

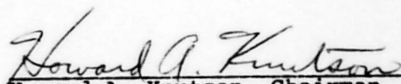
A meeting of the Ethics Committee met in Room 107 of the State Capitol on February 15, 1971 at 7:00 p.m.

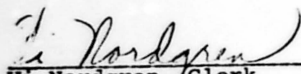
Testimony was heard by Justice W. F. Rogosheske, C. H. Schaefer, Commissioner, Workmen's Compensation Commission and P. Kenneth Peterson, Commissioner, Dept. of Public Works.

Mr. Savelkoul, auth of a bill on ethics, discussed the merits of the bill and offered an amendment to it.

Mr. Knutson, chairman, said he was disturbed that the two reporters, David Nimmer and Stephen Hargen, who wrote the articles on ethics in the Minneapolis Star, declined to appear before the committee. A letter from them is being made a part of this record.

After a question and answer period, the meeting was adjourned.


Howard A. Knutson, Chairman


Vi Nordgren, Clerk

February 15, 1971

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MR. KNUTSON: We heard in our last meeting about the things that were of concern to some citizens, and some of the concerns seemed to be expressed in terms of lawyer-legislators before state agencies. I think we will just leave it at that and call our witnesses in. Our first one is Hal Focht representing the Republican Party.

MR. FOCHT: I appreciate the opportunity to address you on this very important issue. This is obviously a gray, broad area and I expect to hit on all aspects that can possibly be touched upon.

I think everyone here has the same concern. First of all I would like to briefly comment on the present laws as they now exist with regard to the conduct of legislators and the influence upon legislators.

With regard to the present statutes, specifically in Chapter 3, 3.87 through 89, I believe it is, which contains a code of ethics for legislators, the code of ethics as you are all aware as contained in this statute, it is very general, very vague, and I think provides very little standard as far as application by the legislators themselves and also for some standard that the public can apply to the actions of the various legislators. Specifically it breaks down to three categories which apparently you have had a previous testimony on regarding practice before state agencies. The other broad one relating to-- which myself I can not imagine exactly what it relates to as far as the employment which will impair the independence of a particular public official. To me this says absolutely nothing at all. The key to the whole thing, and I think this is the key that is the issue before the public, the one that the public is concerned with, is Paragraph C in that Subdivision 3.88 relating to preventing the legislators from voting on any matter where the interest of the public and the

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interest of the legislators are in conflict. This is somewhat of a standard as far as comparing the interests of one against the other, and I imagine that you could go into detail and each one could sit down and say what interests actually affect the public and what interests actually affect the legislators. As a practical matter, I don't think that anyone, any person in the public is going to look at this and say that they can determine exactly whether or not their particular legislator or any legislator, is actually voting on a matter which he has independent interest in. This has an over-review and I will come back on that particular provision later.

With regard to the next statute in this series, 3.90 dealing with the duties of the ethics committee and their procedure as far as rendering advisory opinions upon request of the legislator, I am not sure if it is the practice at the present time to maintain a record of the opinions, decisions and deliberations of this committee so that they can be used for precedent, but it does not appear in the statutes, and I think for the very beginning at least, it gives some kind of an indication to legislators as to whether or not they have a conflict of interests, or violating the code of ethics in some way so that these should be printed and should be made available perhaps in some kind of a booklet or pamphlet form to all the legislators so they will know what the prior decisions are of the ethics committee and the prior decisions of the legislature, so they can use this for some standard of conduct.

Down to Subdivision 5 of that same statute relating to the decision of the ethics committee to refer to the legislature to drop a complaint, to not hold any further hearings, or make a recommendation to the legislature, or give it to the attorney general, it seems to me that we have quite an exact bribery statute and quite an exact criminal statute relating to any act on the part of any legislator which an attorney general would have to take care of. For this reason it seems to me that if a complaint

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is submitted to the ethics committee which has a part of it the charge of bribery, that is strictly a criminal act and is not dealt with anyway as far as the code of ethics is concerned. It seems to me that there should be a provision that specifically provides that any complaint filed which relates to bribery or any other violation of the criminal statutes, would immediately be referred to the attorney general, rather than having the ethics committee sit down and hear testimony, which would simply duplicate the actions of the attorney general on a particular case.

With regard to the bribery statutes themselves, as far as an individual trying to influence the vote of any legislator as contained in the criminal code, 609.425, this is, I think, questionable as far as the constitutionality of it, because of its vagueness. It has no real provision in there that states what constitutes a corrupt means, which is used in the statute as a violation of the law. This statute requires with it, if there is a violation, a five year imprisonment or \$5,000, or both. It seems to me that there is a serious question as to whether a criminal statute carrying this type of penalty would actually be enforceable by the general term 'corrupt means'. By defining 'corrupt means', I doubt very much whether there would be an indictment on it and prosecution under it, I doubt very much whether that would be upheld. I think that this should be looked at as far as trying to make it more specific in its terms as to exactly what constitutes influencing legislators' vote by corrupt means. The general bribery statutes in regard to public officers and influencing public officers, including legislators, is named in the criminal code 609.415, and .42, and here we run into the problem that we frequently have in any criminal statute whenever the penalty is imposed, and in this particular case it provides that if any person offers, gives or promises to give any benefit to which a public officer is not legally entitled, with intent to influence an officer in the performance of his duties, as anyone who is a lawyer, and I can see

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that there are some lawyers on the committee, so when you put in the word 'intent' in any criminal statute, you have almost eliminated the possibility of any prosecution under it, because it is the difficulty of proving an individual's intent. There are various overt factors that can be used to show this intent, but actually proving it is nearly impossible. I think that this could be looked at as to changing the intent - as to what overt acts might be determined to be influencing a public officer in violation of the bribery statute.

The next paragraph of that same section deals with the public officer requesting or receiving, or agreeing to receive some benefit on the understanding that he will be influenced. Again it gives to the individual's own mind what is in his mind at the time he receives a particular gift, or whatever it might be. I think here again we run into the problem of truth in the matter, and I think this also should be looked at. Going back to the code of ethics and dealing in specifics, too what I think is the real crux of the problem and real issue as far as whether or not a legislator is voting on a matter in which he has an individual private interest which is contrary to the public interest, and it is the one which is contained in that section 3.88. As I pointed out, I feel that this is such a vague and general standard, that neither the public or the legislators have much to go on. One suggestion which I might make that could be used in conjunction with the present statutes, and with perhaps the only change in the statutes itself, would be to give the ethics committee more authority in this area, but to provide that the ethics committee could sit down and prepare specific standards of conduct, using specific examples of what might be or might not be a violation of the code of ethics principles as far as conflict of interest is concerned. For instance, if a stock broker legislator was called upon to vote on a particular bill which would limit the activities of stock brokers and essentially place that stock broker out of business, that is a direct conflict. I don't think anyone

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would disagree with that. A specific example such as this contained in a set of standards to be applied as suggestions that the legislators could follow, and also the public could follow, it seems to me would be much more helpful than to try to deal with it in the statute itself and try to broaden the statute, than trying to apply this to paper language as far as conflicts of interest are concerned. These all could be placed in some kind of printed form. They probably would not have the effect of law. They would simply be guidelines for the legislators, guidelines for the ethics committee, and at any time that the legislator had any question about it, he could refer to it. They could be categorized as far as professions, occupations, types of bills that might be coming up, specific situations that gives a more detailed breakdown as to whether or not one particular bill and a particular occupation in dealing with that bill, whether or not there is a possibility of conflict. As a part of this, it would be easy to incorporate, of course, the type of precedents I mentioned before, that might be established by the ethics committee and maintained in record. Of course, this would follow right in with this type of examples that might be contained in some set of standards of conduct or guidelines for a legislator that could be printed in a form. As I pointed out, if a complaint is made and if you have these standards set out beforehand, it seems to me that the simple fact that you have those standards for the legislators to follow, although they wouldn't have the effect of law, the fact that if there was a violation of standards, it seems to me that it would help the ethics committee to arrive at a decision, and the legislature to arrive at a decision, whether or not there was a violation.

