

## **ITEM 7) Legislator's Office Allowance Account – Use of State Resources to Manage Account and Disclosures.**

**ISSUE:** The Ethics Office has provided informal advice regarding several scenarios that have presented themselves in relation to the 2013 change in the manner of distribution of a legislator's Office Allowance Account. However, due to the unique circumstances surrounding the questions, several offices have asked that the advice be reviewed by the Ethics Committee.

Beginning in 2013, legislators received Office Allowance Account funds as personal income. Previously legislators received the funds in a variety of ways: non-accountable plan which became personal income, an accountable plan managed through LAA Accounting, or a combination of both. Representatives receive either \$8,000 or \$16,000 and Senators receive \$10,000 or \$20,000. [NOTE: Two bills have been introduced relating to office allowance accounts; SB 34 by Senator Berta Gardner on January 23, 2013, and HB 97 by Representative Scott Kawasaki on February 1, 2013. (See attached.) Representative Mike Hawker, chair of Legislative Council, has indicated he is reviewing the 2012 December council action.]

**Below are the questions and informal advice provided by Ethics staff.**

**QUESTION:** May legislative staff manage a legislator's "Office Checking Account"?

**Additional Facts:** The legislator deposited money received from Office Allowance Account funds into an Office Checking Account. The account would only be used for expenses related to "serving as a legislator" and not for any expenses incurred for personal, political or campaign purposes. The account would be managed under similar parameters outlined in the "Accountable Allowance Reimbursement Guidelines" under the accountable plan and approved by Legislative Council.

**ANSWER:** A legislator may have legislative staff manage an 'Office Checking Account' that is set up exclusively for expenses incurred while conducting legislative business. The purpose of managing the account has a legislative purpose. Managing the account could include: reconciling bank statements, writing checks, keeping receipts, recording items on a spreadsheet, etc. Staff may not manage the account if it is also to be used for expenses incurred by the legislator for personal, political or campaign purposes. These types of expenses do not have a legislative purpose and managing such an account would provide a private benefit to the legislator.

The applicable statutes are listed below.

*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 the legislator, legislative employee or another person.*

*AS 24.60.030(a)(5) A legislator or legislative employee may not use or authorize the use*

*of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning.*

*AS 24.60.030(a)(4) A legislator or legislative employee may not require a legislative employee to perform services for the private benefit of the legislator or employee at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time;*

**QUESTION:** If a legislator personally pays for travel/hospitality costs associated with staff travel to attend a conference or meeting related to a matter of legislative concern, is a gift of travel/hospitality disclosure required? Additional Facts: The legislator previously paid for staff travel and hospitality expenses related to a matter of legislative concern with “accountable” Office Allowance Account funds.

**ANSWER:** A legislator may personally pay for lodging for two staff members to attend a conference in Anchorage related to a matter of legislative concern. The receipt of lodging would be considered a gift under AS 24.60.080.

When funds from another source, other than those accountable through the Legislature, are used for travel/hospitality by a legislator or legislative employee for a matter of legislative concern, an ethics disclosure is required. Previously, LAA Accounting provided an accounting of funds used from the accountable Office Allowance Account for such an expense resulting in no gift of travel/hospitality ethics disclosure. To recap, legislative related travel expenses are either recorded internally – through LAA Accounting – or externally – by way of an ethics disclosure.

AS 24.60.080 does not ban such gifts as described above but only requires their disclosure. Therefore, the legislator’s staff is required to complete a Gift of Travel/Hospitality for a Matter of Legislative Concern disclosure if the amount of lodging is \$250 or more stating the gift of lodging is from the legislator. The disclosure is due within 60 days from the beginning date of the trip. The legislator does not need to file a disclosure.

The applicable statutes are listed below.

*AS 24.60.080(c)(4). Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern.*

*AS 24.60.080(d). A legislator or legislative employee who accept gifts under (c)(4) of this section that has a value of \$250 or more ..... shall disclosure to the committee, within 60 days after receipt of the gift, the name and occupation of the donor and the approximate value of the gift.*

**Included in the Packet are Advisory Opinions relating to Gifts of Travel/Hospitality Disclosure:**

- AO 89-01 Gifts – Travel/Hospitality; disclosure of travel hospitality gifts from entities other than individuals.

- AO 89-04 Gifts – Travel/Hospitality; disclosure of travel and hospitality paid for by the executive branch of the state government.
- AO 93-06 Gifts – Travel/Hospitality; an offer to attend a convention without paying the registration fee.
- AO 96-05 Gifts – Travel Hospitality for Legislative and Personal Business.

