

ETHICS COMMITTEE MEETING

October 28, 2013

ITEM 8. AO 13-04 Does the Act and AO 12-02 allow for an exception to conduct fund raising activities for Foster Youth, wards of the State?

Requested by: Representative Les Gara.

Included in the packet:

- Representative Gara's advisory opinion request dated September 27, 2013. The request was labeled AO 13-04.
- Draft AO 13-04 by LAA Legal, Dan Wayne. ~~"NOTE: The draft opinion was not available at the time of the packet mailing. The opinion will be emailed prior to the meeting."~~
- AO 12-02 Use of State Resources for Soliciting Charitable Contributions.
- Press Releases and other communications
 - May 17, 2013 press release issued by Representative Gara titled, "May is Foster Care Month."
 - May 20, 2013 corrected press release.
 - Note from Representative Les Gara on the 'akdemocrats' web page.
- June 19, 2013 memo to Representative Gara from Joyce Anderson, Ethics Committee Administrator, recapping informal advice given on May 17, 2013 regarding the May 17 press release soliciting donations for foster youth during May, foster care month.
- Facing Foster Care in Alaska (FFCA) informational materials.
- State of Alaska Office of Children Services – Foster Care Overview Factsheet.
- Web article titled: Alaska's Efforts to Promote Successful Transitions to Adulthood.
- AO 11-02 Use of State Resources – Business Endorsement
- AO 11-03 Use of State Resources – Medicare Providers

BACKGROUND INFORMATION which may be helpful:

AO 12-02: Provides general guidelines and clarification regarding the use of state resources for soliciting charitable contributions. Activities beyond merely asking for gifts or accepting gifts on behalf of a charitable organization, i.e., activities such as organizing and/or facilitating the fund raising event, are prohibited.

Two Advisory Opinions that may have relevance

AO 11-02: Provides general guidelines regarding the use of state resources when naming for-profit businesses in a legislative communication.

AO 11-03: Provides an exemption for listing for-profit Medicare clinics in a legislative communication with limitations and under certain conditions.

DISCUSSION: Representative Gara will explain his request. Committee members discuss and review the draft opinion. Committee chair asks for public comment. Committee members discuss the draft opinion and make changes, additions or deletions if warranted.

ACTION: Motion to approve AO 13-04 as written or with changes. A roll call vote is required.

ALASKA STATE LEGISLATURE



A013-04

REPRESENTATIVE LES GARA

September 27, 2013

Dear Members of the Select Committee on Legislative Ethics:

I am writing to seek a ruling on work we would like to do for Alaska's foster youth (and youth in the state's Independent Living Program, or "ILP" program, which involves current and recently released foster youth up to age 23, and is a program that by state law is missioned to help these youth succeed after foster care in college, job training, with counseling, and homelessness-prevention efforts).

The state, under Alaska law, is the legal guardian of Alaska's foster youth. As a state legislator sworn to uphold Alaska's laws, I am part of that guardianship, and believe I have an obligation to take it seriously so youth under our guardianship have a chance to lead successful lives.

ACTIVITY FOR WHICH PERMISSION IS ASKED

I am writing because the state used to provide laptops to foster youth, to help them succeed in school, and lead as normal a life as possible (they can use Facebook to stay in touch with friends, store family pictures, etc. – things they have a harder time doing, with less success, if they have no computer).

The state does not do this on a blanket basis anymore and youth have a hard time doing their school or post-secondary homework without a computer.

I would like to help advertise the need for laptops for foster youth. Laptops are portable and many youth live in 10, 20 or more foster home placements, so a laptop is easier to transport than a bulky desktop as they pack up their bags and move from home to home. And since the only real foster care group that does non- court-related proceedings is a non-profit called Facing Foster Care in Alaska (FFCA) is essentially run by one person, who has a full time job at the University, they cannot perform the work they need to do, ideally, without help. That means fewer youth will succeed under Alaska's guardianship.

Facing Foster Care in Alaska, while a non-profit, works closely with the Alaska Office of Children's Services (OCS), has office space in the OCS office; trains OCS workers on youth needs; informs on policies that improve foster youth outcomes; does community work for foster youth; and holds peer mentoring retreats so foster youth have others they can connect with. FFCA also gives youth resources so they can succeed. But they work very closely with the state, including through space at the state's OCS office in Anchorage.

ADVICE AND PERMISSION SOUGHT FROM ETHICS COMMITTEE

I would like to help this non-profit as follows, and think this non-profit has special standing because the state has legal custody of Alaska's foster youth, and a concurrent obligation to help these youth succeed so they end up in productive lives, and not on the streets or in jail.

I would like to use my office, including my and staff time (not to exceed a few hours here and there, and likely not average more than 5 hours in a month) to do the following:

- 1) Promote community donation of new and used laptops, and funds to purchase them which some donors prefer, for foster youth and recently graduated foster youth in the state's ILP program. I can work with the press (as legislators frequently do), my newsletters and public talks to get laptop donations, and monetary donations to buy laptops, which all go to FFCA, and through them and the state's Office of Children's Services, to then to current and recently graduated foster youth in need.
- 2) Sometimes people want to bring a laptop or donation to FFCA to our office, rather than FFCA, which has no full time staff of office presence. I would like permission for my staff to accept these computers. The computers will then be matched through a collaboration between OCS social workers and staff, and FFCA, with our office taking no part in the matching decisions.
- 3) To be safe, we ask people to empty their files from their computer, but if they cannot, there are volunteers in town who are willing to do this; and willing to repair broken computers. When no FFCA person (really, it is only FFCA head Amanda Metivier who works on this for that group and she is in over her head with work – and they do not have the finances to change this) can do this, we would like to share the work to make sure laptops get to youth. If Amanda does not have time we would like the permission to have staff bring or pick up computers from the people who work to repair them or clean their drives. We would essentially like to work with FFCA on this effort – an idea we started roughly four years ago, that has resulted in over 200 computer-foster youth matches.

That is the request. We would like to be able to do points 1-3. It is all aimed at working with a non-profit and the Office of Children's Services. The Office of Children's Services will not do the work our office proposes, unfortunately.

Finally, under Alaska law, legislative offices are explicitly allowed to **"solicit, accept, or receive a gift on behalf of a recognized, nonpolitical charitable organization...."** Alaska Statute 24.60-080(g). I understand the Ethics Committee has an opinion out on that statute.

First, I think that since foster youth are wards of the state, and the state is their legal guardian, this is work that our office should be allowed to do. I and my staff would use minimal time to do what the law requires of us – promote the well-being and success of youth charged to us as dependents under Alaska law. And, as an aside, it would be odd to call it unethical for a legislative office to help wards of the state - i.e., youth whom we are the legal guardians of - succeed.

You should also know that as a legislative minority member, it is harder to get my bills passed. My job is not only to pass bills. It is to improve the state, and the lives of Alaskans, as I can, and to inform voters how they can have an impact on the lives of Alaskans for everyone's betterment.

That is my main request and reasoning under Alaska law.

Second, I would ask that you run your former opinion by outside counsel, though that is not necessary to the first request. But this would form a second basis for allowing my office to do what we propose, and would clarify the law on many other situations. Again, I would ask for a favorable ruling under the first analysis offered above. But the following justifies the request I make here as well.

As an attorney I know the following rule of statutory interpretation. When there is a statute that says a specific thing, as is the case here (legislative offices may solicit and accept and receive items on behalf of non-profits), the law in Alaska as ruled by the Alaska Supreme Court, is that the statute must be enforced **according to its terms**, regardless of whether one feels the statute is good or bad policy.

A statute may only be interpreted more narrowly than it is written if there is STRONG legislative history to overcome the language in the statute, and that explicitly shows the Legislature intended something other than what it wrote. There is no such strong legislative history to override the language the Legislature passed. I would therefore ask, at least in the context I describe, the Committee to reconsider its opinion in AO 12-02 (which involved facts much less compelling than those here, and did not involve people the state has a legal obligation to as guardian).

I understand the Legislative Ethics Committee's logic in the policy it adopted in that opinion. But the language of the statute is required to be interpreted as written, and to allow legislators to help raise funds for and work with non-political non-profits. I believe outside counsel, with legal experience on this rule of statutory interpretation would confirm that. That is, the Committee should not adopt a rule it feels is best (I understand the noble urge to do so), when a statute provides for an opposite conclusion. The language of Alaska's statutes clearly states legislators

may solicit on behalf of non-partisan non-profits, which would serves as a second basis for the ruling I request.

Thank you. I strongly urge the committee to bring in it's able outside counsel to inform it on this rule of statutory interpretation in Alaska.

Best regards, and thank you for your work.

A handwritten signature in black ink, appearing to read "Les Gara", with a long horizontal flourish extending to the right.

Rep. Les Gara

October 23, 2013

DRAFT ADVISORY OPINION 2013 - 04

RE: Use of legislative assets or resources to assist a charitable organization

You are a legislator and are therefore covered by the Legislative Ethics Act. You have requested an advisory opinion concerning facts and circumstances that you have related. The Select Committee on Legislative Ethics relies on the facts that you have described to answer your questions.

Question presented

Does the Legislative Ethics Act permit a legislator or a legislative employee to use the assets and resources of a legislative office, including labor by a legislator and one or more employees from the legislator's office staff, to assist a non-profit charitable organization as follows:

- (1) promote donations to the organization -- of laptop computers and money to purchase laptop computers;
- (2) on behalf of the organization, accept delivery of laptop computers and money to be used for the purchase of laptop computers;
- (3) help repair donated laptop computers and purge unwanted files from them; and
- (4) pick up donated laptop computers from various locations in the community, after the computers have undergone repair.

Statement of facts

A non-profit charitable organization called "Facing Foster Care in Alaska" (FFCA) works closely with the Alaska Office of Children's Services (OCS), has office space in the OCS office, trains OCS workers regarding youth needs, informs about policies that improve foster youth outcomes, does community work for foster youth, and holds peer mentoring retreats so that foster youth can connect with each other for peer support. The legislature is not a member of FFCA.