Various other proposals have been suggested I am aware of with regard to improving the ethics code, and one of these relates to making a legislator disclose before a vote is taken on the floor of the House or Senate his financial interest which might exist as it

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relates to that bill. I think that there is a serious question as to whether or not this would really add much to the ethics question which we have before us. First of all, I doubt very much whether it would have that much compliance as a practical matter of people standing up and disclosing right before. Because the simple fact that they stood up and mentioned that there was some kind of a financial interest, raises a serious question in everyone's mind as to whether or not it might be greater than what he is saying, whether or not there might be a conflict. Secondly, there is a problem of really defining what kind of financial interest you might have in a particular situation. What kind of financial interest is it that must be disclosed? And finally, I think that if anyone, or a legislator gets up and discloses his financial interest and proceeds to vote on it, I think there is serious question as to whether or not he has incriminated himself by simply making that disclosure and going ahead and voting on it, since under the code of ethics as it now exists, you are prevented from voting in any situation where there is a conflict of interest. So, it essentially puts him in a position of really self-incriminating himself at any time he stands up. I really doubt if you're going to get that many legislators to make that step.

Another suggestion that has been made is that a lay ethics committee be established, appointed I presume perhaps by the governor or the head of the House or Senate, who would have the power to investigate the ethics of various members of the legislature, and also the power to hear complaints and make other decisions. I think that this appears desirable at first glance, but I think there is a tremendous danger in it. I think that this would create the possibility that there would be a tremendous influence by this committee, whoever it might be, on the legislation, and perhaps the worst kind of influence which would still be within the limits of the law. The simple threat that a committee member, or the

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committee itself would make on a legislator that he might be called before the ethics committee, just this simple threat that he would be called before it, it seems to me would be a very risky proposition to put into the hands of these individuals that might lead to the possibility of wrong influence as far as the legislation is concerned. I certainly don't feel that the advantages of this type of committee outweigh this risk of the possible legal to be derived from it. These are my general comments, and if you have any questions, I would be glad to answer them.

MR. KNUTSON: Are there any questions?

MR. NORTON: Do you have any opinion about financial disclosure of assets generally speaking, or disclosure say in the case of attorneys or other agents of clients or other people they represent?

MR. FOCHT: I think you get into the problem here if there is a disclosure as far as the particular business or profession, particularly in the legal profession, I think you get into a real serious question in the legal profession, as far as running into a disclosure of a client privilege, as far as what the particular client does or what he is involved in - this type of thing. I think as far as the general disclosure of the particular assets of a legislator, his general category of investments, perhaps as far as an attorney is concerned, the general group of clients that he might have, this would be I think in fact advisable, and I think that it could be certainly incorporated in some type of a resolution that would require this be made. I think this would be very helpful as far as providing the public with information.

MR. SCHUMANN: This is a House committee as you well know, and we go out before the elective every two years. In your presentation you mentioned perhaps some of these could be prosecuted by the attorney general. I am just wondering now if someone were called before the ethics committee and a hearing were held, and the committee members voted three out of four that he had violated the

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ethics statute, whether the jury that we face every two years wouldn't solve that as easily as involving the executive branch or the judicial branch of the government.

MR. FOCHT: On those comments that I was making, they are related to certain violations of the statute, and it seems to me that if there is a bribery situation, that that is simply a criminal matter, and granted that if it is true, that it will be brought out and will probably be answered, and he will probably get his judgment before the election. I also feel that if there is bribery there is certainly a reason for prosecution, and this to me is - if the law isn't there for some purpose, which I assume that it is as far as the bribery statutes are concerned, I feel that it should be carried out. There should be a prosecution under bribery statutes.

MR. TICEN: There is a little bill sitting on the calendar which has been progressed until Monday. The essence of that bill is to raise as I understand it, the minimum charge the bank can make on a loan from \$5.00 to \$7.50. I raise this as a kind of typical thing that we run into when we discuss these matters on an informal basis. Let's suppose that I have an interest in the bank, a financial interest, Let's even complicate it further by suggesting that perhaps I also represent that bank as an attorney. I guess my question would be, am I precluded under 3.88 from voting on that bill at all? And then, of course, depending on the answer to that question, should I be precluded from voting on that bill, and should I at any time be required to stand up on the House floor and say that I have this interest?

MR. FOCHT: As far as the latter statement, I don't believe that as far as the statement by a House member requiring him to make a disclosure as far as his interest in a particular matter if it is simply a matter of the fact that he is an officer of a bank, or something like this. To me this is a matter of public record. As far as an attorney representing that bank, it might not be a

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matter of public record. But unless that attorney is representing that bank to get this bill passed, there certainly shouldn't be any requirement. As far as voting on the bill itself, it is the bank involved in it. It seems to me it gets into an area that a standard that might be drafted along these lines might provide that in this situation. It would not be evidence of itself that there is a conflict, but there is a question to be raised by the legislature and by the legislators involved as to whether or not he can honestly vote for this particular matter. And I think that a standard doesn't have to say that this is 'black' and this is 'white'. It can say that this is something that is an area that is in the gray area that should be considered, and that it will be looked at and it will be studied more closely.

MR. TICEN: As I read 3.88, I believe it speaks in terms of should a legislator or legislative employee should. I gather you have some reservations about the definitiveness of that statute. Would it help any if we said 'shall'?

MR. FOCHT: I think that it really doesn't provide much. I am glad you pointed out this wording here because as it stands here when it says 'should refrain', it really doesn't include any kind of a sanction at all.

MR. SCHUMANN: I want to say before I begin that I am not a lawyer, but you did mention that the lawyer could perhaps indicate the field that he was in, the general field, a corporate lawyer or whatever field he might be involved in. But I am thinking of some of the small town lawyers that we have in our legislature who perhaps represent the whole gamut of law practice, and I am just wondering what situation you put them in? Would they stand up and say on every other vote I can't vote on this because I represent the man involved in this field? What would their position be?

MR. FOCHT: I didn't mean to indicate that any connection at all with any type of business that a lawyer might have would automatically exclude him. I think that there are a lot of areas

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that are completely outside the realm as far as dealing with a particular client on a matter if a client, for instance, is a contractor and is interested very much in a particular contract that is going to be awarded by the state, or authorized by the state. I think it gets into a serious question there and a standard certainly could be developed for this. Current representation of that client I think is a direct conflict of interest as far as whether or not that particular appropriation should be made now or later. Over all if it's in that general realm of passing appropriation bills as a normal course, I don't see it. I think that is one case where it would be questionable. As far as a general practitioner is concerned, I still think that most general practitioners have a few major clients, corporate clients, banks or something like that, that could be disclosed. As far as a farming committee and this type of thing, it's hard to define that.

MR. KNUTSON: We want to just make it clear that Mr. Schumann is a farmer and we have also been questioning some of the farm work around here too, the agriculture committee, and the dairy bills. We don't want to get at the lawyers entirely. Did you have something to follow up on?

MR. SCHUMANN: Let it go - you've capped it all.