**DISCUSSION:**

Staff will answer questions regarding the above advice. Discussion by committee members.

**ACTION:** Committee approves the above advice and/or offers suggestions for changes, additions, or deletions.

# Alaska State Legislature

## Select Committee on Legislative Ethics

716 W 4<sup>th</sup> Ave, Suite 230  
Anchorage AK 99501-2133  
(907) 269-0150  
FAX: 269-0152

Mailing Address  
PO Box 101468  
Anchorage AK  
99510-1468

MARCH 8, 1989

### Advisory Opinion 89-01

#### Subject: Gifts - Travel/Hospitality

RE: Disclosure of travel and hospitality gifts from  
entities other than individuals

You have requested an advisory opinion, under AS 24.60.160, as to whether certain gifts of travel and hospitality in excess of \$100.00 that you have received must be disclosed under AS 24.60.080(d). Specifically you have asked whether that statute requires disclosure of two trips funded by an organization made up of state legislators, including Alaska legislators (and to which Alaska pays a membership fee), and of another trip funded in part by an agency of the federal government (and in part by legislative funds). We have concluded that you must disclose these trips.

The first sentence of AS 24.60.080(d) states that a person covered by the legislative ethics code "who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more." The next sentence requires the disclosure to include the "name and occupation of the person making the gift." You have suggested that this second sentence limits the duty to disclose to gifts given by individuals. We do not read the statute this way.

AS 01.10.060(8) provides, "In the laws of the state, unless the context otherwise requires \* \* \* 'person' includes a corporation, company,

partnership, firm, association, organization, business trust, or society, as well as a natural person." We see no reason why "person" in the second sentence of AS 24.60.080(d) should not be interpreted accordingly.

Perhaps it can be argued that the use of "occupation" along with "person" limits the term to individuals. But in our opinion a better reading of the second sentence is to treat "occupation" when applied to corporations, companies, etc., as requiring disclosure of the nature or purpose of the entity.

Moreover, a narrow reading of "person" would greatly weaken AS 24.60.080(d). Gifts of travel and hospitality covered by that subsection are frequently given by companies or organizations; indeed, probably only a small percentage of such gifts come from individuals. We do not think that the subsection was meant to cover only this small percentage.

The state legislator organization clearly falls under the definition of "person" incorporated into subsection 080(d) by AS 01.10.060(8). The federal agency does not. Nevertheless, we believe that disclosure of the trip funded by that agency is still necessary.

First, we note that the initial sentence of AS 24.60.080(d) stands alone, and contains no limit on the duty to disclose based on the nature of the donor. The second sentence, the one with "person making the gift," should in our opinion be read as specifying what is required in the disclosure statement, and not as any limit on the duty. Thus the duty still exists, even though the second sentence does not specifically apply to a governmental entity.

More important, we believe that not requiring disclosure of travel and hospitality gifts from governmental entities would be undesirable from a policy standpoint. Certainly many such entities, such as municipalities and school districts, are as interested in influencing legislative action as private companies, and should have their gifts of travel and hospitality on matters of legislative concern subject to the same public scrutiny. And since AS 24.60.080 does not ban such gifts, but only requires their disclosure, we are inclined to interpret it to require maximum disclosure.

Adopted by the Select Committee on Legislative Ethics on March 8, 1989.  
Members present and concurring in the opinion were:

Sen. Pat Pourchot, Chairman  
Sen. Jack Coghill  
Sen. Dick Eliason  
Rep. Mike Davis  
Rep. C.E. Swackhammer  
Margie MacNeille  
Irene Peyton  
Judge Thomas Stewart.

# **Alaska State Legislature**

## **Select Committee on Legislative Ethics**

716 W 4<sup>th</sup> Ave, Suite 230  
Anchorage AK 99501-2133  
(907)269-0150  
FAX: 269-0152

Mailing Address  
PO Box 101468  
Anchorage AK  
99510-1468

April 28, 1989

### **ADVISORY OPINION 89-04**

#### **Subject: Gifts - Travel/Hospitality**

**RE:** Disclosure of travel and hospitality paid for by the  
executive branch of the state government

You have requested an advisory opinion, under AS 24.60.160, as to whether you must disclose, under AS 24.60.080(d), travel expenses that you incurred that were paid for by the Alaska Department of Education (DOE).