Based on an idea that came from your office four years ago, FFCA accepts donations of new and used laptop computers, or, in some cases, money to purchase laptop computers. In some instances, donors prefer to deliver donations of money or laptops to FFCA by leaving the donations at your legislative office. FFCA is short-staffed and has difficulty managing some of the work associated with the donations. If your office contributes to this effort, your proposed duties would be to accept donations of laptop computers and money to buy laptop computers on behalf of FFCA, help FFCA repair the laptop computers and purge unwanted files from computer drives, and occasionally have staff pick up laptop computers from other locations where they have undergone repair. Your office would not be involved in deciding which foster children actually receive the donated computers or money.

Discussion

AS 24.60.030(a)(2) prohibits three uses of legislative assets and resources -- use for a nonlegislative purpose, use for a partisan political purpose, or use for the private benefit of any person.¹ Within AS 24.60.030(a)(2) there are several exceptions to these prohibitions. The prohibitions and two relevant exceptions read:

Sec. 24.60.030. Prohibited conduct and conflicts of interest.

(a) A legislator or legislative employee may not

....

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, legislative employee, or another person; this paragraph does not prohibit

¹ Similarly, AS 24.60.030(a)(3) says that a legislator or legislative employee may not "use, allocate, grant, or award public funds for a purpose other than that approved by law."

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility.

The exception most obviously relevant to your question is (I), which allows soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility notwithstanding the prohibitions in AS 24.60.030(a)(2). As we did in AO 12-02, we interpret "solicit" as meaning "to approach with a request or plea." Therefore, exception (I) permits you and your staff to use government assets or resources to promote donations to FFCA by asking for donations to FFCA.

You and your staff may also use government assets or resources to receive the donations. Because "receive" as used in both AS 24.60.030(a)(2)(I) and AS 24.60.080(g) is undefined by the Act, we give it its common and ordinary meaning.²

As we noted in AO 13-02, when a term in a statute is undefined we follow the advice of the Alaska Supreme Court and look to a dictionary as a starting place and then give the term its common meaning. The most relevant definition of "receive" in *Merriam-Webster's Collegiate Dictionary*, eleventh edition, is "to come into possession of."

² AS 24.60.080(a) prohibits or limits the receipt of certain gifts by legislators and legislative employees. However, an exception under AS 24.60.080(g) says "[N]otwithstanding (a) of this section, a legislator or legislative employee may solicit, accept, or receive a gift on behalf of a recognized, nonpolitical charitable organization."

AS 24.60.030(a)(2)(I) permits a legislator or legislative employee to come into possession of a donation on behalf of a non-profit charitable organization.

We interpret "in a state facility" in AS 24.60.030(a)(2)(I) as an exception, to the bar on the use of government resources, that allows a legislator or legislative employee to receive a donation on behalf of a charity *even* in a state facility.³ This means that regardless of where a legislator or legislative employee happens to be at a given time, a legislator or legislative employee is permitted to come into the possession of a donation intended for a non-profit charitable organization.⁴ However, we do not construe "receive" to allow the use of legislative assets and resources for picking up and delivering donations on behalf of a charity, except as permitted under AS 24.60.030(a)(2)(A), an exception that allows "limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal *or* the legislator or legislative employee reimburses the state for the cost of the use." (*Italics added.*)

In AO 12-02 we said:

[T]here is a substantial interest in seeing that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest. Clearly the Legislature has approved legislators and staff asking for gifts for recognized, nonpolitical charitable organizations. But any activities beyond merely asking for gifts or accepting or receiving gifts on behalf of a charitable organization gives the

³ This contrasts with AS 24.60.080(a)(2)(D), a charitable gift exception to a bar on gifts from lobbyists. In that context "on the premises of a state facility" is clearly meant as a limitation.

⁴ We also note that "accept" is not defined by the Act. Based on *Merriam-Webster's Collegiate Dictionary*, eleventh edition, we interpret "accept" to mean the same thing as "receive," in the context of AS 24.60.030(a)(2)(I).

perception at least of conflicts of interest and impugns the integrity of the legislative process and should be avoided. [Internal citations omitted.]

Finally, it is important to note that, although we said in AO 12-02 that in certain narrow factual circumstances we might not consider a legislative employee to be a government asset or resource under AS 24.60.080(a)(2), for the purposes of AS 24.60.080(a)(2) a legislative employee is always a government asset or resource while on government time, regardless of factual circumstances. There is no definition of "government time" in the ethics code. Page 13 of the 2013 edition of *Standards of Conduct Handbook for Legislators and Legislative Employees*, adopted by this committee, says that "government time" is "time for which the employee is being compensated by the state for work performed based upon a schedule set by the supervisor." We relied on a similar definition of "government time" in AO 94-08.

Conclusion

Although the state has a special responsibility to children, and especially to foster children, the exception in AS 24.60.030(a)(2)(I) is not broadened as a result of that. Clearly the legislature as a body may authorize the use of state funds for foster children, however this does not mean an individual legislator may use legislative resources to benefit foster children without limitation. AS 24.60.030(a)(2)(I) is a narrow exception to the three prohibitions in AS 24.60.030(a)(2), which includes the prohibition on the use of government assets or resources for the private benefit of any person.

We concluded in AO 12-02, an opinion regarding exceptions for charitable donations under AS 24.60.030(a)(2)(I) and AS 24.60.080(g), that "[A]ny activities beyond asking for gifts or accepting gifts or receiving gifts on behalf of charitable organizations are not permitted."

Under AS 24.60.030(a)(2)(I), an exception to AS 24.60.030(a)(2) for gifts to a charity, you and your legislative staff are permitted to use government assets or resources to ask

for donations to FFCA and to receive or accept them at any location.⁵ However, except to the narrow extent permitted by the "limited use" exception in AS 24.60.030(a)(2)(A), the Legislative Ethics Act does not permit you and your legislative office staff to use legislative assets or resources to pick up donated laptops from various locations in the community, repair donated laptops, or purge donated laptop computer drives of unwanted files. As we concluded in AO 08-03, the volume of staff time and other government assets or resources allowed by the exception under AS 24.60.030(a)(2)(A) is dependent upon the facts particular to each case.⁶

⁵ We also advise that when soliciting, receiving, or accepting donations from a charity, legislators should keep in mind the following prohibitions in AS 24.60.030(e)(1) and (e)(2):

(e) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

(2) state or imply that the legislator will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

...

⁶ For examples of outcomes based on particular facts, see AO 04-01 (allowing personal use of constituent information gathered by a legislator using legislative resources such as staff time); AO 06-01 (allowing legislators and legislative employees to receive "two to three pieces of personal mail per week or less" via the legislature's mailroom); and AO 13-03 (permitting a legislator to use legislative resources to distribute a limited number of legislative newsletters to persons who are not among the legislator's constituents).

Adopted by the Select Committee on Legislative Ethics on **

Members present and concurring in this opinion were:

Members dissenting from this opinion were:

Members absent were:

LIST OF MEMBERS OF THE COMMITTEE

H. Conner Thomas, Chair	yes	no	absent
Representative Charisse Millett	yes	no	absent
Representative Chris Tuck	yes	no	absent
Senator Berta Gardner	yes	no	absent
Senator Cathy Giessel	yes	no	absent
Gary J. Turner, public member	yes	no	absent
Herman G. Walker, Jr., public member	yes	no	absent
Dennis (Skip) Cook, public member	yes	no	absent
Janie Leask, public member	yes	no	absent

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Alaska State Legislature

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June 14, 2012

ADVISORY OPINION 12-02

SUBJECT: Conflict of Interest – Use of State Resources-Charitable Contributions

RE: Use of State Resources for soliciting charitable contributions

This opinion was initiated by the Select Committee on Legislative Ethics (committee).

Questions Presented

The committee has posed the following hypothetical: A legislator solicits charitable contributions and conducts fundraising activities on behalf of a recognized, nonpolitical, charitable organization to which the Legislature does not belong. For purposes of this opinion, it is assumed that there is no “legislative purpose” for this activity as this term is traditionally used.¹

If the legislator engages in the following activities, do they constitute violations under the Legislative Ethics Act?

- Use of the legislator’s legislative office in Juneau or interim office for conducting these activities.
- Use of other state facilities such as a Legislative Information Office conference room to hold meetings with or for the charitable organization.
- Use of the Legislative Affairs Agency Print Shop for printing needs.
- Use of the legislator’s staff to organize the meeting and facilitate activities connected to fundraising.

¹ While this term is not defined in the statutes, its use generally involves a determination of whether the activity is necessary to allow a legislator to perform official duties. AS 24.60.030.

- Use of the Legislative Affairs Agency staff and equipment and services for meeting and teleconference functions.
- Use of the legislator's office allowance account to pay for expenses associated with the activity such as meeting luncheon costs.
- Use of any other government assets associated with the above functions.

DISCUSSION

The general rules for analyzing ethical conduct in the Alaska legislative arena are codified in AS 24.60.030(a). In particular to the facts of this case, the applicable statute states as follows: "A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person. . . ." AS 24.60.030(a)(2).

In 1998, the Legislature amended AS 24.60.030 to exclude from this general tenet, among other things, a legislator from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization. This language was considered to be a codification of Advisory Opinions 94-6 and 96-4.

In Advisory Opinion 94-6, the committee considered whether a volunteer could solicit contributions or pledges outside of working hours and outside of government buildings on behalf of a nonpolitical, nonprofit organization. The committee determined that even though on its face, AS 24.60.080(a) appeared to prohibit the solicitation of gifts, that a contribution solicited by a legislator to a charitable organization should be exempted when made to a recognized charitable organization. While cautioning about the potential for an appearance of impropriety, the committee also determined that a legislator could solicit a lobbyist for a donation to a recognized charitable organization even during the legislative session.

Subsequently, the committee was faced with whether a legislative employee would be in violation of the ethics code if he or she solicited donations (money, goods, and services) from businesses and individuals for a meeting of the executive committee of the National Conference of State Legislatures in Anchorage. In Advisory Opinion 96-4, the committee found that solicitations from businesses or employees for this purpose did not violate the legislative ethics code citing Advisory Opinion 94-6. In a rather unfortunate use of language, the committee went on to find that the ". . . ethics code did not prohibit using legislative office space, staff, and other resources to solicit contributions to host a meeting of the executive committee of the National Conference of State Legislatures." In drawing this conclusion, the committee wrote "[t]he committee cannot say that preparations for the legislature to host a conference of a committee of the National Conference of State Legislatures constitute a nongovernmental purpose."² The

² The term "nongovernmental" in AS 24.60.030(a)(2) was changed to "nonlegislative" with the passage of Senate Bill 105 in 1998, effective January 1, 1999.

implication of this statement could be interpreted to allow the use of legislative resources for any charitable endeavor.

