

Minutes
Legislative Compensation Commission (LCC)
Capitol Hill Complex, State Capitol - Room 170
Thursday, March 8, 2012
8:00 a.m. – 9:00 a.m.

Present:

Paul Williams (by phone)	Chair
David Pyne	Vice-Chair
Jim Gowans	Commission Member
Derek Larsen	Commission Member
David Rail	Commission Member
Peggy Wallace	Commission Member
Nicole Sherwood	GOPB Budget and Policy Analyst (staff)
Brian Farr	Legal Counsel, Attorney General's Office (staff)

1. Welcome (Paul): 8:15 a.m.

Paul welcomed everyone to the meeting. Due to the fact that Paul was conducting the meeting by phone, the members and staff went through who was present. Paul thanked everyone for coming together again.

2. Other Items (members' compensation: per diem and expenses) (Nicole): 8:20 a.m.

Nicole reviewed the reimbursement forms with the members. Per statute, members can receive mileage reimbursement.

3. Approval of Minutes from March 5, 2012 (Members): 8:25 a.m.

Motion: Derek moved to approve the minutes. Jim seconded the motion. The motion passed unanimously.

4. Revised Recommendations and Supplemental Report (Members): 8:30 a.m.

Representative Dee contacted Paul to see if he could come by for a quick meeting regarding the Commission's recommendations and a meeting took place on Tuesday. The purpose of the meeting was to discuss the Commission's recommendations from the last report issued. The main issue discussed was in regards to the boards, committees, commissions, and task forces that legislators serve on that are part of the Executive Branch and/or Judicial Branch. The Commission's recommendations resulted in legislators who serve on these types of boards, committees, commissions, and task forces not being eligible to receive a salary or per diem. The issue is that the Commission based its recommendation on a list of boards, committees, commissions, and task forces from the legislative website. Paul stated that the Commission felt comfortable with what it did because its recommendations were tied to legislative duties. However, staff from the Office of Legislative Research and General Counsel (OLRGC) said this was a sticky point. The Senate was not comfortable with the Commission's

recommendations. The Commission was asked to revisit the recommendations and discuss these issues. In all the years that Paul has served on the Commission, he was not aware that legislators were paid for committees that weren't part of the Legislative Branch. He was uncomfortable speaking for the Commission and making any changes on his own. This is an issue that the Commission had failed to discuss and the main reason for today's meeting.

Legislators are paid a salary of \$117 per day, plus per diem as approved by the Legislative Management Committee. Paul had many more questions and contacted Mike Mower from the Governor's Office to gain a better perspective of how things currently work. Paul clarified that Mike Mower's position or comments didn't represent the Governor's Office. The purpose of the conversation was to get informational/data/facts.

At Tuesday's meeting, the OLRGC presented Paul and the Commission's staff a list of boards, committees, commissions, and task forces that legislators currently are a part of. As a result, one question Paul had is whether or not the Commission should go through the list and decide whether or not legislators should be paid. Paul didn't think that it was a good idea because he didn't think it was part of the Commission's charge. Plus, he didn't think the Commission had a good enough understanding of all of the boards, committees, commissions, and task forces listed. Paul commented that there are quite a few.

The Commission discussed a couple issues. The first issue pertained to the statute for the Commission. The statute says that the Commission should make a recommendation on either a daily rate or an annual salary. The second issue is in regards to understanding legislators' duties and those approved by the Legislature.

Paul also spoke to Representative Dee to see what his thoughts were regarding these issues and where the Commission needed to get. Paul said that he recommended taking away the annual salary language and making the recommendation a daily rate. This recommendation/conversation started with the chart that John Fellows presented at Tuesday's meeting, which included the types of boards, committees, commissions, task forces, etc. that legislators are a part of. A copy of this chart was passed out to the Commission members. Paul asked Representative Dee if this change would work and get the Commission to where the Senate felt comfortable. Representative Dee said that he thought it would.

Brian stated that the real issue is what to do with Recommendation #2 in the last report issued by the Commission. John Fellows recommended language to give the Commission an idea of the issues. A copy of this proposed language was passed out to the Commission members.

If you look at the Commission's statute, the salary can be based on a daily rate or an annual salary. The statute doesn't allow the Commission to do a hybrid. There are two paths that can be taken. First, Paul suggested backing off an

annualized salary and recommended going to a daily rate. Second, adding a supplemental recommendation stating that the Commission currently doesn't have the authority to make this type of recommendation, but if it did have the authority then this is the recommendation the Commission would make.