DOE paid airfare and related expenses, in an amount in excess of \$100, for you to attend a conference in Anchorage. You attended the conference "for the purpose of obtaining information on matters of legislative concern," so that your acceptance of DOE's "gift" was proper under AS 24.60.080(c)(4). The Committee concludes that you must disclose the gift.

In Advisory Opinion 89-1 the Committee decided that AS 24.60.080(d) required disclosure of travel and hospitality gifts paid for by certain governmental entities. The opinion specifically covered a gift of travel paid for by a federal agency. The Committee believes that the same considerations that led it to the conclusion in Advisory Opinion 89-1 apply to travel and hospitality gifts from branches of the state government outside the Legislature. While executive branch agencies such as DOE may not be as independent as municipalities or school districts in dealings with the Legislature, those agencies nevertheless actively participate in the legislative arena through advocacy of desired legislation and funding in the state budget. As federal agencies rarely participate in the state legislative process, the case for disclosure of travel and hospitality gifts from executive branch agencies of the state government is arguably stronger than the case for disclosure of such gifts from federal agencies, which, as noted, was held subject to the disclosure requirement in Advisory Opinion 89-1.

Therefore, it is the Committee's opinion that AS 24.60.080(d) does

require disclosure of gifts of travel and hospitality exceeding \$100 in value from other branches of the state government.

Adopted by the Select Committee on Legislative Ethics on April 28, 1989.  
Members present and concurring in the opinion were:

Senator Pat Pourchot, Chair  
Senator Jack Coghill  
Representative Mike Davis  
Representative Walt Furnace  
Representative C.E. Swackhammer  
Margie MacNeille  
Irene Peyton (via conference call)  
Judge Thomas Stewart

JG:gc  
WKG10/013  
4/28/89

# **Alaska State Legislature**

## **Select Committee on Legislative Ethics**

716 W 4<sup>th</sup> Ave, Suite 230  
Anchorage AK 99501-2133  
907)269-0150  
FAX: 269-0152

Mailing Address  
PO Box 101468  
Anchorage AK  
99510-1468

August 12, 1993

### **ADVISORY OPINION 93-06**

#### **Subject: Gifts – Travel/Hospitality**

Re: Whether you may accept, from an organization sponsoring a convention, an offer to attend the convention without paying the registration fee.

You are a legislator, covered by the legislative ethics code. You have requested an Advisory Opinion on the question of whether you may attend a convention as the guest of the convention sponsor. You also ask what disclosure requirements apply if you are permitted under the ethics code to accept the gift.

#### **Statement of Facts**

The facts and circumstances that you have related, and on which the commission relies in answering your question, are as follows:

You have been invited to attend a convention as the guest of the sponsoring association. The invitation includes an offer of complimentary registration, which would otherwise cost you \$445. The convention will address issues of interest to you as a member of a particular legislative committee as well as in your private entrepreneurial capacity.

#### **Discussion**

The offer to waive your registration fee is a gift. Under AS 24.60.080(a), a person subject to the legislative ethics code may not accept a gift of \$100 or more unless it falls within one of the exceptions listed in subsection (c) of that statute. Under AS 24.60.080(c)(4), a person subject to the ethics code may accept a gift, regardless of its value, if it is a gift of "travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern." You have indicated that the convention would be an opportunity for you to obtain information on matters of legislative concern. Therefore, to answer your

question, the committee must decide whether the gift of a convention registration fee constitutes a gift of hospitality.

There is no definition of "hospitality" in the ethics code.<sup>1</sup> The committee has considered the purpose of the exception for gifts of travel and hospitality on matters of legislative concern. It is axiomatic that it is in the public interest for legislators and legislative staff to be well informed about issues that are current in the state, whether or not legislation is pending on the issue. To the extent that participation in conferences, conventions, workshops, and training sessions on those issues includes a cost to be billed to the legislature, the legislative budget benefits if legislators can accept all or a portion of the cost as a gift. When participation in an event of this type increases the knowledge available to the legislature about an issue, the whole legislature benefits. The committee therefore finds that "hospitality" in paragraph (4) should be found to include convention fees for a convention where matters of legislative concern will be discussed.

Under AS 24.60.080(d), you are required to disclose this gift within 30 days after you receive it.<sup>2</sup> The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. In this case, the name of the person making the gift is the association that is sponsoring the convention. The association does not have an occupation but it does have a primary purpose, which you should disclose in place of the requirement to disclose an occupation. The committee will maintain your disclosure as a public record and the disclosure will be published in the journal next legislative session.