It is our opinion that this is too broad a reading of Advisory Opinion 96-4. The facts of Advisory Opinion 96-4 are unique and stand for the proposition that a meeting of the executive committee of the National Conference of State Legislatures has a clear “governmental purpose” and is not in conflict with ethical constraints. AS 24.60.030(a)(2) prohibits the use of “public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose.” The use of public resources was justified in this opinion because the committee determined the use was for a “governmental purpose,” not because the cause was related to a recognized, nonpolitical charitable organization.

In 2001, the Legislature enhanced the exception to the general rule by allowing the solicitation, acceptance or receiving of gifts “in a state facility.” The testimony offered in support of the bill noted that this subsection was designed to address the annual Betty Fahrenkamp Golf Tournament held in the capitol “and make it clear that the legislature has no objection to this use of the capitol and state resources.” (Testimony of Joe Balash at the State Affairs Committee meeting on February 27, 2001.) Again in 2006, the Legislature expanded the exception under AS 24.60.030(a)(2)(I) to include not only legislators but also legislative employees. The testimony offered in support of the bill noted that legislative employees more than likely sent out letters soliciting donations for the Betty Fahrenkamp Golf Tournament, organized by the legislature and held in the capitol building, and “if we want to allow the activity then it ought to be clear that it’s allowed.” (Testimony of Senator Gene Therriault at the Senate State Affairs Committee meeting on March 21, 2006.)

Although there are limited advisory opinions addressing this issue, the language in Advisory Opinion 11-02 appears to support this limited reading of Advisory Opinion 96-4. The committee was asked to determine if use of legislative newsletters and press releases to acknowledge and thank for-profit businesses and their agents for donating to charitable programs was ethically permissible.³ While holding that a mere acknowledgment and thanking a for-profit business for charitable contributions was not a “benefit” subject to ethical scrutiny, the committee emphasized that newsletters or press releases by legislators were state resources that could not be used for the purpose of political fundraising or campaigning.⁴

With these principles in mind, and noting the specific facts of this request, which include a reference to a legislator who is soliciting charitable contributions and conducting fundraising activities on behalf of recognized, nonpolitical, charitable organizations to which the Legislature does not belong,⁵ we address the inquiries below:

1. Use of a Legislative Office in Juneau or Interim Office to Conduct Such Activities.

³ AO 11-2 at p. 1.

⁴ AO 11-2 at p. 3.

⁵ The propriety of this conduct is controlled by Advisory Opinions 94-6 and 96-4, and the specific language that appears in AS 24.60.030(a)(2)(I) and AS 24.60.080(g).

This issue is governed by the provisions in AS 24.60.030(a)(2), AS 24.60.030(a)(2)(A), AS 24.60.030(a)(2)(D) and AS 24.60.030(a)(2)(I).

AS 24.60.030(a)(2) A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit . . .

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use; . . .

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and nominal wear and tear, or the legislator promptly reimburses the state for the cost; and office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; . . .

(I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

The language of AS 24.60.030(a)(2) does not allow the use of a legislator's office to solicit contributions absent an exception found in Section (A), Section (D), or Section (I). Use of the legislative office (a state resource) to conduct the stated activities would be for a non-legislative purpose in violation of AS 24.60.030(a)(2). The question remains, are there statutory exceptions to this apparent ethical violation? We conclude there are two recognized exceptions which would allow this activity: AS 24.60.030(a)(2)(D) which allows limited use of a legislative office during session, and shortly before and after session, so long as it does not interfere with the legislator's performance of legislative duties; and AS 24.60.030(a)(2)(I) which allows a legislator to solicit charitable contributions in a state facility.

The exception found in AS 24.60.030(a)(2)(A) only applies to "limited use of state property and resources for *personal purposes* . . ." (Emphasis added.) Since the use of the legislative office would not be for personal purposes, this exception would not apply to these facts. On the other hand, the exceptions found in AS 24.60.030(a)(2)(D) and (I) do appear to apply to allow this conduct. For instance, AS 24.60.030(a)(2)(D) permits an exception to the general rule of not

using state resources for non-legislative purposes by allowing the use of a legislator's private office in Juneau during the session, and ten days before and after the session, for non-legislative purposes. This activity is allowed "if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost."⁶ The use of a legislator's office shortly before, during, and shortly after the legislative session for purposes of soliciting charitable contributions on behalf of a recognized, nonpolitical, charitable organization appears to fall within the terms of this exception.

Likewise, AS 24.60.030(a)(2)(I), exempts the activities of a legislator who *solicits*, accepts, or receives a gift on behalf of a recognized, nonpolitical charitable organization *in a state facility*. The language of this exception also appears to support use of a legislator's office for soliciting charitable contributions. Under the language of either statute, it appears that it would not be a violation of the Legislative Ethics Act to use a legislator's legislative office for soliciting charitable contributions within the restraints noted above.

2. Use of the Legislative Affairs Agency Print Shop for Printing Needs to Assist in Such Activities.

The use of the Legislative Affairs Agency Print Shop for printing needs related to soliciting charitable contributions would constitute a use of "public funds, facilities, equipment, services for a nonlegislative purpose."⁷ As such, it would constitute a violation of the Legislative Ethics Act unless there was a noted exception. There are no statutory exemptions found in AS 24.60.030 that would allow the use of the Legislative Affairs Agency resources for soliciting charitable contributions.

The language of AS 24.60.030(a)(2)(I) only exempts the stated activities of a legislator or a legislative employee from soliciting, accepting, or receiving a gift, but does not apply to the use of other state resources. We do not read the language of AS 24.60.030(a)(2)(I) as allowing the use of state resources for non-legislative purposes and find no support for this reading in the legislative history of the statute.

3. Use of the Legislator's Staff to Organize the Meeting and Facilitate Activities Connected to the Fundraising.

Next, we are asked whether the use of a legislator's staff to organize a meeting and facilitate activities connected to fundraising for charitable contributions violates the Legislative Ethics Act. While a legislator's staff employee could be considered a state resource under certain circumstances, we do not take that position in this opinion for two reasons. First, both AS 24.60.030 and AS 24.60.080 talk in terms of "legislators or legislative employees" in identifying prohibited activities. Second, AS 24.60.030(a)(2) does not reference staff in the types of things that constitute government assets or resources. ("A legislator or legislative employee may not...use *public funds, facilities, equipment, services or another government asset or*

⁶ AS 24.60.030(a)(2)(D).

⁷ AS 24.60.030(a)(2).

resource... ”)(Emphasis added.) These references lead us to believe that a legislator’s staff should not be considered a state resource.⁸

Because it is not unethical under the Act for a legislator or legislative employee to solicit a gift, the answer to this question is whether organizing or facilitating activities connected with fund-raising constitutes ‘soliciting’ under the statute. A narrow interpretation of this term might preclude such activity while a broader interpretation would arguably allow such conduct. Merriam Webster’s dictionary defines ‘solicit’ as “to approach with a request or plea.”

We interpret the term ‘solicit’ literally and narrowly under these circumstances. The first stated purpose of the Legislative Ethics Act is high moral and ethical standards among public servants.⁹ Additionally, there is a substantial interest in seeing that legislators and legislative employees conduct the public’s business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest.¹⁰ Clearly the Legislature has approved legislators and staff asking for gifts for recognized, nonpolitical charitable organizations. But any activities beyond merely asking for gifts or accepting or receiving gifts on behalf of a charitable organization gives the perception at least of conflicts of interest and impugns the integrity of the legislative process and should be avoided. Therefore, while it is permissible to actually solicit or ask for contributions on behalf of recognized, nonpolitical charitable organizations, we conclude more than that is not ethically permissible.

4. Use of the Legislative Affairs Agency Staff and Equipment and Services for Meeting and Teleconference Functions.

See analysis in Sections 2 and 3 above.

5. Use of the Legislator’s Staff and Equipment and Services for Meeting and Teleconference Functions.

See analysis in Sections 2 and 3 above.

6. Use of the Legislator’s Office Allowance Account to Pay for Expenses Associated with the Activity Such As Meeting Luncheon Costs.

See analysis in Section 2 above.

7. Use of any Other Government Asset Associated with any of the Above Functions.

See analysis in Section 2 above.

CONCLUSION

While the general rule under AS 24.60.030(a)(2) continues to prohibit the use of state resources for nonlegislative purposes, there are recognized exceptions for the use of a legislator’s office

⁸ Legislative staff are still required to abide by the Legislative Ethics Act. See AS 24.60.

⁹ AS 24.60.010(1).

¹⁰ AS 24.60.010(2).

during the 10 days before, during and the 10 days after session. One example would be soliciting charitable contributions on behalf of a recognized, nonpolitical, charitable organization. Additionally, a legislator and staff are allowed to solicit gifts on behalf of recognized, nonpolitical charitable organizations without violating Alaska's Legislative Ethics Act. But we interpret the term 'solicit' narrowly under these circumstances. Any activities beyond asking for gifts or accepting or receiving gifts on behalf of charitable organizations are not permitted. On the other hand, soliciting, accepting, and receiving contributions for a meeting of a nonprofit organization that has a clear "legislative purpose" are permitted. As noted in prior advisory opinions, care should be taken to avoid appearances of impropriety even if conduct is not prohibited by the ethics code.¹¹ Similar admonitions are applicable in the situations outlined in this opinion.

