

9 AAC 52.040. Unwarranted benefits or treatment **[emphasis added]**

(a) As used in AS 39.52.120(a), "unwarranted benefits or treatment" includes

(1) a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and

(2) an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.

(b) A public officer may not grant or secure an unwarranted benefit or treatment, regardless of whether the result is in the best interest of the state.

(c) Subject to the requirements of AS 39.52.110, 39.52.120, 39.52.150, and AS 39.90.020, neither the Ethics Act nor this chapter prohibits a public officer from

(1) considering a person who has a relationship with an officer for a state contract or job if the person is considered on an equal basis with other applicants; or

(2) considering an individual's political affiliation or political support in determining whether to appoint the individual to a state board or commission or to hire the individual for an exempt or partially exempt state job.

(3) accepting money to reimburse the public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, if

(A) the public officer is exonerated of a violation of the Ethics Act for which payment is made;

(B) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

(C) the public officer executes a written agreement to repay any money requested and paid in advance of exoneration if the public officer is not exonerated of the violation; and

(D) the public officer repays any money paid in advance if the public officer is not exonerated of the violation; or

(4) approving money to reimburse another public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, entering into an agreement to pay those expenses on behalf of another public

officer, or authorizing payment to secure those professional legal services on behalf of another public officer, if

(A) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

(B) the payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses; and

(C) the public officer whose expenses are paid

(i) has been exonerated of a violation of the Ethics Act for which payment is made; or

(ii) has executed a written agreement to repay any money paid in advance of exoneration, if the public officer is not exonerated of the violation.

(d) For purposes of (c)(3) and (4) of this section,

(1) exoneration of a violation of the Ethics Act

(A) occurs when an allegation in a complaint brought against a public officer under AS 39.52.310 - 39.52.390 is

(i) dismissed under AS 39.52.310(d), 39.52.320, or 39.52.370(d);

(ii) resolved with only preventive action recommended under AS 39.52.330 to avoid a potential violation; or

(iii) dismissed after appeal under AS 39.52.370(f); and

(B) does not include the dismissal or resolution of an allegation in a complaint when corrective action is required under AS 39.52.330;

(2) expenses are reasonable if, based on an evaluation of the complexity of the alleged claim, the attorney's fee or hourly rate, the hours expended, the relationship between the amount of work performed and the significance of the alleged claim, and other relevant factors, the expenses were necessarily incurred to defend against an allegation in a complaint brought under AS 39.52.310 - 39.52.390; those expenses may

(A) include attorney's fees, fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk, and related costs; and

(B) be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid were limited to the alleged violation for which the public officer is exonerated; and

(3) payment under this section may be made to or on behalf of a current public officer or a former public officer who was the subject of a pending complaint when the officer left state service or becomes the subject of a complaint after leaving state service.

History

History: Eff. 4/24/94, Register 130; am 12/22/2010, Register 196

Authority: AS 39.52.120

AS 39.52.950