

ITEM 9.) Board of an Organization, AS 24.60.030(f)
February 26, 2013

The House Subcommittee requested a legal opinion asking for guidance in defining and/or establishing parameters for “board of an organization” under the disclosure requirements of AS 24.60.030(f). Additionally, the Ethics Office provides informal advice to those covered by the Act when asked whether a board membership of an organization must be disclosed. No past advisory opinions have specifically addressed the term “board of an organization” although several have been issued stating the requester must disclose a board membership.

DISCUSSION:

Review the January 15, 2013 legal opinion. Questions/comments from committee members.

Options: Adopt the legal opinion (or) request a formal, binding advisory opinion.
(Note: A legal opinion is not changeable by the committee. The legal opinion is an interpretation of AS 24.60.030(f) by LAA Legal. However, an advisory opinion is an interpretation by the committee of a particular statute or fact pattern.)

ITEMS IN THE PACKET:

- November 30, 2012 request for legal opinion from House Subcommittee.
- January 15, 2013 legal opinion from LAA Legal Counsel, Dan Wayne.
- Ethics Complaint Decision H 12-03, Failure to file a Board Membership Disclosure.
- Disclosure form: Membership on a Board of Directors.

Alaska State Legislature

Select Committee on Legislative Ethics

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TO: Dan Wayne, LAA Legal

FROM: Joyce Anderson, Administrator

DATE: November 30, 2012

RE: Legal opinion defining board of an organization and serving on a board for reporting purposes under AS 24.60.030(f)

The House Subcommittee is asking for a legal opinion as to what constitutes a board or commission and what parameters should be used to define serving on a board or commission of an organization for purposes of disclosing under AS 24.60.030(f).

A legislative employee may not serve in a position that requires confirmation by the legislature. A legislator or legislative employee who serves on a board of an organization, including a governmental entity, shall disclose the board membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves. The committee shall maintain a public record of the disclosure and forward the disclosure to the appropriate house for inclusion in the journal. This subsection does not require a legislator or legislative employee who is appointed to a board by the presiding officer to make a disclosure of the appointment to the committee if the appointment has been published in the appropriate legislative journal during the calendar year.

We did not find a definition of “board” or “commission” of an organization in the statutes. The subcommittee discussed several variables: Does the manner of being delegated to a board or commission factor in and must the board or commission have official status? For instance, what about holding a board/commission position as a volunteer or as a paid board member? Does it matter if the board membership is an appointed position, an elected position, or an agreed upon position? Does the board have to be incorporated, registered, or have some other type of official status? Or, may the

board or commission be informal but still have powers to carry out particular duties or tasks?

This office has given out advice in the past that if serving on a board or commission is a voting position or one that allows for making recommendations or decisions regarding policy/contracts/statements on the record, then the board membership must be disclosed.

Your help in defining these variables and any other elements will provide guidance to the committee and the Ethics Office. The committee is asking for a response by Monday, January 7, 2013. If this timeframe is not possible, please give me a call.

LEGAL SERVICES

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MEMORANDUM

January 15, 2013

SUBJECT: Meaning of "board of an organization" under the Legislative Ethics Act (Work Order No. 28-LS0183)

TO: Select Committee on Legislative Ethics
Attn: Joyce Anderson, Administrator

FROM: Dan Wayne 
Legislative Counsel

You have asked for a legal opinion as to the meaning of the term "board of an organization," under AS 24.60.030(f), because the Legislative Ethics Act does not expressly define the term.

AS 24.60.030(f) is a disclosure requirement. It reads:

(f) A legislative employee may not serve in a position that requires confirmation by the legislature. A legislator or legislative employee who serves on a *board of an organization*, including a governmental entity, shall disclose the board membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves. The committee shall maintain a public record of the disclosure and forward the disclosure to the appropriate house for inclusion in the journal. This subsection does not require a legislator or legislative employee who is appointed to a board by the presiding officer to make a disclosure of the appointment to the committee if the appointment has been published in the appropriate legislative journal during the calendar year.

(Emphasis added).

"Organization" appears several times in the Act but is not defined.¹ When terms are undefined in statute, AS 01.10.040(a) directs that they be construed "according to their common and approved usage."² The Alaska Supreme Court has said:

¹ The term is used frequently throughout the Alaska Statutes and seldom defined, which suggests that its meaning is left to common understanding in those instances.

Dictionaries provide a useful starting point for determining what statutory terms mean, as they provide the common and ordinary meaning of words. When a popular or common word is used in a statute, but is not defined, the word should be given its common meaning.³

The relevant definition of "board" in *Webster's Collegiate Dictionary*, Eleventh Edition, defines it as "a group of persons having managerial, supervisory, investigatory, or advisory powers."