BRC/ksg

Adopted by the Select Committee on Legislative Ethics on June 14, 2012

Members present and concurring in this opinion were:

Herman G. Walker, Jr., Chair
Representative Craig Johnson
Representative Chris Tuck
Senator Gary Stevens
Senator Donny Olson (alternate for Senator John Coghill)
Dennis (Skip) Cook
Antoinette (Toni) Mallott
H. Conner Thomas
Gary J. Turner

¹¹ AO 94-6 at p. 5 ("The committee notes that the potential for appearance of impropriety is high when legislators and legislative employees request favors of lobbyists, even on behalf of worthwhile organizations. The committee therefore urges you to use caution in making a decision about whether to approach a lobbyist, especially during a legislative session."). AO 96-4 at p. 3. (As the committee noted in Advisory Opinion 94-6, care should be taken in requesting donations from lobbyists. Although the logical conclusion of this opinion does not prohibit requesting lobbyists to contribute to the conference, the particular interest that a lobbyist may have in securing the good will of a legislative office suggests that soliciting a lobbyist for donations may give rise to the appearance of impropriety even if the solicitation is not prohibited by the ethics code.")

Joyce Anderson

From: Mark Gnadt
Sent: Friday, May 17, 2013 8:51 AM
To: Mark Gnadt
Subject: NEWS: May is Foster Care Month - Call for donations



REPRESENTATIVE LES GARA

(907) 269-0106

www.replesgara.com

rep.les.gara@akleg.gov

CONTACT: **Toby Smith**

FOR IMMEDIATE RELEASE
May 17, 2013

May is Foster Care Month

Rep. Gara, Facing Care Group Ask for Small Donations that Make a Big Difference

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"Two things that would make a huge difference in the lives of foster youth are new or gently used laptops so youth can succeed in school, and care packages so that youth in college or job training courses have simple items, like the sheets, pillow cases and blankets one youth didn't have when she arrived at her college dorm," said Facing Foster Care In Alaska Statewide Coordinator Amanda Metivier. "Providing foster youth with opportunity allows them to break the cycle and better their futures. A laptop might not seem like much to some people, but it can be the difference whether or not a foster youth graduates high school. That's also true for having small things like an alarm clock, food to eat, and bedding. Donating care package items allows them a chance at success," said Metivier.

Both Rep. Gara and Metivier are former foster youth and have been working together on legislative reforms and volunteer efforts for many years.

The two started a Laptops for Foster youth program that will have matched roughly 375 computers with youth by the end of the month. Youth use laptop computers to do homework, school research

and projects, and to stay in touch with family members and friends. A computer is often the only way some youth can keep pictures of family members. Rep. Gara and Metivier ask for laptops because these computers are more portable.

"Some foster youth bounce between five, ten, or even more than 20 foster homes during their childhood," said Gara. "It's important they have a computer than can stay with them."

"Foster youth simply don't have the things, and the support most children from strong families have. Our goal with foster youth is the same as our goal for all Alaskans—to give them the best chance possible to succeed. Because foster youth have few resources and often bounce between homes, this takes a special effort from all of us. We have to face the reality that when these youth leave foster care, they often have minimal funds, or responsible adult in their lives to lean on or call when they need help," said Rep. Gara.

A University of Washington/UAA study from 2008 showed that roughly 40% of foster youth in Alaska end up homeless as some point in their lives after they leave care.

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Rep. Gara, Sen. Davis and Metivier have worked with the Legislature to improve foster youth college and job training opportunity, and to reduce homelessness and foster youth instability in a system where some youth bounce between many homes and schools when their lives are already filled with much dislocation and stress.

To make donations Alaskans are asked to do the following - preferable during Foster Care Month, but also at any time during the year if now isn't possible:

Laptop Computers: Gara and Metivier are looking for donated late model used or new laptops that work quickly, not slowly, and have Wi-Fi capability and a word processing program. They can also take tax deductible donations, made to Facing Foster Care In Alaska, which will be used for laptops that will be matched with current or recent foster youth.

Care Packages: Facing Foster Care In Alaska will accept tax deductible donations that will be used to help foster youth who are studying in college, or job training programs, who need basic items like clothes, bedding, and other things they don't have money for.

To donate a laptop, or make a monetary donation contact Rep. Les Gara's Office at 269-0106. Gara's Office will then coordinate with Facing Foster Care In Alaska to get the donations and the computers to foster youth.

###

Mark Gnadt

Press Secretary, House Democratic Caucus

W: (907) 465-3842; C: (907) 209-7006

www.akdemocrats.org

www.facebook.com/AKdemocrats

www.twitter.com/akhousedems

www.youtube.com/AKHousedemocrats

Joyce Anderson

From: Mark Gnadt
Sent: Friday, May 17, 2013 3:30 PM
To: Mark Gnadt
Subject: Correction On Today's Foster Care Month Press release

Please disregard this morning's Press release on Foster Care Month. A corrected press release on Foster Care Month will be issued next week.

We apologize for the inconvenience.

Mark Gnadt

Press Secretary, House Democratic Caucus

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www.facebook.com/AKdemocrats

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Joyce Anderson

From: Mark Gnadt
Sent: Monday, May 20, 2013 9:30 AM
To: Mark Gnadt
Subject: CORRECTION: May is Foster Care Month - Call for donations

CORRECTION: The place to drop off laptop computers or donations has been corrected in the release below. Please do not bring them to Rep. Gara's office, but instead call Amanda Metivier at 907-230-8237.

From: Mark Gnadt
Sent: Friday, May 17, 2013 8:51 AM
To: Mark Gnadt
Subject: NEWS: May is Foster Care Month - Call for donations



REPRESENTATIVE LES GARA

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rep.les.gara@akleg.gov

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May 17, 2013

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Formatting look odd (especially Yahoo users)? Then click here: http://akdemocrats.org/gara/052413_note_from_gara.htm

A Note from Representative Les Gara

Anchorage
House District 18



Small Efforts Can Change A Life: May Is Foster Care Month.

Dear Neighbors,

Okay, it's time I walked the talk. Do politicians ever do that? Are we allowed? Um. Yes.

This week I gave away my favorite laptop to the Laptops for Foster Youth program we started with Facing Foster Care in Alaska a few years ago. They will work with the State to match that laptop with a foster youth or recent alumni pursuing college or success in the job market. Foster youth will do, well, what kids do with laptops. So far we have matched roughly 375 laptops with youth who used them to do their homework, keep up with the Kardashians, stay in touch with distant family members at a time their life is going through upheaval, and maybe store pictures of their favorite relative.



Rep. Gara with foster youth and UAA student Sarah Redmon

If you have a GOOD, FAST used laptop, a new one, an iPad that works well, or want to donate funds to Facing Foster Care, contact them at the number below. If you have a slow one, well, keep it or give it to someone you don't like. Seriously, we want to treat foster youth like the first class citizens they are, and they will not use a laptop that requires a bird inside the machine to do typing, and internet molecule sending, with a stone.

And I'll pull at your heartstrings one more time. This office has worked hard to expand opportunity for foster youth through legislation. We now have more college scholarships, job training scholarships, and housing help to avoid



May 24, 2013

Voice Your Opinions!

Letters to the editor make a difference. You can send a 175-word letter to the Anchorage Daily News by e-mail (letters@adn.com); or by fax or mail (call them at 257-4300). Send letters to the Anchorage Press via e-mail editor@anchoragepress.com or by mail to 540 E. Fifth Ave, Anchorage, 99501. Feel free to call us if you need factual information to help you write a letter.

Contact the Governor. The Governor can be reached at 269-7450; sean.parnell@alaska.gov; or www.alaska.gov.

Contact us. My office can be reached at: 716 W. 4th Ave, Anchorage, AK 99501; by phone: 269-0106; visit my website at <http://gara.akdemocrats.org>; or email: Rep.Les.Gara@akleg.gov

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the plague of foster youth homelessness. Last year a young woman with a UA scholarship didn't know she needed her own bedding for her dorm bed. She had no sheets, no pillowcase, no pillow, and no blanket. Facing Foster Care is also accepting donations to help pay for care packages for youth who they have identified like this young woman.

Below is the press release we issued, and Statewide Director of FFCA Amanda Metivier's phone number. We've worked together on a lot of great legislation, and to start the laptop program. She does the hard work now.

Give her a call and make someone's day. Shoot, get a tax deduction, as FFCA is a non-profit. If you want your heart tugged a little more, read our press release below.

Thanks!



FOR IMMEDIATE RELEASE
May 17, 2013

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Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
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FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 – 1468

TO: Representative Les Gara

FROM: Joyce Anderson
Administrator

DATE: June 19, 2013

RE: Foster Care Month and Asking for Small Donations

Below is a recap of informal advice given on May 17, 2013 regarding a press release sent out on May 17 at 8:51 a.m. under your name through Mark Gnadt, the House Minority Press Secretary. The press release highlighted the fact that May is foster care month and donations to foster youth are always welcome. You specifically highlighted laptop computers, monetary donations and care packages. At the end of the press release you stated, "To donate a laptop, or make a monetary donation contact Rep Les Gara's Office at 269-0106. Gara's Office will then coordinate with Facing Foster Care In Alaska to get the donations and the computers to foster youth."

After several conversations and one with H. Conner Thomas, chair of the Ethics Committee, a correction to the press release was issued on May 20 at 9:30 a.m. which stated: "CORRECTION: The place to drop off laptop computers or donations has been corrected in the release below. Please do not bring them to Rep Gara's office, but instead call Amanda Metivier at 907-230-8237."

BACKGROUND INFORMATION

AS 24.60.030(a)(2)(I): In 1998, the Legislature added statutory language permitting legislators to solicit, accept and receive gifts for recognized, nonpolitical charitable organizations. In 2001, the Legislature enhanced the exception by allowing the above activities to occur in a state facility. The Legislature expanded the exception in 2006 and included legislative employees. Advisory Opinion 12-02 was issued to clarify the ethical parameters with regard to activities connected with soliciting, accepting and

receiving charitable contributions on behalf of a recognized, non-political charitable organization.

AS 24.60.030(a)(2)(I). A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, legislative employee, or another person; this paragraph does not prohibit a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

DISCUSSION

This memo will focus on the activities specifically outlined in your press release:

- Donating laptop computers and dropping them off at your office.
- Monetary donations dropped off at your office.
- Care packages with basic items such as clothes, bedding, and other things foster youth don't have money for to be dropped off at your office.
- "Gara's office will coordinate with Facing Foster Care In Alaska to get the donations and the computers to foster youth."
- Help promote May as Foster Care Month.