MR. GUSTAFSON: Suppose you live in a community where you have two large road contractors that build roads over the state of Minnesota and half the country, and roads are pretty fundamental business out in the country. A bill comes along to increase the gas tax 2¢ or 1¢, whatever, aimed at generating money to build highways, etc., and a lawyer represents one or more of these contractors. What's he going to do when voting on that gas tax increase?

MR. FOCHT: Again it gets into the personal opinion. I think it's a matter of consensus that you have to have. In my own personal opinion I don't see any problem at all as far as the state of Minnesota is concerned because that (inaudible) to the

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entire support of the highway system. When you get into preparing specific standards and applying specific standards or making examples for specific standards, I think that there are a number of instances which are obviously going to be in such an area that it is going to be difficult to define every situation. But my point is that there are other more blatant instances where you can define it.

MR. GUSTAFSON: What's a hypothetical where it's obvious that you ought not vote one way or the other? Can you do that?

MR. FOCHT: I tried to do that by the example I used as far as the stock broker is concerned, and there is as a matter of fact in this session something dealing with stock brokers along this line. That some stock brokers may be put out of business by the passage of these statutes. To me this is very positive. He is going to be out of a job if this bill is going to be passed. As far as the other situation is concerned regarding the highway, my own personal feeling is that on these areas where it involves an entire state wide levy and an entire state wide program, that would be one that seems to me to be put in a standard which would be in the area that this would not be a conflict. I think you have to put it both that this is a conflict and this isn't a conflict in the standards that you are specifying.

DR. SOMMERDORF: I just want to make one little observation, the problem that develops when you suggest that someone who has an apparent conflict of interest stand up and state his conflict of interest and then refrain from voting, I think our rules require that in order for passage a bill has to have sixty-eight votes. Now this is fine for the individual who refrains from voting for a bill which would benefit himself or one of his clients. On the other hand, if it is in his interest to have this bill defeated, by his refraining from voting, he is voting against that bill in essence. For instance, on our bill last week which took the limits off wrongful death payments, we had some insurance people on one side

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of that argument and some plaintiffs' attorneys on the other, and if all of these people had gotten up and said 'I have a conflict and can't vote', that bill would have lost, but the insurance men would have helped defeat that bill.

MR. KNUTSON: Justice Rogosheske.

JUSTICE ROGOSHESKE: This is a new experience to me. I feel very honored that I am appearing here at your invitation, in a way in which I think a member of the judiciary the legislature and not intrude on a coordinate branch unless asked for his advice, so that's what I'm here for, to try to be as helpful to you as I would like myself to be if our positions were reversed. I'm of the ancient vintage in the legislature. It's twenty-three years ago that I served. I was a pretty young boy at that time. I knew very little about conflict of interest and I don't think that I thought about it until the surprising incident I heard Bob Ticen mention, and I had an invitation, I think to the savings and loan party tonight, and my dear friend who I think maybe had said well Vernon Welch was in the legislature. He was then counsel in some capacity, and I remember with a start when there was a bill up concerning that (inaudible) he stood up and ask I believe to be excused from voting on the ground that he was interested. That answers some of those questions. I don't think any legislator under the rules as I knew them, could just refrain from voting. There had to be some (inaudible) he be required to vote unless excused, of course. This was the procedure that he chose to use and he was customarily excused. It was a refreshing thing to me because in those days I think during one session I was in, somebody in the legislature (inaudible) read one day the majority leader's client out of Martindale & Hubbel. It was a rather distressing day in the Senate.

Well, I don't want to carry on here just aimlessly. When I got your letter, Mr. Chairman, I thought where I possibly could be helpful would be

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I don't have very much concern about a legislator who is not lawyer or has no professional ethics that he must comply with, because it seems to me, at least if my experience still holds true, that it didn't take very long during session and you were pretty well able to tell what legislator was voting on some special interest legislation and what prompted his vote. It always seemed to me that his persuasive ability, if he wasn't candid with his colleagues about his interest in independent legislation, was reduced to zero. Then he just couldn't pass any votes. When he talked from a special interest standpoint, he either had to make an awful lot of sense, and he didn't get anywhere just by reason of the fact that he was promoting his own interest. And then, of course, if you have a lawyer who commits a crime, he's subject to prosecution. The fact that he's in the legislature doesn't prevent that. He's subject to being ousted, expelled from the legislature, a sanction that I think is about as powerful as anybody can have. To say that if you commit outright rank misconduct in the legislature, and particularly now with the state of affairs that have developed with the judiciary, you almost got to be poor and pure to be a judge since the last several years I am sure that must be in the legislative halls now too, that the kind of misconduct that is spoken of here has gone by and this doesn't happen. I just can't believe, and I never did believe that I walked around as a member of the legislature regarding every one of my brethern in the House or Senate with suspicion, that he was promoting his own personal interests. That's just not true, and you know it's not true. You don't find those kind of people in the legislature. If they are there, they are going to be there for one term and soon they're gone. But when you get to the lawyers, they've got a special burden to carry, because his conduct is not only subject to the scrutiny of his fellow legislators, but of his profession. And when he gets in a conflict, it is serious. He exposes himself to disciplinary sanctions. It is very interesting

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that in the last three years the American Bar Association has been revising the code of professional responsibility of the legal profession. The committee was headed by Ed Wright (inaudible) president of the bar association and had a very outstanding committee. He worked all those years and revised and updated codes of professional responsibility, and I hold his book in my hand. Now twenty-two states have the appellate court and twenty-two states have adopted this code as standard conduct for lawyers licensed to practice in that jurisdiction. We in Minnesota adopted it as I think the sixteenth state in August of this year, so this is the code by which a lawyer's conduct in and out of the legislature is governed, and a violation of the disciplinary rules here, subject the lawyer to disciplinary sanctions consisting of public censor under our new disciplinary procedures, probation, suspension for a limited time, or for the most grievous error, disbarment. And We're only started on this thing. I know that in the past self-policing of the members of our profession just wasn't adequate to prevent a lawyer from getting in trouble to the point where he had to be disbarred. Our procedures in this state hopefully are designed to stop a lawyer before he reaches that point where disbarment is one of the answers. In it significantly, it's divided into canons, ten canons, and under the canons are ethical considerations, and attached to those are disciplinary rules, the violation of which exposes the lawyer to disciplinary sanctions of the kind I mentioned.

Canon No. 8 says 'a lawyer should assist in improving the legal system, and it says, and I don't mean to read it, but in unmistakable terms it says what a lot of laymen don't really believe, that a lawyer should be encouraged to be in a legislative body, because one of his duties as a professional man is to improve law. But then it puts sanctions on him, and the whole gist of it, as the last speaker was pointing out here, to answer the questions that were put to him, seems to me to be answered by a canon that says that an attorney holding public office should avoid all conduct

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which might lead a layman to conclude that the attorney is utilizing his public position to further his professional success or his personal interests. And all through these disciplinary rules and canons, and one of the great disciplines about a lawyer is that he's always got to disclose, he's got to have utmost loyalty to his clients, he's got to serve his interests best to the suppression of his own desires, and he's got to be candid and disclose any conflict of interests.

It says for example in one of the disciplinary rules that it's ground for discipline that a lawyer who holds public office shall not use his public position to influence or attempt to influence the tribunal to act in favor of himself or his clients. And in another place it says that a lawyer shall not state or imply that he is able to influence improperly, or upon irrelevant grounds any tribunal legislative body or public officials.