In common understanding, the word "organization" is a noun used to describe a grouping of parts to form a whole. This term could describe a condition, like the *organization* of bee hives, or a process, such as the *organization* of a social event. But given the context here, it means a group of people united for a common purpose, such as an association, or a structure for doing business, such as a corporation. In *Webster's*, "organization" is defined as follows:

- 1)
 - a: the act or process of organizing or of being organized
 - b: the condition or manner of being organized
- 2)
 - a: ASSOCIATION, SOCIETY <charitable *organizations*>
 - b: an administrative and functional structure (as a business or a political party); *also*: the personnel of such a structure

The complete phrase, "board of an organization," refers to a board that has power to manage, supervise, investigate, or advise an administrative and functional structure such as a business, or a group of people united a common purpose such as an association or society. Accordingly, membership on the board of an organized group, business, association, or society, would have to be disclosed regardless of the organization's size or type. Obviously, an informal group or association that does not have a governing board does not fall under this subsection.

² Also, AS 01.10.040(b) says "[W]hen the words 'includes' or 'including' are used in a law, they shall be construed as though followed by the phrase 'but not limited to.'" Therefore, because "board of an organization" in AS 24.60.030(f) is subject to "including a governmental entity," "organization" should be interpreted as including non-governmental entities as well as governmental ones.

³ *Alaskans For Efficient Government, Inc. v. Knowles*, 91 P.3d 273, 276 n. 4 (Alaska 2004), quoting 2A Norman J. Singer, Sutherland Statutory Construction § 47.28 (6th ed.2000).

Because "board of an organization" is not specifically defined, the legislature has left discretion to the Select Committee on Legislative Ethics ("committee") to interpret this phrase within the context of this disclosure provision. This discretion gives the committee some flexibility in applying the Act. However, this is not to say that the committee has complete discretion to create a unique, narrow definition that is not consistent with a common understanding of the terms. For example, the exclusion of boards of specific types of organizations, such as religious organizations, may be inconsistent with the statute, which directs broad disclosure and does not create an exception for religious organizations. It seems likely the common understanding of "board of an organization" would include the governing board of a church, temple, or other religious organization.

Another consideration in interpreting this phrase is the context of the term within the Act. Because "board or an organization" is used in a disclosure provision, perhaps it should be given a broad definition to ensure full disclosure and defuse the appearance of a conflict of interest. As the Select Committee on Legislative Ethics advised in AO 2009-05, "[E]thics disclosure requirements are based in part on the principle that certain potential conflicts of interest, once out in the open, pose less of a threat to the public's confidence in government than they might if they were not revealed."

Ultimately, the committee has three choices. It may leave AS 24.60.030(f) subject to interpretation based on the common understanding of "board of an organization," as generally outlined above; it may choose to craft a specific definition in an advisory opinion under AS 24.60.160, which will be published when adopted; or, the committee may decide to draft a definition of the phrase and ask a legislator or a committee to file a bill at its request to add a definition to the Act.

Please let me know if you have any other questions or concerns.

DCW:lnd:ljw

13-007.lnd

Alaska State Legislature

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HOUSE SUBCOMMITTEE COMPLAINT H 12-03

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee (committee) hereby finds there is probable cause to believe that Karen Sawyer, chief of staff to former Representative Carl Gatto and now staff to Representative Shelley Hughes, violated the Legislative Ethics Act, AS 24.60.030(a)(2), Prohibitions related to conflicts of interest and unethical conduct.

The House Subcommittee investigated allegations contained in complaint H 12-03 and determined:

1. The House Subcommittee received a properly filed complaint dated February 23, 2012.
2. The complaint alleged the following:
 - Ms. Sawyer failed to file a timely disclosure for board membership on the Stop Islamization of America (SIOA) board for calendar year 2011 in violation of AS 24.60.030(f) and AS 24.60.105(a).

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: September 27, 2011, February 23, 2012, and November 20, 2012. The length of time to process the complaint was due to Ms. Sawyer's schedule and other contributing factors.

On February 23, 2012 the committee adopted a Scope of Investigation focusing on AS 24.60.030(f), Prohibitions related to conflicts of interest and unethical conduct.

AS 24.60.030(f) . . . A ... legislative employee who serves on a board of an organization, including a governmental entity, shall disclose the board

membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves.

AS 24.60.105(a) When a . . . legislative employee is required to file a disclosure under this chapter and a date by which the disclosure must be filed is not otherwise set by statute, the deadline for filing the disclosure shall be 30 days after the commencement of the matter or interest or the date the ... legislative employee first becomes subject to this chapter, whichever comes later.