AO 12-02 addressed a scenario similar to the foster care fund raising drive: a legislator solicits charitable contributions and conducts fundraising activities on behalf of a recognized, nonpolitical, charitable organization to which the Legislature does not belong and there is no legislative purpose for the activity. AO 12-02 looked at 'legislative purpose' as an activity necessary to allow a legislator to perform official duties.¹

FACTS: Facing Foster Care In Alaska, a non-profit charitable organization, is not an organization the Legislature belongs to. A non-profit charitable fund raising drive, such as the one described in your press release, does not have a 'legislative purpose'.

In AO 12-02, the committee defined the term 'solicit' literally and narrowly under activities described in AS 24.60.030(a)(2)(I). The committee concluded, "Any activities beyond [merely] asking for gifts or accepting or receiving gifts on behalf of charitable organizations are not permitted." Activities such as organizing and facilitating a charitable fundraising drive are not permitted under the Legislative Ethics Act. Organizing and facilitating a fundraising event encompasses a wide range of activities whereas the legislative intent was only to allow the act of soliciting, accepting or receiving a charitable contribution. Merriam Webster's dictionary definition of 'solicit', referenced in AO 12-02, is "to approach with a request or plea."

¹ Reference AO 12-02, footnote 1. "While this term is not defined in the statutes, its use generally involved a determination of whether the activity is necessary to allow a legislator to perform official duties. AS 24.60.030."

Your press release focused on promoting a fund raising drive for foster youth. This activity is permitted under AS 24.60.030(a)(2)(I) and AO 12-02, with limitations. Also the use of your name on promotional materials issued by Facing Foster Care In Alaska would be permitted.

A press release, however, should not contain legislative contact information as a contact point for the public and/or organizations wishing to obtain additional information about the fund raising drive. By doing so you would be facilitating the fundraising effort by having interested individuals/organization call your legislative office for more information, which is prohibited. Your press release did not contain any contact information for Facing Foster Care thereby making your legislative office as the sole contact point for additional information.

A legislator may partner with nonprofit, charitable organizations and provide a quote on the benefits of the fund raising drive to the community and in your case, foster youth. There are no ethical concerns with these types of statements.

However, picking up laptops, monetary donations or care packages would be a prohibited activity by your staff when on government time.² The act of picking up items would fall under the area of facilitating the fundraising drive. Legislative employees may certainly perform this activity when not on government time. A legislator may not require a legislative employee to perform this activity nor may the activity be a condition of employment.³ Since a legislator serves 24/7, a legislator may perform this activity at any time with the stipulation no state resources are connected to the activity.

The activity of coordinating the distribution of donations and computers would fall under the same restrictions as picking up items. You also mentioned in one of our conversations about 'scrubbing' the computers prior to distribution. I am assuming your office was to be involved in this activity. This activity would also be prohibited by staff on government time.

In regard to donations being dropped off at your office, AS 24.60.030(a)(2)(I) uses the term "accept" and "receive". In my conversations with you and your office staff, we talked about having the donations dropped off at Facing Foster Care. Monetary donations do not create a space issue but donations of laptop computers and other bulky items may create space issues depending on the volume of donations. It is important to note, however, that your office is not prohibited from accepting and receiving donations on behalf of a recognized, non-political charitable organization in a state facility. The accepting and receiving would be dependent on the number of items, size of items, space

² "Government time" has been interpreted by the Ethics Committee to mean "[t]ime which the employee is being compensated by the state for work performed based on a schedule set by a supervisor. Legislative employees have a wide variety of work schedules. The specific hours in 'government time' may vary according to the work schedules set by supervisors for each employee."

³ AS 24.60.030(a)(4).

availability and other building considerations. The non-profit organization should pick up the items.

CONCLUSION

The use of state resources for activities that fall in the area of organizing and facilitating a fund raising drive for a recognized, non-political charitable organization that does not have a legislative purpose and to which the Legislature does not belong are prohibited under AS 24.60.030(a)(2)(I) and AO 12-02. The use of state resources for such activities are permitted under the restrictions and conditions outlined in this memo.

NOTE: A teleconference meeting was held today in my office with H. Conner Thomas. We both restated the committee's position that the use of state resources for a non-profit charitable fund raising drive in the areas of facilitating and coordinating the fund raising activity was prohibited. The act of soliciting, accepting and receiving a charitable contribution is permitted. Based on this discussion, you stated you would request an advisory opinion from the committee focusing on the fact foster care children are wards of the state which brings a different component to the facts set out in AO 12-02 and the parameters set out in the opinion regarding the use of state resources for activities related to a non-profit fund raising drive.

LIMITED NATURE OF ADVICE

Pursuant to AS 24.60.158 my advice is informal and not binding on the Ethics Committee. I consulted with H. Conner Thomas, chair of the Ethics Committee, in formulating my advice. Informal advice is cleansed of all identifying information and forwarded to the Committee for review. You have the option of requesting a formal, binding advisory opinion from the Committee at any time. The committee has 60 days in which to respond to the request.

If the nature of the request or any facts has been misrepresented or omitted, please contact me immediately. This advice only applies to the specific facts and activities as outlined in this communication.

Pursuant to AS 24.60.165, the committee may not bring a complaint against a person based upon information voluntarily given to the committee by the person in connection with a good faith request for advice under AS 24.60.158 or AS 24.60.160 [advisory opinion request], and may not use that information against the person in a proceeding under AS 24.60.170. This section does not preclude the committee from acting on a complaint concerning the subject of a person's request for advice if the complaint is brought by another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the committee from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.

Enc AO 12-02



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FACING FOSTER CARE IN ALASKA



Our Mission is to improve the foster care system through sharing our experiences, supporting and educating youth and social services and implementing positive change in society as a whole

About Us

Facing Foster Care in Alaska (FFCA) is a group of current foster youth and alumni that has formed to make improvements to the foster care system in Alaska.

Guidelines for FFCA membership -- youth currently in care, age 15 and older, are eligible. Youth must be willing to participate in the advisory board, and must want to work on improving the foster care system for others. Alumni are those youth ages 18-24 and currently out of care who were in legal out-of-home placement through the Office of Children's Services sometime during their youth. Members meet quarterly in their regions. [Read more](#)

If you are interested in joining us, or know of a youth or alumni who may be interested in joining FFCA, please contact Amanda Metivier at atfacing_fostercare@yahoo.com or (907) 230-8237.

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Email:

Subject:

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2012 Statewide Retreats

March 2-4

June 1-3

August 10-12

November 16-18

If you are interested in attending a FFCA retreat, contact [Amanda](#).

Office Space for FFCA at OCSI

FFCA has an office at **323 E. 4th Avenue** in Anchorage. The FFCA space is co-located at the Anchorage Office of Children's Services. FFCA and OCS are partnering to provide a Youth Room where youth will be able to access independent living services such as employment, education, etc. Amanda's work hours are Monday through Friday from 1PM to 5PM. Feel free to stop by and check out the space. Amanda is available to help link FFCA youth/alumni to resources and teach them to advocate for themselves on an individual level as well as

a systems level. Call Amanda (230-8237) or drop by soon!

Get More Information



[Visit us on MySpace](#)

[2010 FFCA Brochure](#)

The FFCA webpages are hosted by Alaska CASA in partnership with the youth and alumni of FFCA.

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What it means to be a member of FFCA:

- To be proactive
- To be worthwhile
- A sense of self
- Networking with other youth and alumni
- To be a role model
- To be yourself
- Coming together making a difference
- Making it fun for foster youth
- Moving mountains with our stories

- Finally finding a family
- Feeling like you are not a victim of your circumstances
- TO BE THE CHANGE



Facing Foster Care in Alaska

"HEAR US TO KNOW US"



Mission Statement

Our mission is to improve the foster care system through sharing our experiences, supporting and educating youth and social services and implementing positive change in society as a whole

Membership- FFCA is composed of individuals who are in or have been in the foster care system. The membership represents a wide range of ages, including

~Youth (Soul of the group) Ages 15 to 18

~Alumni (Senior leaders) Ages 19 to 24

~Elders (Resource Advisors) Ages 24 to 100

FFCA wants to recruit new members and encourage anyone who is in foster care or has been in foster care to join us. Contact the regional Independent Living Specialist in your area about becoming a member.

You can also Email us at facing_fostercare@yahoo.com for more information.

Present the below information to your ILS or call FFCA Coordinator Amanda Metivier (907) 230-8237.

Name: _____ D.O.B: _____

Address: _____ City/Zip: _____ Phone: _____

Email: _____

By Signing this you are also giving permission for pictures to be taken and used in newsletters, brochures, flyers and for media. If you wish to not allow this please let us know.

Regional meetings

And statewide retreats:

FFCA is building membership by holding regional meetings in Juneau, Fairbanks, Anchorage and Wasilla. At these regional meetings, youth and alumni get to know each other, have fun and learn about FFCA.

Members can, if they wish, share their experiences in foster care; often provide support for others; always learn new things and talk about ideas to help change the foster care system.

Youth and alumni who attend regional meetings have the opportunity to attend statewide retreats. The retreats are held four times a year in Anchorage area. These two day events usually involve some type of training, work, strategy sessions, food, and fun.



History-

In 2003, a group of dedicated foster care youth and alumni from across Alaska came together to share their issues and form a Youth Advisory Board. In 2004, the group adopted the name Facing Foster Care in Alaska (FFCA). FFCA is dedicated to sustaining a statewide organization that will continue to work towards supporting the foster youth and improving the foster care system.

Goals for 2010-

- Strengthen Board Leadership
- Recruit and maintain membership

~ Impact foster care policy change

~ Strengthen partnerships with allies and agencies

~ Strengthen regional groups

Accomplishments-

FFCA has touched the lives of hundreds of youth and alumni across Alaska and the U.S. FFCA members have remained dedicated to improving the foster care system on both a state and national level through partnerships with state and private agencies, and youth alumni networks.

Listed below are some of the major accomplishments FFCA has made as an organization.

