

May 13, 2015

DRAFT ADVISORY OPINION 2015-02

Questions Presented

The Select Committee on Legislative Ethics asks the following questions:

Question (1): *Does a lunch and learn event held in a state-owned facility at the request of a legislator provide a private benefit to the event presenter, under AS 24.60.030(2), if the presenter is someone other than a legislator or a legislative employee?*

Question (2): *Does the opportunity of a person other than a legislator to provide a free meal to legislators and legislative staff, at a lunch and learn event in a state facility, raise ethical concerns under the Legislative Ethics Act?*

Statement of Facts

The committee relies on the following facts:

Lunch and learn events during legislative sessions have become increasingly popular in the capitol since 2007.¹ Attendees are provided with a free presentation on one or more topics. The presenter generally also provides attendees with a free meal. The presenter is not charged a fee to use the capitol for the lunch and learn event.

Lunch and learn events are typically set up by a request from a legislator to the appropriate Rules Committee chairperson, through Rules Committee staff. The events are listed in the legislature's public daily meeting calendar, and sometimes advertised on flyers posted in the Capitol; a sampling of flyers indicates that all legislators and

¹ A list of lunch and learn events held during the period of March 12, 2015 -- March 25, 2015, is enclosed to provide examples.

legislative session staff, regardless of partisan political alignment, are the target audience. A presentation at a lunch and learn event may be teleconferenced.²

Discussion

Question (1): *Does a lunch and learn event held in a state-owned facility at the request of a legislator provide a private benefit to the event presenter, under AS 24.60.030(2), if the presenter is someone other than a legislator or a legislative employee?*

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.³ Within AS 24.60.030(a)(2) there are several exceptions to these prohibitions. The prohibitions and the relevant exception 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

(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

² Sample flyers that encourage attendance at particular lunch and learn events are enclosed.

³ Also see AO 13-04.

cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use. . . .

In AO 09-03 we considered whether the weekly use of a legislative committee room in the Capitol by an informal, faith-based group of legislators and staff was prohibited by AS 24.60.030(a)(2). We determined as follows:

The meetings held by the informal group of current legislators and staff, as well as the participation of individual legislators and legislative employees in those meetings, have a personal and nonlegislative purpose, but as described (in AO 09-03) they do not interfere with the performance of public duties, and the cost to the legislature is nominal. For these reasons we determine that the limited personal use exception in AS 24.60.030 applies. The group's use of the Capitol facility is permissible under the exception in AS 24.60.030(a)(2)(A).

A legislator who sets up a lunch and learn event as described, for another person to present information about a matter of legislative concern, confers a private benefit on the presenter by creating an opportunity for the presenter to have access to legislators and legislative employees, and providing the presenter with free and convenient use of space for that purpose. Nevertheless, as long as the event does not interfere with the performance of a public duty by a legislator or legislative employee, and the cost to the state for facilitating the event is nominal, the exception under AS 24.60.030(a)(2)(A) applies.

Generally lunch and learn events as described meet the requirements of AS 24.60.030(a)(2)(A) because they result in only a nominal cost to the state when they occur during a period designated for a meal break and do not require the state to expend additional resources. However, in some instances, depending on additional applicable facts, a lunch and learn event's use of space in the Capitol might interfere with the duties of legislators or legislative employees by displacing them from the space or delaying the

carrying out of official duties. Likewise, in some instances an event's use of space might be on a scale that results in more than a nominal cost to the state. In either of these instances we may find that setting up a lunch and learn event violates the prohibition, under AS 24.60.030(a)(2) or (a)(5), against using government assets or resources for the private benefit of a person, depending on the facts before us.