The committee conducted an investigation, and on November 20, 2012, the committee reviewed and analyzed the following materials:

- Above named statutes.
- Ms. Sawyer's written response to Complaint H 12-02 and H 12-03.
- National and Alaska SIOA web site pages from 2011 and 2012.
- Transcripts and/or summaries of six interviews.
- Ms. Sawyer's emails related to HB 88, Use of Foreign Law, and SIOA.
- Other applicable background materials.

FINDING OF PROBABLE CAUSE

The House Subcommittee finds that, after a thorough investigation, Ms. Sawyer failed to file a board membership disclosure for the years 2011 and 2012 in violation of AS 24.60.030(f).

The committee reasoned that a board membership disclosure is required regardless if the board membership is a volunteer position, a paid position, an elected position, an appointed position or an agreed upon position.

AS 24.60.010(2) states, "The legislature finds that a fair and open government requires that ... 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." The rationale for disclosure of board membership is twofold: disclosure is the most effective way to avoid conflicts of interest related to legislative work and disclosure provides transparency when there is a perceived conflict of interest.

The facts the committee considered were:

- Ms. Sawyer opened a checking account under the SIOA name and listed herself as Secretary/Treasurer and signed the bank card as such.
- Several individuals stated on record that Ms. Sawyer informed them she was secretary/treasurer of SIOA.

- Investigative evidence shows that Ms. Sawyer's involvement with SIOA and the activities she performed over a period of many months was telling of her role in the organization.
- Ms. Sawyer is the only other person listed on the Alaska SIOA web site other than Mr. David Heckert, Alaska Regional Director. Her title on the web site is 'Administrative Volunteer'. Ms. Sawyer stated her position with SIOA was as a volunteer. The web site was viewed on November 11, 2011, and again on November 1, 2012. She was listed on the site on both dates as Administrative Volunteer. The web site was launched on June 24, 2011.

RECOMMENDATION

The committee, under authority of AS 24.60.178(b)(3), is recommending corrective action. Ms. Sawyer must file a board membership disclosure for the years 2011 and 2012 within two weeks from receipt of this decision.

A fine may be imposed under AS 24.60.260(c) for late disclosures.¹ The committee waives the fine for the two late disclosures if they are received within the time stipulated in this decision. A willful late filing is subject to a fine of \$100 each day the disclosure is late and may not exceed a maximum of \$2,500.



Herman G. Walker, Jr., Chair

Adopted this 19th day of November 2012
by a majority of the House Subcommittee

Members Participating

Herman G. Walker, Jr. Chair
Dennis (Skip) Cook
Antoinette "Toni" Mallott
H. Conner Thomas
Gary J. Turner
Representative Craig Johnson
Representative Chris Tuck

¹ AS 24.60.260(c) The committee may impose a fine on a person who files a disclosure after the deadline set by this chapter. The amount of the fine imposed under this subsection may not exceed \$2 for each day to a maximum of \$100 for each late filing unless the committee determines that the late filing was inadvertent or willful. If the committee finds that a late filing was inadvertent, the maximum fine the committee may impose under this subsection is \$25. If the committee determines that the late filing was willful, the amount of the fine imposed under this subsection may be \$100 for each day but may not exceed a maximum of \$2,500.

Disclosure of
Membership on a Board of Directors
 of any organization

NAME OF DISCLOSER: _____
 Please Print

ADDRESS: _____

PHONE NUMBER (Daytime) _____

EMPLOYER (if legislative employee) _____

**Disclosure of membership on a board of directors
 in accordance with AS 24.60.030(f)**

Name of Organization or Entity	Address	Date of Board Membership
1. _____ _____	_____	_____
2. _____ _____	_____	_____
3. _____ _____	_____	_____
4. _____ _____	_____	_____

The above is a true and accurate representation of my membership on boards of directors,
 in accordance with AS 24.60.030(f)

 Signature

 Date

☐ **Check box if this is your 90 day final report and there are no changes to the above information. AS 24.60.115 requires legislators, legislative employees and public members of the committee leaving service to disclose every matter or interest UNLESS previously disclosed OR the matter or interest is no longer subject to disclosure.**

 Signature

 Date

REPORTING DEADLINES: AS 24.60.105 and AS 24.60.115

- Within 30 days of becoming a director on a board.
- Annually within the first 30 days of a regular session.
- 90 days after final day of service.

EXPLANATION

A legislator or legislative employee may serve on a board of an organization, including a governmental entity, if the legislator or employee discloses the board membership to the committee. A legislative employee may not serve in a position that requires confirmation by the legislature. Appointments to boards by the presiding officer published in the legislative journal do not require disclosure.