---

<sup>1</sup> Webster's New World Dictionary of the American Language, second college edition, 1972, defines "hospitality" as

the act, practice, or quality of being hospitable; friendly and solicitous entertainment of guests

and defines "hospitable" as

friendly, kind, and solicitous towards guests.

These definitions do not help to draw a line distinguishing which gifts may be accepted under the ethics code and which gifts are improper.

<sup>2</sup> AS 24.60.080(d) reads, in pertinent part:

(d) A legislator or legislative employee who accepts a gift under (c)(4) or (6) of this section shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. A gift under (c)(4) of this section required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift to the committee. . . . The committee shall maintain a public record of the disclosure it receives relating to gifts under (c)(4) of this section and shall forward the disclosure to the appropriate house for inclusion in the journal. . . .

### **Conclusion**

You may accept the gift of the registration fee as a gift of hospitality on a matter of legislative concern. You should disclose your receipt of this gift as discussed above.

Adopted by the Select Committee on Legislative Ethics on August 12, 1993. Members present and concurring in the opinion were:

Joseph P. Donahue, Chair  
Ed Granger, Vice-Chair  
Margie MacNeille  
Shirley A. McCoy  
Edith A. Vorderstrasse  
Senator Jay Kerttula  
Senator Drue Pearce  
Representative Brian Porter  
Representative Jerry Mackie

TC:gc  
93-438.glc

# **Alaska State Legislature**

## **Select Committee on Legislative Ethics**

716 W. 4<sup>th</sup> Ave., Suite 230  
Anchorage, AK 99501  
(907) 269-0150  
FAX: 269-0152

Mailing Address  
P. O. Box 101468  
Anchorage, AK  
99510

February 11, 1997  
**Advisory Opinion 96-05**

### **Subject: Gifts – Travel/Hospitality for Legislative and Personal Business**

RE: Whether a legislator may accept payment for the costs of a trip on which the legislator conducted both legislative business and personal business.

You are a legislator covered by the legislative ethics code. You have requested an advisory opinion concerning a business trip you took some time ago. The committee has decided to respond to your request even though you have already engaged in the conduct about which you ask. However, the committee plans to consider, at another time, whether to adopt a policy that limits responses to requests for Advisory Opinions to questions concerning future conduct.

### **Statement of Facts**

The facts and circumstances that you have related, and on which the committee relies in answering your questions, are as follows:

You took a legislative trip out of state to meet with several individuals who worked for a national legislative group. During the course of your meetings you discussed legislative topics that were of interest to you. You extended your stay to attend an educational seminar of interest to you privately. The state paid for your travel to and from the office and for per diem for those days on which you were traveling or on which you met with the staff. The state did not pay per diem for the days on which you attended the educational seminar. You are requesting an Advisory Opinion as to whether your conduct violated legislative policy or the ethics statutes. You have offered to repay the state for the cost of your travel if the committee finds that your trip was in violation of legislative policy or the ethics law.

The ethics committee cannot comment on whether you have complied with legislative policy with regard to travel and per diem allowances. Legislative Council is the body which sets those policies, and which is, together with the House and Senate leadership and the chair of legislative committees, responsible for interpreting and implementing that policy. The ethics committee notes that in approving a request for travel funds, the individual entrusted with approval authority is responsible for reviewing the purpose of the proposed trip and determining that the use of travel money is a valid use of public funds.

The ethics committee has, in the past, requested an explanation of legislative travel and per diem policy from Legislative Council. A response has not been forthcoming to date.

The committee can respond to your request for advice about the ethics code.

### Discussion

In issuing advisory opinions under AS 24.60.160, the committee accepts as true the facts described by the requestor.<sup>1</sup> Based on the facts presented in your request, the committee accepts that you performed legislative business during the trip you made. It is permissible under the legislative ethics code for a legislator to accept state payment for the costs of a trip on which he or she conducted governmental business. As noted above, the committee does not have authority, in the context of advisory opinions, to use its judgment in lieu of a legislator's judgment in determining what is necessary state business or how much state business is necessary to justify accepting state payment for a trip.

The committee also cautions that if a legislator or legislative employee were to intentionally use a facade of legislative business to obtain a government-paid trip but were to fail to conduct any governmental business to justify governmental payment, the committee might well find a violation of AS 24.60.030(a)(2).<sup>2</sup>

---

<sup>1</sup> AS 24.60.160 states, in relevant part,

The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies . . . as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended . . . . The opinion issued is binding on the committee in any subsequent proceedings **concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request** for the advisory opinion. . . .