- ⇒ Developed a policy agenda with issues that were introduced in state legislation in the House and Senate.
- ⇒ Hosted a rally around foster care reform
- ⇒ Launched the FosterWear Program
- ⇒ FFCA has become nationally recognized as members have traveled throughout the country to present at various conferences, and even met with members of congress
- ⇒ Developed a statewide network of youth and alumni across Alaska





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Foster Care Overview

Why are children placed in foster care?
Who are the children who need care?
Types of care
What is the role of a foster parent?
What rights do foster parents have?
How are children placed with a foster family?
What is a "permanency plan"?

Why are children placed in foster care?

Children are mainly placed in foster care when it is determined that the child is unsafe or at high risk of maltreatment. The Office of Children's Services works with the family to implement the least intrusive approach to keep children safe, first with consideration of an in-home safety plan and last, an out-of-home placement.

Other children are in care because of a voluntary placement by their parents. Parents may be unable to care for their children because of parental illness, medical needs of the child, family emergencies or planned, parental absence from the home.

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Who are the children who need care?

Children living in foster care may be infants, toddlers, preschoolers, grade school age, or teenagers and may be a part of a group of brothers and sisters. They may be any ethnicity or race, and come from a variety of backgrounds, cultures, and families. A foster child is as individual as any other child, each with their own special personality, abilities, interests, and potential.

Helping Alaskan Native children grow with a strong connection to their heritage is very important to OCS. Alaskan Native families who can share their cultures and traditions with children are needed throughout the state.

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Types of Care

Relative Caregivers: Care by a relative, is the preferred choice for out-of-home placement. Relatives have an option to care for a child with or without a foster home license.

Foster Home/Foster Group Home: Family homes that are licensed to provide ongoing care for children in a time of family crises. This type of foster care is what most foster parents choose to do, at least initially. Some licensed homes:

- Serve children of a certain age.
- Serve as emergency shelters.
- Specialize in teens who are getting ready to leave foster care.
- Provide care for teenagers who are on legal probation.

Division of Juvenile Justice (DJJ): DJJ is responsible for youth who are in the custody of the DJJ who have committed criminal offenses and/or are committed to legal probation by the court. If, necessary youth may be placed outside of their home, to ensure adequate care and supervision. This may include a relative placement or a DJJ foster home that is willing to provide structure, guidance and intense

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supervision. Foster parents who care for teens from Juvenile Justice work with a probation officer instead of a social worker.

Guardianship Homes: The legal guardian is someone appointed by the Court to care for a child until he or she is age 18. A guardian is not a child's legal parent and does not have the legal rights and responsibilities as an adoptive parent would. The child's parents retain certain parental rights to the child in a legal guardianship.

Adoptive Home: Children who are free for adoption (either by termination of parental rights, or by relinquishment) are placed in an adoptive home. Adoption means that the legal rights and responsibilities of the parent are transferred to the adopting parent by the court. Adoption gives all of the legal authority and responsibility to the adopting parent so the adopting parent can care for the child without the supervision of the court or the Office of Children's Services.

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What is the role of a foster parent?

As a foster parent, you are responsible for the temporary care of a child who has been placed outside his or her own home. During a time of disruption and change, a child needs a safe, stable, and nurturing home. The role of the foster parent is to

As a foster parent, you are responsible for the temporary care of a child who has been placed outside his or her own home. During a time of disruption and change, a child needs a safe, stable, and nurturing home. The role of the foster parent is to:

- Provide temporary care for children, giving them guidance, and a safe, stable, nurturing environment.

- Work with the caseworker and the child's family so that the child can safely return home.

- Participate with the caseworker and the child's parents in supporting a case plan.

- Adhere to the confidentiality of the child and his or her family.

- Understand the need for, and goals of, family contacts and help with visits.

- Establish and follow through with the family contact plan with parents and siblings.

- Help the child cope with the separation from his or her home.

- Encourage and supervise school attendance, and participate in teacher conferences.

- Provide positive reinforcement, redirection, realistic expectations, and consistent limits with the children.

- Work with the agency in arranging for the child's medical and dental care.

- Work with the child on creating a Life Book (a combination of a story, diary, and scrapbook) that gives the child a meaningful history of their life experiences.

- Stay current and complete required training.

- Inform the caseworker promptly about any problems or concerns so that needs can be met through available services.

- Maintain records (e.g., health, medical and dental treatment records; immunization records; and school records and report cards, etc.), and return to the assigned caseworker when the child leaves your home.

- Respect the child's culture/religion.

- Report any household changes.

- Report any suspected abuse or neglect.

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What rights do foster parents have?

Foster parents have the right to:

- Decide whether to accept placement of a child in their foster home.

- Define and limit the number of children that can be placed in the foster home, within legal capacity.

Receive known information on each child who is to be placed in the foster home.

Expect regular visits from the child's caseworker to exchange information, plan together, and discuss any concerns about the child.

Participate in regular conferences.

Receive notice of, and participate in, case plan reviews and court permanency hearings on a child placed in their home.

Receive training on meeting the needs of children in care.

Fair hearing on licensure actions on their home.

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How are children placed with a family?

In placing a child in a home, agency staff tries to find a home that best suits the child's needs. Many times, there will be a Team Decision Meeting (TDM) that involves the child's parents, tribe/tribal representative if the child is a tribal member, caseworker, supervisor, service providers, extending family members, and any other person the child or the child's parent identifies. A successful match between the child and the foster home will make a big difference in a child's life. Listed below are some considerations when a child is placed in out of home care:

Relatives: Are relatives available who would be willing to provide a safe and suitable placement for the child?

Previous foster home: If the child was previously placed in foster care, is it appropriate to return to the same foster home?

Placing siblings together: If the child already has sisters or brothers in foster care, can the child be placed in the same home, if appropriate? If several children need placement, can a home be found where they can live together?

Religious background: Has the parent expressed a religious preference concerning placement of the child? Where practicable and in the best interests of the child, the preference regarding religion of a parent will be honored.

Alaska Native/American Indian heritage: Can an Alaska Native home be found? The child's tribe must be notified when placing a Native American Indian child.

Neighborhood and school: Can a home be found in the same school district so that the child does not have to change schools?

Special needs: Does the child have specific emotional, or special physical, psychological, or medical needs requiring a foster home is equipped and trained to provide for his or her needs?

Other children in the home: If the foster home already has other children (biological or foster), are they willing to share their toys, rooms, and attention with another child?

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What is the "permanency plan"?

Permanency planning is a term that is used in child welfare to determine the plan to have a child leave the custody of the state agency in as timely and safe a manner as possible. Permanency planning begins at the investigation and assumption of custody, so that a plan is initially designed to focus on how the child and family will successfully and safely exit the state system.

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acrf@nwresource.org

Alaska Pioneer Homes
Behavioral Health

Office of the
Commissioner

Juvenile Justice
Public Assistance

Northern Exposure: Alaska's Efforts to Promote Successful Transitions To Adulthood

Runaway and Homeless Youth

As Alaska's statewide independent living coordinator, Jefty Prather has a lot of ground to cover.

For the Office of Children's Services (OCS), Prather and his four regional independent living specialists work to safeguard the futures of kids aging out of the foster care system in a State more than twice the size of Texas, but with a total population of just 670,000-less than San Francisco.

In such a vast but sparsely populated environment, collaboration isn't just a nice bonus, it's crucial to keeping young people safe. Without the support of transitional living programs (TLPs), Native organizations, and local communities, Prather's job would be not just challenging, but impossible.

About 200 youth in Alaska's foster care system are between the ages of 16 and 20; and about 40 age out of the system each year. While OCS can keep youth in custody until age 19 and even allows them to stay on until 20, "that doesn't happen very often," Prather says. "Most of them don't want to be in custody after they're able to leave." But, he says, sometimes his office can make a difference: "To a few of them we're able to say, 'Oh, man, do you really want to do this? Because you're not really prepared to be on your own.'" On a good day, the youth heeds that advice.

It is at that critical time that Alaska's TLPs come into play. Currently, there are only three TLPs in the entire State, offering about 50 beds. Juneau Youth Services (JYS) in the State's capital of Juneau and Covenant House in Anchorage are the largest. They both provide numerous services to homeless youth, including street outreach, shelter, life skills, and job training and education assistance. "We desperately need their programs to put our youth into when they leave custody, when they're not ready to live on their own," Prather says.



Many parts of Alaska are accessible only by air or sea. For youth in these remote areas,

communication is the key. "As huge as Alaska is, there's a lot of sharing of information," Prather says. "So the resources that are available, most people know about them." If a regional coordinator knows a youth is about to leave custody, the phone calls begin—to see if there are any available beds at the TLPs.

TLPs are used to getting these calls. "We're a very tight knit community in terms of State agencies, the city, the school district, the behavioral health organizations," says John Heimbuch, community services director at JYS. "One of the nice things about a place like Juneau is, many of these people on your teams are also your neighbors, so it's relatively easy to know who to call."

Many foster care youth also arrive at TLPs directly from the streets. "We have a lot of youth that, when they leave OCS, don't want to be involved with us again," Prather says. "But, on the other hand, they know about the homeless shelters for youth and they're comfortable going there." When the shelter determines the youth was formerly in foster care, they then contact OCS. "They know that there are funds available that we can help them with," he says, "and we can coordinate to provide services and training."

The State's Chafee Foster Care Independence Program (CFCIP) and Covenant House TLP, for example, collaborated on a grant from the Department of Labor through the Workforce Investment Act to hire an employment coach and mentor. This person provides additional life skills training in areas like finding a job, resume writing and interviewing, and then keeping a job once employed. "Our youth tend to be more difficult to maintain in jobs sometimes, because they don't have a lot of work history and things like that," says Prather. "So, they require a little bit more hands-on support than most of the job training programs have available." With the help of this grant, both CFCIP and TLP youth get some extra guidance.

Otherwise, Alaska's OCS does not provide funding directly to TLPs that are serving former foster care youth. The State's Chafee funding earmarked for room and board is distributed through independent living funds, directly to the youth. Employed youth who cannot afford rent can apply for these funds that will cover 100 percent of their first two months' rent, 50 percent of the third month, and 25 percent of the fourth month.