Question (2): *Does the opportunity of a person other than a legislator to provide a free meal to legislators and legislative staff, at a lunch and learn event in a state facility, raise ethical concerns under the Legislative Ethics Act?*

The answer is yes, depending on the nature of additional facts. For example, AS 24.60.030(a)(1) prohibits legislators and legislative employees from soliciting, agreeing to accept, or accepting a benefit other than official compensation for the performance of public duties, but also contains an exception for "the acceptance of a gift under . . . AS 24.60.080." The free meal provided at a lunch and learn event is a gift. The Act provides that legislators and legislative employees are allowed to receive gifts worth less than \$250.00. AS 24.60.080(a)(1) provides that legislators and legislative employees may:

(1) solicit, accept, or receive, directly or indirectly, a gift worth \$250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$250 that in a calendar year aggregate to \$250 or more in value. . . .

This dollar limit raises a concern that in some cases a legislator or legislative employee might receive meals and other gifts from a person that in a calendar year aggregate to \$250 or more in value. However, an exception in the Act, under AS 24.60.080(c)(4), applies to a free meal provided at a lunch and learn event if the provider of the meal is

not a lobbyist⁴ and the legislator or legislative employee accepts the meal for the purpose of obtaining information on matters of legislative concern.⁵ AS 24.60.080(c)(1)(B) provides a further exception to the limits, in AS 24.60.080(a)(1), on gifts from non-lobbyists.

The legislature has drawn a clear distinction between gifts from lobbyists and gifts from other persons, and has imposed stricter limitations on gifts from lobbyists. Therefore, even if a meal is accepted as a gift primarily for the purpose of obtaining information on a matter of legislative concern, the (c)(4) exception does not apply if the provider of the meal is a lobbyist, an immediate family member of a lobbyist, or acting on behalf of a lobbyist; exceptions under AS 24.60.080(c) apply only to AS 24.60.080(a)(1), not to the prohibition on gifts from lobbyists and their family members or agents under AS 24.60.080(a)(2). However, a separate exception, AS 24.60.080(a)(2)(A), allows legislators and legislative employees to receive from a lobbyist a gift of "food or beverage for immediate consumption," and that exception would apply to receipt of a free meal from a lobbyist at a lunch and learn event.

⁴ AS 24.60.080(c)(4) reads:

(c) 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

....

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

AS 24.60.080(d) requires disclosure of gifts of travel and hospitality under this exception, within 30 days, if the value exceeds \$250. AS 24.60.080(j) requires that value, under AS 24.60.080, be determined by calculating fair market value.

⁵ The topics presented at the lunch and learn events advertised on the enclosed flyers -- the capital budget, tribal sovereignty, education, criminal recidivism, enriching and empowering communities, and children's justice -- are all examples of topics that are matters of legislative concern.

There are other lunch and learn event scenarios that might raise concerns under the Act. For example, if the event has a partisan political or campaign purpose, we may determine that setting it up or participating in it is prohibited by the provisions related to partisan political activity or campaigning under AS 24.60.030(a)(2), (a)(4), or (a)(5). The personal use exceptions under AS 24.60.030(a)(2)(A) and (a)(5)(A) do not apply to partisan political or campaign use of government assets or resources.

Finally, any time legislators or legislative employees are provided a gift, including hospitality, with an expectation that they will do something in return for it, that may be a matter of concern under the Legislative Ethics Act. AS 24.60.010(1) and (2) provide:

- (1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;
- (2) a fair and open government requires 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. . . .

These principles do not require the committee to find that receipt of a free meal at a lunch and learn event creates an appearance of a conflict of interest, or that a resulting appearance of a conflict of interest in this context would necessarily violate the Act. However, they inspire the committee to weigh all relevant facts when considering a complaint that has come before it.

Conclusion

For the reasons stated above, the committee finds:

- (1) A lunch and learn event as described in the facts before us -- relating to a matter of legislative concern, held in a state-owned facility at the request of a legislator, open to legislators and legislative session staff regardless of their partisan political alignment, and presented by another person -- provides a private benefit to the presenter, under

AS 24.60.030(a)(2). However, setting up the event may be permitted by the Act under the personal use exception in AS 24.60.030(a)(2)(A), if the state's cost of facilitating the event is nominal and the event does not interfere with the performance of a public duty by a legislator or a legislative employee.

