the Commission on Judicial Qualifications is meeting on August 10, 2006 and that should produce sworn testimony from Justice Nuss. Senators Morris and Brungardt will be asked to testify before the Commission by Justice Nuss. The Chairperson indicated that, should they appear before the Commission and give testimony, their action will put them in a position that is inconsistent with their refusal to appear before this Committee. Chairperson O'Neal recommended that the Committee should wait until after August 10 to further explore an appearance before this Committee by the Senators.

The Chairperson reviewed the list of potential witnesses who declined to appear and suggested the Committee develop a list of potential questions for the witnesses. The list would define the scope of inquiry.

Chairperson O'Neal indicated he would like to gather information about the exchange of information between Justice Nuss and the Commission on Judicial Qualifications Examiner Ed Collister. In addition, the deadline for Justice Nuss to submit his witness list is July 7, and the deadline for Examiner Collister is July 14.

The Chairperson requested Jill Wolters provide a review of the status of witnesses and requests for information. Ms. Wolters stated that contact had been made by telephone, letter, or with a face-to-face meeting with the potential witnesses or their staff. Senator Anthony Hensley declined to testify through Dustin Hardison, a member of his staff. Troy Findley declined to testify through Matt All, Chief Counsel to the Governor. Senator Derek Schmidt left a voice message that he would be unavailable through July 7. Senator Roger Pine indicated that he had no interest in testifying, he believed the Committee had heard everything he knows from Senators Bruce and Apple. Senator Pine stated that he contacted the Attorney General's Office to release a copy of his affidavit to the Committee.

Chairperson O'Neal stated that he had received no further communication from Senator Vratil other than the letter stating that he was representing Senators Morris and Brunghardt.

Ms. Wolters asked Senator Barnett for a copy of the note Senator Wagle referred to in her sworn testimony on June 8, 2006. He responded, through his assistant, that no such note existed. Ms. Wolters continued stating that she had made a request for information from Senator Barnett (Attachment 1) and that he provided copies of his letters to U. S. Attorney Eric Melgren (Attachment 2) and Kansas Attorney General Phill Kline (Attachment 3). Mr. Melgren responded that the U. S. Department of Justice does not comment on pending investigations (Attachment 4). Mr. Tom Williams, Director of Investigations, Kansas Attorney General's Office, indicated their office had conducted a preliminary inquiry, did not find any criminal behavior, and had previously submitted copies of all materials except Senator Roger Pine's affidavit (Attachment 5).

Chairperson O'Neal referred to page 6 of the transcript of the June 15 Pre-hearing Conference conducted by the Commission on Judicial Qualifications (Attachment 6), indicating that he would like copies of the two affidavits Examiner Collister provided to Mr. Badgerow, attorney for Justice Nuss.

The Chair returned to the discussion of question development and indicated that the questions would establish the line on inquiry so invited witnesses would know the areas of the Committee's interest. The questions would also help potential witnesses make an informed decision on whether or not they should appear.

Representative Ward referenced Senator Pine's affidavit (Attachment 7) indicating that he felt the Committee should have the opportunity to question Senator Pine and clarify statements that appear to be inconsistent with other testimony the Committee has heard.

The Committee then proceeded to discuss its future direction and whether it should continue. It was decided to meet again after the August 10<sup>th</sup> hearing of the Commission on Judicial Qualifications. Representative Peterson indicated he would like to see the files of the Kansas Attorney General's investigation.

Chairperson O'Neal returned discussion to the list of potential witnesses and requested the Committee submit questions for Senator Derek Schmidt, Senator Anthony Hensley, Troy Findley, Governor Kathleen Sebelius, Senator Stephen Morris, and Senator Pete Brunghardt.

Representative Pauls suggested that Chairperson O'Neal be added to the list of witnesses since he was approached by Senator Barnett following his meeting in Senator Morris' office. The Chairperson indicated he would have no problem with testifying if the Committee had questions for him.

Representative Ward requested that his opposition to the Committee proceeding any further be recorded until a "need" was demonstrated.

Future meeting dates were discussed. The Chairperson directed the Committee to prepare and submit questions for witnesses.

Representative Pauls suggested that staff contact Examiner Collister to ask him to ask Justice Nuss during the hearing on August 10th if he knows if any of his staff had contact or communication with Senators. Chairperson O'Neal agreed.

*Representative Faber moved and Representative Siegfried seconded the motion to accept the minutes of June 6-7, 2006. Motion carried.*

The meeting adjourned at 11:20 a.m.

The next scheduled meeting will be scheduled in mid to late September.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Committee on:

October 3, 2006

(date)