Foster youth who are in a TLP can apply for independent living funds to use for things such as small furniture, household goods, tutors, cultural development and sometimes, even travel. A few years ago, these funds were used to bring a youth to JYS from a remote village to live in a supervised apartment and learn various life skills. She then returned to her home community to live independently.

Fortunately, case managers can help youth with making decisions about using independent living funds. "We will help them use their money wisely," says Rick Driscoll, family services program coordinator at JYS. "We will help them do things like secure a deposit for a rental or identify education needs—to use the money in a manner that's beneficial."

Once in a TLP program, Prather notes that "youth are very good about contacting us when they need us." There is also a youth advisory group, Facing Foster Care in Alaska, made up of current and former foster youth who meet quarterly to recommend improvements to the State's foster care system. Prather attends these meetings and notes that they are a good way to keep up with everyone and make sure they are doing well.

Another collaboration that Prather's office calls upon is with tribal communities. Over 60 percent of the youth in Alaska's foster care are Native Americans, so it's important to work with those communities in providing services. In the Juneau area, the Tlingit and Haida tribes operate their own central council government, and OCS works with them and JYS to provide independent living skills classes to youth in both transitional living and independent living situations from both communities.

In Anchorage, Southcentral Foundation is an Alaska Native-owned healthcare organization that operates a TLP with 12 beds. Many youth leaving foster care head to this program, which serves Alaska Native and American Indian youth in an environment that, according to Prather, feels like a family. That environment is beneficial because many Native youth "come from really small villages—where they're used to having more extended family and cultural connections—so they kind of need that," he says.

The primary challenge facing Prather's office is probably universal in the TLP/CFCIP world: "We just don't have enough beds." There used to be more than the current three programs, but funding and city subsidization come and go. A new TLP is currently starting up in the city of Sitka, so soon there will be four. Prather realizes Alaska's remote location and small population don't help matters.

Despite the fiscal and geographic challenges, Prather is positive about the services his independent living group and their network of TLPs and communities provide. "Everybody works really hard at it, and I think that, for the most part, we're pretty successful," he says. Small town spirit in the Nation's largest State.

Alaska State Legislature

Select Committee on Legislative Ethics

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February 28, 2011

ADVISORY OPINION 2011-02

SUBJECT: Conflict of Interest – Use of State Resources

RE: Does the Legislative Ethics Act permit a legislator to use legislative newsletters and press releases to acknowledge and thank for-profit businesses for donating goods and services to non-profit charitable organizations?

You are a legislator and therefore covered by the Legislative Ethics Act. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

1. You started a nonprofit charitable program that causes discounts to be made available by retail clothing stores to foster youth. You have also started a nonprofit charitable program to help foster youth obtain laptop computers. The laptop program includes donations of laptops by private businesses, and participation by a for-profit business that has offered to inspect laptops at no cost to make sure they are in working order before they are provided to youths. 2. Legislators use state resources, including legislative funds and the services of legislative employees, to communicate with constituents through legislative newsletters and through press releases delivered to news media organizations. 3. You would like to use legislative newsletters and press releases to acknowledge and thank for-profit businesses, their owners, and their employees for donating to the charitable programs you have created.

Discussion

The Legislative Ethics Act does not limit or prohibit campaign, partisan political, or commercial endorsement speech in newsletters and press releases that are printed or distributed without using state resources, but where state resources are used the Act does set limits. Using a legislative newsletter or press release to acknowledge and thank for-profit businesses for donating goods and services to non-profit charitable organizations can fall within those limits, depending on the facts of a particular case.

AS 24.60.030(a)(2) reads, in part:

(a) A legislator or legislative employee may not

...
(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person;

However, AS 24.60.030(a)(2)(J) specifically allows a legislator to send "any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee."¹

"Benefit" under Ethics Decision H 10-01

The House Subcommittee on Ethics determined, in Complaint H 10-01, that a legislator who had listed certain local for-profit businesses and their business contact information in a legislative newsletter, with no intention other than to make contacting the businesses more convenient for the legislator's constituents, violated the prohibition, under AS 24.60.030(a)(2), against using state resources to confer a private benefit. The subcommittee found that the list "implied" endorsement of the listed businesses, even when accompanied by a printed disclaimer to the contrary, and that an endorsement was a benefit to the business. The subcommittee relied on the Act's definition of "benefit," under AS 24.60.990, which says, in part:

"benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

...

¹ Because this exception does not mention press releases, they are arguably subject to the broader prohibitions in AS 24.60.030(a)(2) against using state resources for "partisan political purposes" and "nonlegislative purposes" as well as for "private benefit". Since the legislature may adopt a resolution commenting on just about anything, it appears that issuing a press release on a subject would also have a "legislative" purpose. Under the facts stated, the press release would not appear to be in support of or opposition to any partisan political activity.

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction;

....

First, the exception under subparagraph (C) lends further support for us to find that a legislator's solicitation of charitable donations is not prohibited by AS 24.60.² Second, we find that merely acknowledging and thanking a for-profit business for charitable contributions in a legislative newsletter does not confer a benefit, tangible or intangible, that is a "material" advantage to the business or of "material" worth, use, or service to the business; if anything, it could add public pressure on the business to expend even more of its own resources in support of charitable causes. However, we distinguish between a communication that is identifiable on its face as nothing more than an acknowledgment and thanks, and one that is not; one that is not can too easily be perceived by the public as an endorsement of the business or its commercial services or products, regardless of the intentions of the legislator or legislative employee who publishes it. General praise of a for-profit business or its commercial products or services in a legislative newsletter is an implied endorsement. An endorsement of a for-profit business or its commercial products or services in a legislative newsletter, explicit or implied, is prohibited by AS 24.60.030(a)(2).

Implied Partisan Political Support

Although an acknowledgement and thanks as you have described may be permissible in other contexts, when it appears in conjunction with a newsletter or press release that also contains partisan political or campaign speech, we will presume that it appears for a partisan political or campaign purpose. Taken as a whole, the provisions of AS 24.60.030 absolutely prohibit a legislator or legislative employee from using state resources to publish a newsletter or press release that communicates support or opposition to a partisan political cause, including a political campaign or candidacy. For example, AS 24.60.030(a)(5), prohibits legislators and legislative employees from using or authorizing the use of "state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning." This makes it impermissible for a legislator or legislative employee to use state resources to, among other things, publish or distribute newsletters and press releases containing language with a political fund raising or political campaign purpose.

It is worth noting some of the other prohibitions that could be relevant to our analysis of facts in future ethics complaints related to legislative newsletters and press releases. AS 24.60.030(c) would prohibit the use of state funds, other than the annual allowance prescribed in accordance with AS 39.23 for postage, stationery, stenographic services, and other expenses, for printing or distributing a legislative newsletter during a campaign period for an election in which the legislator or legislative employee is a candidate.

² AS 24.60.030(a)(2)(I) also specifically allows a legislator or legislative employee to solicit charitable donations in a state facility.

Another potentially relevant prohibition is under AS 24.60.030(e), which reads (in part and with emphasis added):

(e) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, *donate or not donate to a cause favored by the legislator*, or provide or not provide a thing of value;

(2) state or imply that the legislator will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution, *donate or not donate to a cause favored by the legislator*, or provide or not provide a thing of value;

....

Encouraging a for-profit business to donate to a charitable cause or acknowledging and thanking a business that donates to a charitable cause -- in a newsletter or by other means -- is not prohibited by the Act except as noted in this opinion, however, in some instances it might put a legislator or legislative employee at risk for an ethics complaint under AS 24.60.030(e), depending on the particular facts.

Conclusion

For the reasons we have stated and within the limits we have described in this opinion, the committee finds that the Legislative Ethics Act permits a legislator to acknowledge and thank a for-profit business in a legislative newsletter or press release for donating goods and services to non-profit charitable organizations. The acknowledgement and thanks should be clearly identifiable as an acknowledgement and thanks, should not endorse the business or its commercial products or services, should not list contact information for the business, and should not state or imply that the business or its owners or employees support or oppose a partisan political activity, including a political campaign.

Adopted by the Select Committee on Legislative Ethics on February 28, 2011.

Members present and concurring in this opinion were:

Dennis "Skip" Cook, Chair
Representative Carl Gatto
Representative Chris Tuck
Senator Donald Olson, alternate member
Senator Gary Stevens
Herman G. Walker, public member

Gary J. Turner, public member
H. Connor Thomas, public member
Antoinette Mallott, public member

Member absent:

Senator John Coghill

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11-093.plm

Alaska State Legislature

Select Committee on Legislative Ethics

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September 27, 2011

ADVISORY OPINION 2011-03

SUBJECT: Conflict of Interest – Use of State Resources – Medicare Providers

RE: Does the Legislative Ethics Act permit a legislator or legislative employee to list, in a legislative newsletter, the names of health care providers that specialize in serving patients insured by Medicare?¹

You are a legislative employee and therefore covered by the Legislative Ethics Act. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You are a member of the staff of a senator. According to sources you cited in your request for a formal advisory opinion, including a newspaper article;² a federal government report;³ a summary of a study conducted by the University of Alaska;⁴ and a white paper published by the State of Alaska, Department of Administration,⁵ it is

¹ For the purposes of this opinion, we understand that by providers who "specialize" you mean "participating providers" of Medicare insured services, as they are described in a footnote to our "statement of facts," below.

² "Alaska Medicare Patients Rejected by Doctors," *Anchorage Daily News*, October 21, 2008.

³ "Interagency Access to Health Care in Alaska Task Force, Report to Congress," by Kathleen Sebelius, Secretary of Health and Human Services, September 17, 2010.

⁴ "How Hard is It for Alaska's Medicare Patients to Find Family Doctors?" Rosalind Frazier and Mark Foster, UA Research Summary No. 14, March 2009, Institute of Social and Economic Research (ISER).

⁵ "Alaska Care Retiree Health Plan and How It Relates to Medicare," February 10, 2010, a white paper published by the State of Alaska, Department of Administration. Excerpts from that paper distinguish between three types of Medicare providers, as follows:

becoming ever more difficult for patients to find participating providers of Medicare-covered services because most health care providers choose, for financial reasons, to either opt-out of providing the services or to provide them only on an individual, case-by-case basis. To assist constituents who may be experiencing difficulty obtaining services, you want to list in a legislative newsletter published by your office the names and locations of three medical clinics in Anchorage -- two of them non-profits -- that specialize in serving Medicare patients. You have been advised informally that, based on our recent findings in AO 11-02, the Legislative Ethics Act may not permit the listing.