Now those are just general comments, and I might close by saying that the thing that has brought me in close contact with this code is that toward the last five years I have been a member of the committee, and the last two years chairman of it, to write canons for professional conduct of prosecutors and defense counsel in criminal trials. There was not anything written about what a defense lawyer may or may not do in defending an accused in a criminal trial. We just finished that report, and I have the book here. It was just approved last interim by the House delegates of the American Bar Association in Chicago at a meeting. It is now the official policy of the A.D.A., and the way it gets to the lawyers these right standards about what a defense lawyer may or may not do under sanctions of professional disciplines, these are geared right into this code, so that a lawyer who violates these is subject to the same sanctions I enumerated, and they will be if they are accepted as I think they will be, a persuasive common-sense standard. They will be enforced by trial judges, by other lawyers, by committee, that have the responsibility of enforcing the

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professional code at this time.

MR. GUSTAFSON: Would there be any merit in your judgment having been both in the legislature and on the bench, to incorporate either by rule of the House, or by statute, the canons of ethics that you have alluded to. I know (inaudible) that a lawyer, legislator, or both, these govern our activities in and out of the legislature, but just to further reaffirm the fact that this does govern our conduct, would that be of any merit?

JUSTICE ROGOSHESKE: I think so. If I were a new legislator and there was a handbook of what was verboten and what was permissible, it would be very helpful to me. I, however, would not put it in the statutes, as apparently I didn't know about this. I remember now about Rabbi _____ and his great efforts back in '59 session who tried to get the legislature to incorporate some code of ethics in the statutes. I would never put them there. I think you ought to recognize that as legislators you have alone plenary power to control the conduct of your members. Nobody can intrude on that power. You ought to put in quotes, I would never establish, and I suppose there is argument, I would never establish a lay board outside the legislature to which would be submitted questions of conduct for their condemnation or approval. The way I would do it is what we recommend here in the prosecution and defense counsel standards, and the way it's done in England. I would think that if you have an advisory council in each house, or the house it chose, made up of your legislative members, to which a legislator could go in confidence, that it would never be revealed, and ask advice in a gray area of conduct, where he didn't know what to do, and get advice from seasoned, honorable, experienced legislators, that's the way I would handle it. I would put down a code that could be revised as experience thought it could be revised, only those standards which would clearly and unanimously agree as something a legislator should not do, or is permitted to do.

MR. GUSTAFSON: I concur in your judgment that we should not

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by statute adopt by reference the code you refer to. Would you be opposed to the idea of having a house rule, or part of our rules on ethics, that we adopt as one of the standards the code of ethics, the Bar Association's Code of Ethics?

Justice Rogosheske: For lawyer legislators?

MR. GUSTAFSON: Yes.

JUSTICE ROGOSHESKE: Except that the reasons are so general that it's hard to apply without making hypotheticals. It's very difficult to understand what is prescribed by it like a couple I read.

DR. SOMMERDORF: We've heard some implied criticism of certain lawyer legislators who have appeared before the court representing certain clients, especially during the session, the implication being that perhaps the fact that this lawyer legislator is also setting the salary of the judge, or the judges, that this might have an appearance of undue influence. I wonder if you would comment on that.

JUSTICE ROGOSHESKE: I think a lawyer legislator can be guilty of that, but again it depends upon the form of conduct that he takes. One of the rules he has specifically - a case in Illinois rose under one of the canons about the propriety of a lawyer legislator coming before a board, had permission which was established by the legislature of which he was a member. They concurred that he should not be precluded from doing that, and by implication, although I found nothing in here there certainly ought never to be anything wrong with a lawyer appearing before a court. The fact of the matter is, the structure of our adversary system is such that the lawyers' appearance before the court is subject to review not only by the professional ethics that he is obliged to come to but on the merits of the case. I think this

about that, to try to express myself clearly. I would think - let's suppose this is hypothetical. Let's suppose that a lawyer had a client and to his surprise he was assigned to appear before a judge who in the years past, and maybe it still is true, who was a chairman of a judges legislative committee that was around the Capitol doing a lot of lobbying for salaries, retirements; that he became very friendly with him; and that the judge regarded him as one of the fellows who had given him immeasurable help to him and so he surprisingly was going to appear before this judge. Counsel on the other side didn't know of his past contact between the judge and the lawyer. I would think the first thing the lawyer would have to do **is to** save his client's confidence and disclose what the situation was; that this was the relationship he had with this judge, and that he was concerned lest the judge might unwittingly favor or disfavor the case because of that relationship, and that he wanted the client to know that he was going to make a full disclosure to the adverse client - the client on the other side, so as to enable him to disqualify the judge or to ask the judge to step aside.

I would think that would be the proper way to handle it.

MR. KNUTSON: Mr. Ticen.

MR. TICEN: Mr. Chairman, Justice Rogesheske; I have kind of made a practice at these hearings of asking a kind of series of set questions. First of all, I think there is an insidious desire on the part of many to get rid of lawyer-legislators, and I gather from what you said that you not feel that - that that's not the way it ought to be. I, of course, have felt, subject to the comments you made here tonight, that really legislators have more contact with courts in terms of setting salaries, establishing jurisdiction, etc., setting retirement pay, etc., than we really do over other agencies, and it has been suggested that no lawyer should appear before another state agency. Several witnesses have said, not only

only during Session but during the Interim - I wonder if you might amplify your remarks with regard to non-judicial "agencies" to which lawyers might appear from time to time.

JUSTICE ROGOSHESKE: I would think, Number one, the current code of professional responsibility does not bar a lawyer from doing this. Number two, I think there are instances where a lawyer ought not to comment. And I got burned as a lawyer in the legislature doing it, and if you will pardon my personal references to make my point, I was vice-chairman of the civil administration committee. John Hartel (SP?) was the chairman, and he was assigned the job of all civil service legislation, and in those days, '43, '45, '47, there was an awful lot of preparing of the civil service laws to be made, so we had an awful lot of discussion on it and a great, militant desire to change the classifications into a higher salary range, and Smokey Stover was the Director - I call him Smokey, but Robert Stover was the Director of the Civil Service Administration. I knew all of the Civil Service Board members and the Highway Clerks, of which there must have been about 60, after legislative session, came to me and asked if I would undertake to get their salary range changed - their classification as District Highway Clerks changed to a higher salary classification, and told me why, and I thought they were very justified, and I knew a lot about it. I knew how that was made up, I was part of the activity, and so I said I would undertake - I would accept care of that responsibility, and they all put in \$10 or something like that, and so I filed a petition before the Director and a Brief, asking that they be changed from this range to that range. Stover turned it down, and of course I had a discussion with him, and then I appealed to the Civil Service Board and argued it there, and when I got all through with it I knew that the clerks would have been better off by getting a private lawyer rather than myself, because I was in

a definite conflict there. I was in a position as a legislator to have a very specific influence on the way this structure of Civil Service was being put together, and there I find I couldn't hold complete loyalty to my clients because it was conflicting with the interests that I had as a legislator to see that that system wouldn't be upset by moving the clerks into a different range than what a professional civil service person thought they should be. And in that place I think a lawyer should not appear before an agency. A lawyer, for example, who would be chairman of the banking committee, particularly in the Senate, before whom would come the confirmation of appointment of commissioners - I just can't see any other way. I know that others don't agree with me, but that is in a conflict of interests if he undertakes to file an application for a new banking charter. I don't know how you could do that. As a lawyer, I don't know how you could do that without getting involved with the code of professional responsibility.

MR. KNUTSON: Mr. Ticen.