Derek wanted to know exactly what the Commission needed to deal with. Jim stated that the Commission is specifically dealing with extra meetings. Jim gave an example of legislators being paid for serving on an Executive Branch Commission and being paid the daily rate and per diem rates for serving on this particular Commission. Peggy said that there are unique circumstances, but these types of situations should be handled by leadership instead of the Commission. Peggy thought it important to understand who has authority over what. Derek clarified that again the Commission's recommendations have to be a daily rate or an annual salary. David Pyne asked whether the days would be capped. It was stated that the days wouldn't be capped and they could go beyond the 60 days. The Commission's recommendation would be that the salary is \$273 for 60 days. Then they would go beyond that with anything approved by the Legislative Management Committee. They would determine what is paid above and beyond the 60 days. David Pyne said that this is something he would support.

Paul mentioned that the Commission can leave the recommendations as is. The issue Paul had is that legislators are getting paid to attend Executive and Judicial meetings, which is something that had not been discussed or even crossed his mind. He had always assumed that the Commission is responsible for determining the pay associated with the office as a legislator; legislative duties related to the Legislative Branch. He just didn't know enough about the issue. He said that he is not opposed to it, but he just doesn't know enough. He is trying to get up to speed because the Session ends tonight. The Commission can use John Fellow's language or take out the annual salary and change to a daily rate. This will give them the latitude to do what the Legislature is already doing.

The Commission's staff asked the OLRGC what boards, committees, commissions, and task forces they kept referring to. At Tuesday's meeting the OLRGC provided Paul and the Commission's staff with a list as mentioned above. A copy was distributed to the Commission members. The question came up of how the list is created. John Fellows had said at Tuesday's meeting that the list is created by the Legislative Management Committee. At a late date the OLRGC gave the Commission an expanded list and now expect the Commission to make a decision. The Commission agreed that it's a decision that needs more attention.

The statute includes that the Commission can approve the salary for authorized legislative meetings. In their own rules, Joint Rules of the Legislature, authorized legislative meetings is defined by what Legislative Management Committee decides. The Commission doesn't have control on the joint rules. The original

recommendation included the approval of both the Legislature and the Governor. However, the Legislature backed away from this.

One of the questions is who approves the extra meetings and what parameters are set up to determine what extra meetings qualify? The sentiment seems to let the Legislature decide. Jim reiterated that most things have to be approved by the Legislative Management Committee.

The problem is that the array of boards, committees, commissions, and task forces presented at Tuesday's meeting is much broader than what the Commission had seen before. Jim stated that they won't even know what some of the committees are until after tonight. Everybody gets a chance to put a master study list together and it is approved in statute. Then the Legislature picks which ones they can fund this year. Usually meetings take place during interim, before the next session. That is where the Legislature uses its flexibility.

Jim asked Paul what the big concern was in regards to an annual rate versus a daily rate. Is it just the extra committees that aren't black and white? Paul confirmed that this is the issue. Currently the Commission has a split recommendation. If the Commission changes to a daily rate it gives the Senate what it wants and it takes the role away from of the Commission and puts it on the Legislature to determine what they should and should not approve.

As statute states, the Commission needs to make recommendations on the basis to maintain a citizen legislature. Also, Derek said that the purpose of the recommendations is to create transparency.

Paul stated that he is worried about the Commission giving too much. The only time the Commission gets the Legislature's attention is when they want something. We show up to present our recommendations and these last couple of times the Legislature hasn't asked us to present or talk about the recommendations. Paul continued by stating that it's ok, but it would be helpful to know the concerns ahead of time and not quite so late. We go to a lot a work and do the best we can. Really it's hard for as a Commission to get their attention. If we give too much, then we're not going to get it back. He wants to be judicious. The problem is making a decision, based on an understanding that all of us don't have.

Brian mentioned that in going to the daily rate, the Commission should be looking at possible realms and parameters. There is a Supreme Court case that relates to this issue. During the 1990s there was a case in regards to legislators serving on the Judicial Conduct Commission. It went to the Supreme Court. The issue at hand was the setting up an office of profit and trust and violating the Constitution. There are some constitutional limits on what the Legislature can do.

The Commission could add in something about following the Constitution. Peggy liked this idea because it would remind the Legislature that it should be following the letter of the law.