Discussion

In AO 11-02, a legislator wanted to use legislative newsletters and press releases to acknowledge and thank for-profit businesses, their owners, and their employees for donating to charitable programs the legislator had created. We said:

The Legislative Ethics Act does not limit or prohibit campaign, partisan political, or commercial endorsement speech in newsletters and press releases that are printed or distributed without using state resources, but where state resources are used the Act does set limits.

...

General praise of a for-profit business or its commercial products or services in a legislative newsletter is an implied endorsement. An endorsement of a for-profit business or its commercial products or services in a legislative newsletter, explicit or implied, is prohibited by AS 24.60.030(a)(2).

In that opinion we referred to the Legislative Ethics Act and cited a portion of AS 24.60.030(a)(2) that reads:

There are three types of Medicare providers -- participating, nonparticipating, and those who "opt out." Participating providers have entered into a contract with Medicare. They are required by their Medicare contract to accept assignment of claims and to bill Medicare directly. They cannot collect for any amount over the Medicare allowed amount.

...

Nonparticipating providers may choose whether to accept assignment or not on an individual, case-by-case basis.

...

Providers who "opt out" of Medicare have signed a contract with Medicare stating they will not bill Medicare directly, nor seek any form of Medicare reimbursement for services provided to any Medicare beneficiary for two years. These providers are prohibited from filing any claims with Medicare and may charge the member any amount for their services, with no limit.

(a) A legislator or legislative employee may not

...

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person;

We also considered exception (J) to AS 24.60.030(a)(2) -- the newsletter exception -- which allows a legislator to send "any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee."⁶ Although we noted exception (J) in AO 11-02, based on the facts before us in that instance we still determined that "endorsement of a for-profit business or its commercial products or services in a legislative newsletter, explicit or implied, is prohibited by AS 24.60.030(a)(2)."

We interpret exception (J) narrowly. Almost every other prohibition in (a)(2) is expressly reaffirmed in the language of exception (J), including limits on partisan political activity and conferring private benefits on legislators and legislative employees. Although the prohibition on conferring private benefits on "another person" is not expressly affirmed in exception (J), it is implied. If it were not implied, then the exception would allow results that, based on our reading of the Legislative Ethics Act as a whole, are contrary to the Act. It does not make any sense that the legislature would impose a tight restriction on the use of state resources to confer private benefits on anyone in (a)(2) and in (J) loosen it completely for everyone but legislators and legislative employees, creating the possibility that state resources could be used to promote, among other private interests, the private commercial interests of anyone who isn't a legislator or legislative employee. It is important that free expression be allowed, but eliminating the private benefit limitation in newsletters is not necessary in order to accomplish that. As we have noted, (a)(2) does not limit freedom of expression by legislators or legislative employees in newsletters published *without* the use of state assets and resources. Furthermore, we note that the applicable definition of "benefit," although meant to be broadly construed, focuses on material gain through receipt of things the recipient might be willing to do something in exchange for.⁷ This allows some latitude; for example, the benefit a person might receive

⁶ AS 25.60.030(a)(2)(J).

⁷ The applicable definition is under AS 24.60.990(2), which reads in part:

"anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and

as the result of a legislative newsletter recognizing a personal or professional milestone or accomplishment in a congratulatory way would in most cases not be a material benefit.

Although we determined in AO 11-02 that endorsement of a for-profit business or its commercial products or services in a legislative newsletter would be prohibited by AS 24.60.030(a)(2), we also said that "merely acknowledging and thanking a for-profit business for charitable contributions in a legislative newsletter does not confer a benefit, tangible or intangible, that is a 'material' advantage to the business or of 'material' worth, use, or service to the business. . . ." An excerpt from our conclusion in AO 11-02 reads:

... the Legislative Ethics Act permits a legislator to acknowledge and thank a for-profit business in a legislative newsletter or press release for donating goods and services to non-profit charitable organizations. The acknowledgement and thanks should be clearly identifiable as an acknowledgement and thanks, should not endorse the business or its commercial products or services, should not list contact information for the business

The matter you present does not involve charitable donations by businesses. Also, although two of the three providers you propose listing are non-profits, the services provided -- by all three providers -- are nevertheless commercial services.⁸ Even if you were proposing to merely acknowledge and thank the health care providers you have described (for being participating providers of Medicare-covered services), and even if the newsletter did not list contact information for the providers (an omission that is counter to your main purpose of listing them in the first place), we would probably consider the acknowledgment and thanks in this instance an endorsement of commercial services.

As we did in AO 11-02, we take into consideration that in Complaint H 10-01 the House Subcommittee on Ethics found probable cause to determine a legislator's listing of certain

encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; . . .

⁸ In AO 84-01 we said:

It should be noted that not all non-profit corporations are organized for the public welfare. Alaska law allows them to form for many reasons, including professional, commercial, and political purposes. It could not be said that such groups organize for the public welfare.

Later, in AO 85-02 we advised that, as a general rule, "a non-profit corporation which has qualified for a 501(c)(3) exemption will be presumed to operate for an interest which is shared by the community as a whole;" however, in that opinion we also recognized that "non-profit corporations are frequently formed in order to generate substantial salaries for those who control them."

local for-profit businesses and their business contact information in a legislative newsletter published with state resources to be a violation of AS 24.60.030(a)(2). In that matter, even though the listing was accompanied by disclaimer of commercial endorsement explaining that the legislator was publishing the list merely for the convenience of constituents interested in contacting the businesses, the subcommittee reasoned that the list "implied" endorsement of the businesses and therefore conferred on them a private benefit. Even though you intend to publish a list to help benefit constituents (not businesses), it might, however, result in a private financial benefit to the businesses you list and the persons employed by those businesses. We cannot advise that the prohibition in AS 24.60.030(a)(2) should apply in every case where a private benefit to another person can be traced to the use of state resources by a legislator or legislative employee. However, the stronger the link between the benefit and the resources used to confer it, the more likely it is that the prohibition may apply. As was found in H 10-01, and affirmed in AO 11-02, in circumstances where listing a business in a newsletter implies an endorsement of the business or its services, the listing is prohibited.

Your goal is to help constituents obtain less expensive health care services, but listing businesses that provide commercial services, even with a printed disclaimer, might still imply endorsement of the businesses or commercial services. In your request you reason that any real or perceived ethical impropriety that results is outweighed by the necessity of helping patients connect with participating providers of Medicare-covered services. This is a compelling point, considering the apparent shortage of participating providers of Medicare services, the total number of patients in need of Medicare services, and the considerable number of Alaskans with other health insurance plans who, upon reaching a certain age, are required to sign up for and submit claims to Medicare before they are eligible to receive benefits under their other health insurance plan. However, it is primarily for other reasons we find that in this instance the Legislative Ethics Act would not prohibit you from publishing in the newsletter Medicare-related information as it is posted at the website of the State of Alaska Medicare Information Office in the Department of Health and Social Services, Seniors and Disabilities Services Division, if you attribute the information to the department.⁹

⁹ The website -- <http://www.hss.state.ak.us/dsds/medicare> -- includes the following information:

We are Alaskans helping Alaskans get more out of their Medicare. We are funded through two programs: State Health Insurance Assistance Programs (SHIP) and Senior Medicare Patrol (SMP). SHIP provides one-on-one personalized counseling, education and outreach to Medicare beneficiaries and their families. This allows people to better understand and utilize their Medicare benefits. SMP educates Medicare beneficiaries and others on how to spot and report potential Medicare errors, fraud, waste and abuse. SMP is a program of the U.S. Administration on Aging (AOA). We have a large network of counselors throughout Alaska that help beneficiaries understand and navigate Medicare and other health

First, the more closely your listing tracks the department's own language, the less it may appear to be an endorsement by your newsletter. Publishing the list with clear attribution to the department is more than a mere disclaimer; it lessens the risk, in this instance, that the list could be seen as an endorsement of commercial services. The existence of one or more obvious legislative purposes, e.g., promoting public health, supporting Department of Health and Social Services initiatives, and guiding people in need of Medicare services to institutions, like the Anchorage Neighborhood Health Center, that receive substantial financial support from the state through legislative appropriation, also lessens that risk. Second, we take notice that many elderly or disabled persons face significant obstacles to obtaining information directly from Internet websites and are also among those who are most likely to rely on Medicare services for health care; a newsletter listing like the one you describe might constitute the only practical opportunity for some of them to obtain the information listed.

Conclusion

For the reasons stated above, the committee finds that in this instance the Legislative Ethics Act permits a legislator or legislative employee to list in a legislative newsletter the names of participating providers of Medicare services, even if the newsletter is published and distributed with state resources, as long as the newsletter makes clear that the list is quoted from material that is published by the Department of Health and Social Services as part of the department's effort to help patients locate participating providers of Medicare services and is not an endorsement of commercial services. This does not mean that prior publication of information by a different branch of government is either a prerequisite to using that information in a legislative newsletter or a guarantee that use of the same information in a legislative newsletter will comply with the Legislative Ethics Act; we will decide each matter that comes before us based on its own particular facts.

Adopted by unanimous vote of the Select Committee on Legislative Ethics on September 27, 2011.

insurance programs and plans. If you would like a Medicare 101 session please call Judith Bendersky, MPH and Jeanne Larson:

In Anchorage: (907) 269-3680
Toll-free in Alaska: (800) 478-6065
TTK: (800) 770-8973
email: hss.medicare@alaska.gov

Now Taking Medicare Patients. Please call for an appointment:
Anchorage Neighborhood Health Center, (907) 257-4686
Providence Senior Care Center, (907) 212-3420
Alaska Medicare Clinic, (907) 433-5100

Members present and concurring in this opinion were:

Dennis "Skip" Cook, Chair
Representative Carl Gatto
Representative Chris Tuck
Senator John Coghill
Senator Gary Stevens
Herman G. Walker, public member
Antoinette Mallott, public member
Gary J. Turner, public member
H. Connor Thomas, public member

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