MR. TICEN: Suppose I had a workman's comp. case. I'm sure we will hear from that a little later on this evening - and I'm appearing before a referee who I personally gather could care less about me, whether I'm in the legislature, God, or whomever. I gather you would think that would not be a conflict of interest.

JUSTICE ROGOSHESKE: Not only no conflict of interest, but as I was talking on the side of God earlier, very desirable. I'll bet that many revisions of the workman's compensation law has been the result of a lawyer-legislator's undertaking to represent an injured employee, who has found that there is a gap in the statute which ought to be corrected. I don't know how a lawyer could ever feel that he would somehow exploit his public office to represent

an injured employee. I used to turn them down as a country lawyer because I thought we had compensation counsel. That was a bad mistake.

MR. KNUTSON: Any further questions? Mr. Norton?

MR. NORTON: Mr. Chairman, Justice Rogosheske: Did you feel that this new code of ethics is sufficient to cover all disclosures or do you feel that there should be more specific rules in regard to disclosure of at least the nature of clients or else, let's say investments that a lawyer or any other legislator might have.

JUSTICE ROGOSHESKE: I think that's a very gray area. You have to remember that the code of professional responsibility deals primarily, and only in two instances, with the lawyer's relationship to his client and to the court. It deals only in two instances with his relationship as a lawyer where he is also a legislator or a public official, and I would think that when you ask a lawyer-legislator to disclose his clients, that you are trespassing on what the speaker said, and I agree with that, a very sensitive area reaching into the confidential relationship with a lawyer and his clients.

MR. NORTON: What about the investments question, Mr. Chairman?

MR. KNUTSON: About what?

MR. NORTON: On a broader approach, do you feel that investments or interests should be disclosed, lawyer or not?

JUSTICE ROGOSHESKE: I I I don't - we're struggling with in the courts now, as you know. Many of the states - the Federal system of judges have established rules about it. It means the mischief of a public official having investments is not that he has them, but that the people he works with - in a collective group, such as serving on an appellate court, do not know. I think all of it would be alleviated by a disclosure to his colleagues. Where you can do it on an appellate court, as we can, and we do not ever hesitate in the court the way it's presently constituted - whenever a case is being conferred in conference after oral argument, to start out with saying to the others on the court, I want you to know before I speak

to this, that this is my connection, either with the lawyer who represents the client, or with the subject matter involved, and so on. I have found in the last three or four years - Well, Judge Sheron had an awful lot of trouble because he did have some investments, and he just got rid of them all. And it's pretty near impossible for a judge today to have an investment except government bonds, and maybe some land, because of that potential conflict of interest. I think it's the disclosure. Now the way it's worked in the courts where this is now being studied by Judge Heinert's committee of the ABA to rewrite the code of judicial conduct, and the way it's being worked in the interim, and the way we have been trying to come to an agreement is that a judge would fill out a questionnaire of what holdings, what property holdings he has, what his interests were along that line; what his mortgage was, who had the mortgage; what his life insurance was; what his investments were. And he would file that in a sealed envelope with some person who could not open it, and it could only be opened at the request and upon the showing of cause by another member of the court or by an ethics committee investigating the judiciary.

MR. KNUTSON: Mr. Johnson or Mr. Haaven?

MR. JOHNSON: Do you feel, as you indicated in your remarks, that really the key here is that we can discipline our own because we have the power to remove those who get out of line. I'm not sure that the people believe that. And you also indicated that a citizens group might not be in the best interest. Now I've been thinking along those lines, but you kind of shot holes in my idea that maybe the people ought to get closer to the situation and gain some confidence in their governing body, but could you explain that a little bit better, or..

JUSTICE ROGDSHESKE: Just off the top of my head - I haven't thought it through, but I don't see how non-legislators, no matter how outright they are, can judge compassionately and accurately the claimed misconduct of another legislator. The men of good faith and good will would be doing it, not to embarrass the fellow, or not for a political advantage that may come from it, because no matter what side of the aisle you sit on in the Legislature, you develop such a close bond that no legislator wants to make trouble for another because he knows that it works both ways. So that's why I think if you had this advisory committee, first to prevent a fellow - for most of it would be done out of ignorance by a person, and he's going to do it, no matter how many rules; the cheater - the corrupt person - who is going to make a righteous man out of him? But the fellow who does it because he's stupid, or somebody else did it and therefore he does it, is the fellow that you want to warn, to make him into a good legislator. That's where I think the effort should be made.

MR. KNUTSON: Mr. Haaven.

MR. HAAVEN: Mr. Chairman and Justice Rogesheske: I'm a non-lawyer from the country, and - - -

JUSTICE ROGOSHESKE: I see you on television, though.

MR. HAAVEN: Thank you. I'm possibly in the position of defending the lawyer-legislator back home, and believe it or not I do defend them.

JUSTICE ROGOSHESKE: Thank you.

MR. HAAVEN: But the image has been lost out in the country to a great extent, and I am curious as to your reaction to the series of articles which ran in the Star last summer and fall by the two writers, which incidentally, were asked to appear before this committee, but decided apparently not to. What was your personal reaction, and what, if anything, did the bar association do to help combat it?

MR. ROGOSHESKE: The answer to the last question is 'nothing'. In answer to the previous question, my reaction was one of anguish,

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and one was the fact that the public could have from those articles gotten the wrong impression. Because, for example, I know of no more honorable gentleman than my friend from Morrison County. He and I used to argue endlessly about the propriety of his representing carriers before the case of a

or could be. I know of no (inaudible) who would not do what these canons say he shall not do to exploit his legislative office and he's been publicized in the papers with the innuendos, and publicized when walking into the chambers of the Supreme Court, and sitting down or appearing on argues. He never appeared without doing it in a professional way. Now I don't know that it's all so pure that one should disagree with what he did, or lawyers may disagree with it. But the unfortunate thing about those articles are that they left people with an idea that no good can come from having a lawyer as a legislator. I don't think there's any doubt about it that a lawyer who goes to the legislature has a great limitation on his practice. I think it's true about a doctor. But I think it's certainly true about a lawyer. Wally Gustafson's question about two contractors. They want to hire me in my district. They come to my office and they say, 'can we put you on a retainer of \$10,000 a year.' And Mr. Gustafson says, 'for what?' A lawyer like that has to say, 'now look, you are in need of my professional services, not for the position I hold in the legislature. He's just got to say, 'I can't represent you'. Now he sacrifices a great deal. This is something the public doesn't know. He could make a lot more money if he didn't have the stricture of a public office.

MR. HAAVEN: These articles more or less define what the people were thinking already. I was just wondering what the bar association did if that's the organization to do so to help combat this sort of image? Do you feel they should have done something?

MR. ROGOSHESKE: I don't know. It's hard to motivate a volunteer

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lawyers organization to come to the defense of lawyers that they may think are maligned. I don't know. How do the broadcasting associations do it, kick over the traces of prejudice in defending a criminal trial. We've got the fair trial press council and call them in and say 'why did you do that?' But it's only on a half-hearted basis.

MR. HAAVEN: It seems to me that publicity should be able to get out somehow on this code of ethics that you do have.

JUSTICE ROGOSHESKE: Well, there is hope. We now have a director of professional responsibility, an 18 member lawyer committee from all over the state, with a full time director, whose job it is now, if it is suggested that some lawyer has committed misconduct, to give not only the chance to defend himself, but the complainant a chance to make the accusation. I think that as it goes on (inaudible)

MR. HAAVEN: In the past five to ten years, how many attorneys have been brought up before the bar?