Motion: David Pyne made the motion to adopt the proposed language as presented, to include language in accordance with the State Constitution, and adopt the \$273 daily rate.

Paul wanted to discuss the motion and get everyone's thoughts.

David Rail: I agree with David's motion as long as everything is put together.

Derek: It feels like confusion to me. I thought we were clear on Monday. If we go to a daily rate for up to 60 days, then it is the same thing we were going for.

Peggy: I am comfortable with it.

Jim: I am fine with the changes.

Brian clarified that Recommendation #1, as it now is written, pertains to receiving a salary and per diem based on actual days. For the extra meetings, legislators can get up to \$273 (whatever is approved by the Legislative Management Committee) so as long as the meeting complies with the three condition as follows: set up in statute, set up in a joint resolution or approved by the Legislative Management Committee, and that it's consistent with the Constitution principles.

David Pyne asked how many days do legislators usually meet. Brian responded by saying that they meet 45 days in the Session, about eight interim days a year, and possibly a couple other days for things like a Special Session, etc. David Rail stated that legislators receive a check at the beginning of the Session for the whole Session. So if we authorize up to 60 days then will we be ok. Peggy mentioned that if you don't show up to your committee meeting then you don't get paid. Jim commented that leadership gets stipends at the same time. Legislators get paid up front for the Session and then monthly for attending interim meetings.

The Commission looked at wording from the last report issued. The Commission spoke about replacing the annual salary language with a daily salary language in Recommendation #1. Then the Commission spoke about John Fellows recommended language for Recommendation #2. Also, adding the constitutional language and crossing off legislative leadership.

Brian read proposed language (based on the Commission's discussions) for Recommendation #2 and stated that constitutional language would be added to iii. The Commission thought that the changes seem to get the OLRGC everything they asked for, subject to constitutional revisions. Paul was concerned in regards to whether or not language needed to be added to Recommendation #1. He wanted to make sure everything was covered.

David withdrew his motion.

Substitute Motion: David Pyne made the motion to adopt the following agreed-upon language as read by Brian and discussed as follows:

Recommendation #1:

The Commission recommends that for transparency purposes the daily per diem allowances for food and lodging be replaced with an expense reimbursement system.

The Commission recommends that if legislators eliminate the daily per diem allowances for food and lodging and change to an expense reimbursement system for actual lodging, actual meal and incidental expenses if lodging is necessary, mileage, and travel expenses, then contingent upon these changes the Commission recommends that legislators be paid a daily salary of \$273 per day for the general session, interim days, special sessions, and veto override sessions. Further, the \$273 daily rate is based upon combining the existing \$117 daily rate with the two existing per diem rates of \$95 and \$61. With the elimination of the per diems, members of the Legislature may seek reimbursement for actual travel related expenses similar to the reimbursements for state employees as outlined in the Division of Finance's Utah Admin. Code R.25-7.

The Commission recommends that, if the Legislature is called in due to a natural disaster or other emergency situation that is beyond the scope of these recommendations, the Commission may reconvene to consider compensating legislators for time taken for those circumstances at the daily rate of \$273.

If the Legislature rejects the Commission's recommendations then the salary for a member of the Legislature will remain at the current rate of \$117 per day for 60 days per year.

Recommendation #2:

If legislators eliminate the daily per diem allowances for food and lodging and change to an expense reimbursement system for actual lodging, actual meal and incidental expenses as set forth above, then contingent upon these changes the Commission recommends that legislators who serve on committees, commissions, or task forces, other than Standing Committees, Interim Committees, Legislative Management Committee, Executive Appropriations Committee, and Appropriation Subcommittees, be paid up to an additional \$273 per day for required meetings of such committees, commissions, or task forces held on days other than the general session, special sessions, veto override sessions, and interim days, if (i) the committee, commission, or task force is created by statute or joint resolution, (ii) the meeting and amount is approved by the Legislative Management Committee, and (iii) service and payment for service on such committee, commission or task force is not in violation of Article V, Article VI Sections 6 and 7, or other provisions of the Constitution of Utah.

David Rail seconded the motion. The motion passed unanimously.

5. Additional Meetings (Chair): 9:05 a.m.

None.

6. Adjourn (Members): 9:10 a.m.

Motion: David Pyne made a motion to adjourn. Derek seconded the motion. The motion passed unanimously.