(emphasis added.)

<sup>2</sup> The relevant part of AS 24.60.030(a) reads:

(a) A legislator or legislative employee may not

\* \* \*

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nongovernmental purpose or for the private benefit of either the legislator, legislative employee, or another person[.]

The three exceptions to this prohibition (use of state property of nominal cost, use of generally available information, and telephone use without charge) do not apply to the facts here.

### **Conclusion**

The committee finds, based on your statement that you were engaged in some governmental business on the trip, that it was not a violation of the ethics code for the state to pay the cost of travel and per diem for those days on which you were involved in the governmental business.

Adopted by the Select Committee on Legislative Ethics on February 11, 1997. Members present and concurring in this opinion were:

Margie MacNeille, Chair  
Joe Donahue  
Shirley McCoy  
Senator Jim Duncan  
Senator Drue Pearce  
Representative Con Bunde  
Representative Kim Elton

Members absent were:

Ed Granger  
Edith Vorderstrasse

TBC:pl:jdr  
96-244.plm

**SENATE BILL NO. 34**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

**BY SENATOR GARDNER**

**Introduced: 1/23/13**

**Referred: Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to office accounts for each member of the legislature for legislative**  
2   **office expenses."**

3   **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4    \* **Section 1.** AS 24.10.110 is amended to read:

5           **Sec. 24.10.110. Office accounts [ADDITIONAL ALLOWANCES].** In  
6           addition, each member of the legislature is entitled to an annual **legislative office**  
7           **account, as established by the legislative council, that complies with 26 U.S.C.**  
8           **62(c) (Internal Revenue Code) and regulations adopted under that statute**  
9           **relating to qualified business expenses under accountable plans** [ALLOWANCE  
10          PRESCRIBED IN ACCORDANCE WITH AS 39.23 FOR POSTAGE,  
11          STATIONERY, STENOGRAPHIC SERVICES, AND OTHER EXPENSES].

12   \* **Sec. 2.** AS 24.10.110 is amended by adding a new subsection to read:

13           (b) The funds in the office account of each member of the legislature shall  
14          remain in a separate account maintained by the Legislative Affairs Agency as

1 provided in (a) of this section, subject to the following:

2 (1) funds in a member's office account may be paid to the member  
3 upon request of the member for reimbursement and after the agency determines that  
4 the request for reimbursement is for a qualified business expense; and

5 (2) any funds remaining in a member's office account at the end of  
6 each year shall lapse into the general fund as provided by law.

7 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 **APPLICABILITY.** This Act applies to office accounts established on or after  
10 January 1, 2014, under AS 24.10.110, as amended by this Act.

**HOUSE BILL NO. 97**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES KAWASAKI, Josephson, Muñoz, Gara, Tuck**

**Introduced: 2/1/13**

**Referred: State Affairs, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to office accounts for each member of the legislature for legislative**  
2   **office expenses."**

3   **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4    \* **Section 1.** AS 24.10.110 is amended to read:

5           **Sec. 24.10.110. Office accounts [ADDITIONAL ALLOWANCES].** In  
6           addition, each member of the legislature is entitled to an annual **legislative office**  
7           **account, as established by the legislative council, that complies with 26 U.S.C.**  
8           **62(c) (Internal Revenue Code) and regulations adopted under that statute**  
9           **relating to qualified business expenses under accountable plans** [ALLOWANCE  
10          PRESCRIBED IN ACCORDANCE WITH AS 39.23 FOR POSTAGE,  
11          STATIONERY, STENOGRAPHIC SERVICES, AND OTHER EXPENSES].

12   \* **Sec. 2.** AS 24.10.110 is amended by adding a new subsection to read:

13           (b) The funds in the office account of each member of the legislature shall  
14          remain in a separate account maintained by the Legislative Affairs Agency as

1 provided in (a) of this section, subject to the following:

2 (1) funds in a member's office account may be paid to the member  
3 upon request of the member for reimbursement and after the agency determines that  
4 the request for reimbursement is for a qualified business expense;

5 (2) a member may limit the amount of the funds in the member's office  
6 account to any amount up to the maximum annual amount authorized by the  
7 legislative council; and

8 (3) any funds remaining in a member's office account at the end of  
9 each year shall lapse into the general fund as provided by law.

10 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 **APPLICABILITY.** This Act applies to office accounts established on or after January  
13 1, 2014, under AS 24.10.110, as amended by this Act.