JUSTICE ROGOSHESKE: Unfortunately only those that the public disbarred by finding them guilty of some crime, and after they were convicted, then we as the judicial system set the disbarment.

MR. HAAVEN: How many?

JUSTICE ROGOSHESKE: We got quite a few in the prison today, lawyers (coughing, etc.)

MR. HAAVEN: I know of one!

JUSTICE ROGOSHESKE: We have been derelict. We deserve all. It has been our fault and the buck stops with the Supreme Court of Minnesota. We have had a system, and this is not only with Minnesota, Minnesota is a quality state with its bar association, don't misunderstand me. This has been true all over the nation, that the reliance upon the profession to police itself simply has not worked, and the reason it has not worked is because you can't ask lawyers who are busy to investigate claims on their fellow practitioners and you get into professional problems

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when you go outstate where a lawyer who is accused of misconduct is having coffee with a lawyer who is on the ethics committee required to investigate him. So now we've got this system where initially it still goes through that committee, but it goes right up to the director who can move right in and find out the facts. I look for the day when I hope, somebody says I'm a dreamer, but I look for the day in my profession when we walk this trial lawyer unless he does some crime of passion, that a lawyer will be suspended from practice, the fellow who has the nervous breakdown, the guy who mixes his clients and comes up with his own, will be caught before he reaches the point and needs disbaring.

MR. KNUTSON: We thank you very much, Mr. Justice for coming down here. We call as our next witness Mr. C. H. Schaefer,

MR. C. H. SCHAEFER, COMMISSIONER, WORKMEN'S COMPENSATION COMMISSION: I am Cy Schaefer of the Workmen's Compensation Commission. We are successors to the Industrial Commission which was abolished by a reorganization act about forty years ago. My experience has been pretty much with workmen's compensation; therefore, I am going to confine my remarks to my experience as far as workmen's compensation is concerned.

Now workmen's compensation in Minnesota will have its sixtieth birthday in a couple of years. I have had some contact with it in one way or another in excess of forty of those years. We first had workmen's compensation in Minnesota in 1913, from 1913 to 1921 the jurisdiction was in the courts of this state. In 1921 the industrial commission was established, and then from 1921 to 1967 the industrial commission administered to workmen's compensation laws and as I said the operating name was changed to 'workmen's compensation commission'.

Just a few words about my experience all these years as far as lawyer legislators operating before the commission, I can not say that I have ever had a problem. I never had any undue influence, any attempt upon the commission, me, in any way whatsoever. I have been

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been a referee for some thirty years and can honestly say that I have never had knowledge of any case or do I recall any time that a representative employee who was a lawyer legislator make any attempt to speak to me before that case, or make any comments about my position after it. I find the same thing is true before the commission now. The greatest cases in workmen's compensation are pretty much spread out. There is no concentration of any one individual I know of. Speaking of cases, did you hear where some members of the legislature represented a defense client one or two years ago where a senator was retained by an insurance company. Undoubtedly this insurance company may have had in the back of their minds that he being a member of the legislature, maybe his province would lend a little ease to the cost. He lost his case. I can recall several similar cases over the years. But, the point I am making - most of those cases I think they're lost. They did not prevail. No criticism was ever made of the commission in any way or any attempt to effect a decision one way or the other.

Taking another lawyer legislator in the field of workmen's compensation, I say if there's any attempt to bring any stress and strain upon the commission, it's - and that's not true either. They call up and say I have this client, he wants our aid, and we do what we can for him, I think that's our duty. The mere fact that he's a member of the legislature, that he calls upon us for our service, I don't think that constitutes any undue influence. The point I'm making on that is that we're probably called on for a little more service from a non-lawyer legislator than a lawyer because he takes care of it himself.

So, to sum it up, I would say that as far as the industrial commission is concerned I can honestly say I have taken no profits whatsoever, or any attempt to cause any influence upon the commission. There may have been once or twice in certain cases where somebody was not pleased by the decision and has come to see us, but actually it never came to pass. On second thought, perhaps he hasn't (inaudible) As Mr. Rogosheske pointed out, discuss these problems and if they do have difficulties with workmen's compensation, why they are the people who are going to help us solve these problems in the coming session, and as far as attempting to bring any undue influence upon the commission, I say it's non-existent.

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MR. KNUTSON: Any questions of Mr. Schaefer? Thank you, Mr. Schaefer. Mr. Peterson, would you give us the benefit of your experience?

MR. P. KENNETH PETERSON, COMMISSIONER, DEPT. OF PUBLIC WORKS: Like Judge Rogosheske, I am invited here, and I served a number of years with him, and a few years following him, and I know that at that time there were questions that did arise, and I will concur with what he says that it was not looked on very favorably by colleagues those who were known or thought to represent clients within the legislative halls itself. I would like to relate myself to the subject that is before you tonight and talk really in two terms what having to do with our relationship with legislators generally. I think from the comments previously that this is pinpointed toward the relationship of lawyer legislators which is different from lawyers generally. Yet in our situation I regard them pretty much altogether because the community and all of us within the community will call upon their records later to oversee, to require, to obtain information concerning a vow which they may have.

Now those of you who have had anything to do with our body, which incidentally is the oldest agency outside of the legislature itself, which will celebrate, I might add, its 100th anniversary on March 4th of this year, that we are approached from time to time by legislators as to a situation that may seem rather minor to you, but in particular outlying communities, they are matters of major concern. I think for example there are a few inquiries since this legislature has met, and they have been only inquiries having to do with the dualization of railroads people. Now this is a process that has been going on for a long period of years and the concern expressed in these communities are expressed necessarily to the legislators (a) because they're here, and (b) because they are representing them, and they make inquiry of it. When they do, they do not enter an inquiry in the case, but they

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call for information, and I think quite properly so, as much as we would expect a mayor or county board member, or any other persons who might be called upon by the community to make this inquiry. But specifically having to do with lawyer-legislators, and this would apply to them also, but more often than not they come to us by way of communications, either in letter or person, to inquire as to what is involved in a particular matter that may be important. And most of you will know a petition that's normally filed with the commission and is concurred on a given question, at all times are the parties represented by counsel, most generally they are. They might ask that they expedite the work of our commission very considerably. Well, they are lawyers so they understand the procedural requirements as set forth in the civil procedure act that was adopted by a legislature some years ago.

Now quite often they will be applying, or inquiring, or they will be to the extent that there is representation, and I might add that since 1967 when I assumed this office, at no time have any of them appeared in terms of a whole community as practitioners before us. Incidentally, not all practitioners who appear before us are lawyers. There are, as in the case of the Interstate Commerce Commission, and other regulatory bodies at the Federal level, those who are not lawyers, but who are licensed to practice before that commission because of their particular experience or expertise in the field. Most generally when they represent a single client they will have, of course, the interest of just that client without reference to a whole community. It doesn't mean that it is necessarily a selfish desire. It could very well be for example in the area of transportation that the community desperately needs a particular service and the defense may be representing a client, but at the same time, representing a wider constituency, namely, the people whom he represents or those in the immediate vicinity.

Secondly, having to do with legislation, as you know, our body is created by the legislature, and there are a whole body of

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laws that date back many many years, and because of the rapid change of time, new and other legislation is required to clarify or to change or alter existing laws. Much of it is remedial in nature. There will be I suspect nothing in the nature of a half a dozen proposals that will be made to this legislature that will be recommended by our body, not to influence anybody, or to be influenced by them, but to clarify that which is invalid. Quite often our decision making is very wide, very broad, and in most instances calls not only for a judgment of the law but a question of policy and a question of what is prudent and what would be in the best interest of the body or community concerned. Certainly I would hate to think that on these remedial bills, the man who happens to be a lawyer would be constrained to restrain from voting on these matters, because he perhaps better than a non-lawyer member of the legislature, would understand what is involved.

As to those who practice before the legislature, like Judge Rogosheske, I would like to relate back to the days that I served specifically from 1947 to 1954. I heard it said, and it has been said, although I think it was probably less publicized in the newspapers, that there were many lawyers who appeared before our body and who by reason of that fact were accorded certain privileges and decisions that were made that way for the reason that he was a member of the legislature. I can say now as I serve on this body that in the four years that we do not hear all cases inasmuch as there are a number of cases that do come before us, but of all of the four years that I have served there has been only one lawyer legislator who appeared before us at all. That isn't to say that there hasn't been an inquiry or a personal conference, or something of that sort having to do with the method by which to proceed and that is new to him, but it has in my experience that only one lawyer has actually appeared while I have sat on a case, and I do sit on all of the cases, particularly within the jurisdiction and the knowledge of the commission.

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And may I say in the case of this lawyer, he is one who has served his clients, and by the way, he represents out of state telephone companies, small telephone companies, that he is probably one of the few who was able to represent them adequately because of his knowledge and his expertise. I called on the director of our telephone division to inquire how long this particular member had served, and I learned that he has been before our body and for these clients, and these clients only since back in 1957, and which was prior to the time that he became a member of this body.

I do not mean to infer there is anything particularly mysterious or unique about our body except that there are a lot of cases that have been handed down. There have been a few cases at the appeal level that a new lawyer who might or might not be a member of the legislature would have no prior knowledge of. It calls for a certain expertise in the field not only of law, but of the county that would specialize or qualify a lawyer being a member of this body or not, who could adequately represent his clients very effectively. Then I would say there are the cases of lawyers and non-lawyer members who at least on one occasion I can recall, who appeared as witnesses in behalf of either the protestants or on behalf of an applicant. When these are done, normally he speaks so tenderly that his testimony is not taken as part of a record, but he is accorded the privilege of speaking for the community that he is representing. This is only fair and proper that he do so, because what we do is of concern to every single community in the state.

The one difference I'd say between ourselves and Judge Rogosheske's body of the Supreme Court is that all of our cases are appealable. Therefore, if the adjudications that we make are regarded as being not supportable, not meeting the best of the standards of deciding cases of this kind, they are appealed, or capable of being appealed through the District Court, and can be appealed further

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to the Supreme Court. Consequently, there is very little room for wrongdoing.

That, Mr. Chairman, are the few remarks that I came prepared to make, and as the others have, I will submit myself to your inquiries.

MR. KNUTSON: Any questions of Mr. Peterson?

MR. TICEN: Well, perhaps a facetious one, Mr. Chairman. I am assuming that you do not recommending that that one lawyer legislator who appears before you with some regularity should be prevented from continuing as an attorney.

MR. PETERSON: Indeed not. I would say that the particular people that he represents, and it is in a very specialized area, it would be without really the advantage of his expertise knowledge gained over a long period of years. It is an area of law that is not commonly practiced by any others, and we recognize quite readily those who are specializing in communications and transportation as a primary area, and I think the client would suffer very measurably. I can recall in at least in one of the two instances his clients were not successful before our body.

MR. SCHUMANN: I have had the occasion to speak twice at hearings that were carried on before your commission and I just know that I realize tonight why we lost both of them.

MR, PETERSON: (inaudible) brought before the commissioners and decisions are made and can only be made under state law, and statutes by the commissioners. We have actually revised our own procedures so that when one of the hearings is held, the proposal for decision is not put out in the name of the commission but by the hearing examiner, and then all of the faults of the hearing come back to us and we make the finding at that time. I should add that because of persons, the lawyer and non-lawyer who appears before our body is prejudiced by the fact that he isn't a legislator.

MR. KNUTSON: We have one other item we want to talk about.

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Representative Savelkoul has a bill that is designed to do something with this situation, and we thought we'd like to hear a little bit about his ideas. Mr. Savelkoul is a lawyer legislator appearing for special favors on his bill before this committee.

MR. SAVELKOUL: I realize it's late and I have no objections to coming back another time (inaudible)

MR. KNUTSON: I think if you would present your ideas and the reasoning for your bill, especially in view of what we've heard tonight, we'll try to limit the questions on the understanding that this is before a committee. Just so we get your ideas on this.

MR. SAVELKOUL: I might say, Mr. Chairman, that I don't feel there is a problem with lawyer legislators. I might say that in my proposal that (inaudible) I feel a high standard of ethical conduct that I feel exists, and this isn't (inaudible) a substantial amount of review in this area from articles written and books written involving other states (inaudible) So the purpose of my bill really is three-fold, I guess. One is to limit the possibility as a potential for what an unbiased person might consider unreasonable conflict involved in the decision in their voting process of a legislator.

The second purpose is to provide guidelines for the legislator first of all. My bill also includes recommendations for the executive and administrative branches' conduct, and I envision anyone from these divisions being able to go before this body and hear an ad hoc decision as it relates to a particular problem which may exist. I think this is necessary, and I don't think it's possible to develop one code that would govern all situations, but I tell you why I think (inaudible) an example. For instance, in the administrative branch of government, you get into situations where investments are made. And if a particular man in charge of investments will suggest one stock broker or one fund over another, there is some potential or some question, at least from other stockbrokers, and the public, that he is favoring one broker or another, or he is favoring one salesman over another, as the case may be. You get into situations where buyers who are in different

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branches of government are treated by people who are in the selling, especially if they sell to the state. Maybe an unbiased person looking at this would take the approach that something crooked is at hand. Those people who are involved in purchasing departments shall not be allowed to even take a meal from someone who is a vendor. In legislative areas you can run into many situations where a lawyer otherwise deals with a client who has an interest before the legislature off season. And we as legislators may not feel it's a conflict, but I guess the point is this that it may not be a conflict, but the point is this that if the public in fact thinks it's wrong, or thinks it's improper, they're facing a system that breaks down. So maybe they could have a voice, an opinion which would be valid, and which would prevent us from engaging in that particular conduct.

Third and last purpose of this type of bill and this type of committee is to develop a situation where a member of the public, if you will, a committee on its own motion could look into a particular situation involved in a question of ethics and make a decision, make a ruling which would be confidential and to the people involved, suggesting if it is proper and suggesting if it isn't proper. It would be a device where the ruling, the decision would be available to legislators to guide future conduct, and would also give the public a feeling that they had an impartial decision, and whether the conduct was illegal or not proper for a legislator to engage in.

The bill itself, I guess copies were handed out, is a very broad bill. I also have a broad amendment to it. Basically it involves a committee composed of legislative people as well as non-legislative people, and so in fact would be non-legislative people. My first impression was just have this only legislative, and after thinking about it and reading more about it, I think it's not only a problem of conflict with a legislator, it's a

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conflict in face of the public in the legislative, as well as the administrative, as well as the executive branches of government. Therefore, I have people from the legislature involved on the commission, people from the executive and people from the administrative involved on the commission. I charge them with embarking upon a role of devising a code of conduct for part time, as well as full time people, taking into consideration that we do have a part time legislature, and try to arrive at solutions and decisions as to where they would go wrong, and make basic reasons. I feel it has to be done in this manner because our legislative process I don't feel is designed at least in this session, and by the time and the depth which would have to be utilized to go into these areas.

The second part will be to issue these advisory opinions to legislators, but also this commission would be a commission that would issue these opinions to city councilmen or county commissioners as the case may be. The type of thing I have in mind here is, for instance, if a city alderman, for instance, an insurance man and all the city insurance is sold to that agency, there may in fact be no conflict. But the point is maybe with all the other insurance men in town the people will think he is taking advantage of a situation and think he's improperly using his office, and that's where it breaks down the confidence in the system. And, I think that's a higher priority than allowing an insurance man who wants to be a councilman, for instance, have, you know, that particular sale in question.

The fourth function is for the committee to investigate on its own motion claims of course, of a confidential nature (inaudible) conflict of problems that exist. The only time that they would make a recommendation as such to the public is in a situation where they find a - in effect make a finding of the probable cause of the standard of conduct which has been developed has been violated or found probable cause toward violation of the statutes they presently have. Basically, that's the philosophy behind the bill, the type of

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thing I envision it accomplishing, and I realize there are many problems, but I just don't feel that we can here in the legislative session pass, first of all, I don't think it's wise to write this type of thing in the statutes, but I think as a practical matter, it is just possible to write all the specific decisions that will have to be reached into the statutes since there are innumerable situations for lawyers, as well as lay legislators where in some situations contact may not be appropriate but in other situations would. And I think that decision has to be made on an ad hoc basis, not by a committee that necessarily is all legislators, but definitely a committee that would have substantial representation from the legislative body, and from those people who are involved in it.

MR. KNUTSON: I think there are a couple of observations which we should limit our questioning to at this time at least. The suggestion is a committee with outside members. I think that is something we should limit our questions to. It can investigate on its own motion, I think we should limit our questions to that one too, and it covers all branches. If we can limit our questions to those three areas, I think those are the items that perhaps you need to this bill and that we would be most anxious to get Mr. Savelkoul's opinion on at this time.

MR. GUSTAFSON: Mr. Chairman, would you want to extend it to a fourth one? (laugh) Henry, that's a rather ingenious code you have here and under the circumstances has great merit. (laugh) I have two questions. First of all - I haven't read the bill, sorry to say - but you said that this would be done in a confidential manner and that creates two questions: (a) how to you keep that kind of an organization confidential, and (b) can you, you know, public-wise, otherwise, say to an organization legislatively ordained, that their deliberations up to a certain point shall be confidential? Can we do that?

MR. SAVELKOUL: Well, one of the specifics of my proposal is

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that when the person whose ethics are being questioned feels that he wants it to be public, he has that option, or if he feels that it shouldn't be open to the public, I think that he should have that option. Now, I think you can keep it quiet the same way you keep a grand jury hearing confidential. I mean, I think there can be rules and guidelines written down so that the preliminary investigations, if you will, the preliminary discussions shall be confidential and not open to the public.

MR. GUSTAFSON: Well, Mr. Chairman, the grand jury analogy isn't quite right because the grand jury, you understand, they ultimately come out and everybody knows they're meeting, and everybody knows who they are looking at and what they are trying to find, so grand juries are not confidential, except that nobody gets in the jury room except by invitation. That isn't quite what you have here.

MR. SAVELKOUL: No, not quite, but I'm talking about the same concept where this commission can not be used as a witch-hunting device for political purposes. I would like to have them be able to make their deliberations without the focus of cameras, etc.

MR. GUSTAFSON: I think the thing that would scare me is something like this, that politics being what it is, somebody could make a charge, and the old saying - 'where there is smoke there is got to be fire' - and it could be totally without merit, but suddenly this person finds himself before this commission and it's a matter of record that somebody is being investigated, and the first thing you know, they know who he or she may be. They are totally innocent, but because there is an offensible charge being developed they are guilty before being innocent.

MR. SAVELKOUL: They can do that now. They can file a complaint. In fact, in my first campaign, I was charged with violating the corrupt practices act. It hit the headlines, and I had no way, other than by my own press releases to give a decision about what I was doing was or was not proper. There was

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no notice other than my word, and what you say is true, that possibility exists, but it exists right now in the form of complaints for violation of the corrupt practice act, and in our statutory committee it exists, and there is no redress other than saying it's true or it wasn't wrong. In my particular campaign the violation, or alleged violation was one of the ads put in the paper did not have my campaign committee's secretary-treasurer's name on it. Like you say, (Interruption) and I think this provides more protection for the abuse that you mentioned than the present status.

MR. SCHUMANN: I am wondering, now, I charge the labor and code ethics (inaudible)

I find a lot of merit in this bill, and I wonder whether by that we ought to preclude it from considering this other than just considering the idea.

MR. KNUTSON: Well, I'm considering the idea. We're not considering it as a bill, and our charge is to make a report to the members on ethics of the legislature, and I thought that we should at least hear the ideas behind this, and if by chance we should want to recommend something like this. We are in no sense considering this bill for passage, or anything like that. We will not be taking a vote on it. It is before a committee.

MR. SCHUMANN: May I add one more thing. I appreciate the idea that it covered all public officials, and the idea that the confidence of many public officials is at stake in our whole system. I think personally, myself, I think it's a good idea.

MR. KNUTSON: I think you're right in raising that question, because we don't want that misunderstanding. We are just considering this for the ideas.

DR. SOMMERDORF: Well, Justice Rogosheske, notwithstanding I think there is some merit in having some non-legislators on this committee if we are judging people outside of the legislature, as well as inside the legislature and the executive branch. In

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response to your question as to whether or not we could charge the committee such as this with keeping things confidential, I see no reason why we can't. The present ethics committee is charged by statute to keep all deliberations confidential to a certain point - what is it, a gross misdemeanor, (Mr. Knutson, yes), so I don't see why we can't put this sanction on the other commission we might set up.

MR. KNUTSON: Any other questions? Thank you Mr. Savelkoul. We surely appreciate your coming down here. One other item that I have tonight, and this is in the nature of a report to the committee from myself.

It disturbed me a great deal about these two reporters who did not choose to come here last time, so I took it upon myself to contact them again and ask them if they wouldn't come over and visit with us about this subject, and I explained to them that our intentions were, if you want to put it this way, purely honorable. They had done some work in this area, and they indicated they would reconsider, and today I received a letter from them that they have said I could make a part of this record, giving the reasons why they would not choose to appear before this committee. So, I am going to make this part of the record by giving each one of you a copy of this letter, and I again am expressing my own personal opinion, I feel rather disturbed about this because I think it's an area where we have had some communications to the public on this subject. At the time that it was done, there was no communication with the committee charged with this responsibility, at least to my knowledge, and I think that our discussions that we've had these past two evenings have been very good for understanding the problems involved in this subject. I think they would have been good background for the writers that did this article. I think they would be good follow-up articles for the writers, and yet they choose not to demonstrate any further interest in investigating this matter.

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I just feel pretty strongly about this. I don't feel that it is a matter that we would care to pursue any further, but I think that I am personally going to let these writers know my feelings as I have expressed them to you tonight, and if anybody wishes to join in or express them otherwise, I think you should feel free to do so.

The only other items I would like to have the committee hear about as these reporters have suggested in their letter, there two people, or three people, four people I guess that they ran across that have done some work in this area, and I will contact them to see when they might be available and see if we can't spend a little time listening to them. They apparently have done enough work to be near experts in this area, if there is such a thing, and I think it might be of advantage to us to hear them.

Is there anything else that the committee would like to hear before we start our deliberations? If not, hearing no objection, I declare the meeting adjourned.