(2) The opportunity for a person other than a legislator to provide a free meal to legislators and legislative staff at a lunch and learn event relating to a matter of legislative concern in a state facility may create the appearance of a conflict of interest in a particular case, depending on the applicable facts. As a general rule, however, we find that a legislator or legislative employee who attends a lunch and learn event primarily for the purpose of obtaining information on a matter of legislative concern may receive the gift of a free meal at the event under the exception in AS 24.60.080(c)(1)(B) or (c)(4), if the gift is from a person who is not a lobbyist, or under the exception in AS 24.60.080(a)(2)(A), if the gift is from a lobbyist.

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

Dennis "Skip" Cook, Chair	yes	no	absent
Representative Chris Tuck	yes	no	absent
Representative Charisse Millett	yes	no	absent
Senator Gary Stevens	yes	no	absent

Senator Dennis Egan	yes	no	absent
Janie Leask, public member	yes	no	absent
H. Conner Thomas, public member	yes	no	absent
Herman G. Walker, Jr., public member	yes	no	absent
Gary J. Turner, public member	yes	no	absent

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Reference Materials for AO 15-02

Alaska State Legislature

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November 19, 2009

ADVISORY OPINION 2009-03

SUBJECT: Conflict of Interest – Use of Government Resources

RE: Limitations on the use of a public facility under the Legislative Ethics Act.

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

Question Presented

Does the weekly use of a legislative committee room in the Capitol by an informal, faith-based group of current legislators and staff:

1. violate the prohibition on the use of state resources and facilities for a nonlegislative purpose and/or for the private benefit of the legislator, legislative employee or another person?
2. constitute a permitted use of state resources for personal purposes?

Statement of Facts

The Capitol, including the parts of the Capitol operated by the legislature, is a public facility. An informal group of current legislators and legislative staff hold a weekly religious faith-based meeting during legislative sessions in a legislative committee room in the Capitol. The meetings are held at an early morning time that does not conflict with scheduled meetings of the legislature. The group notifies prospective participants in advance of each meeting but the meetings are also open to the public. Among those notified ahead of time of the meetings are current and former legislators, staff, current and former public officers of the state's executive branch, and lobbyists.

In earlier advisory opinions, we have discussed the Legislative Ethics Act's prohibition on the use of a public resource for a nonlegislative purpose and in doing so have focused on a threshold question of whether or not a particular use has a legislative purpose. In one instance, preparations by legislators and legislative employees for a National Conference of State Legislatures (NCSL) meeting in a public facility had a legislative purpose, but (arguably) also conferred a benefit on NCSL. In Advisory Opinion 96-04, February 20, 1996, we reached the following conclusion:

The 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. Having made that

determination, the committee finds that the ethics code does 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 Advisory Opinion 95-03, November 7, 1995, we reviewed facts in which a group, made up of legislators and members of the executive branch, proposed to donate exercise equipment to the legislature for establishment of an exercise room in the basement of the Capitol for the donors' exclusive use. We determined that it was permissible for the legislature to establish its own exercise room in the Capitol if it was not exclusive but was made available to legislators generally.

The matter before us boils down to a question of whether the usage described in the facts presented fall within a narrow exception for limited personal use of public facilities operated by the legislature.

AS 24.60.030(a) says, 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;

This statute prohibits a legislator or a legislative employee from using the capitol facility for a personal or nonlegislative purpose.¹ However, a subparagraph within it, AS 24.60.030(a)(2)(A), contains an exception, sometimes called the "personal use exception," which 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.

The meetings held by the informal group of current legislators and staff, as well as the participation of individual legislators and legislative employees in those meetings, have a personal and nonlegislative purpose, but as described they do not interfere with the performance of public duties, and the cost to the legislature is nominal. For these reasons we determine that the limited personal use exception in AS 24.60.030 applies. The group's use of the Capitol facility is permissible under the exception in AS 24.60.030(a)(2)(A).

¹ The terms "legislative purpose" and "nonlegislative purpose" are not defined in the Act.

Conclusion

We find that the exception for limited personal use in AS 24.60.030(a)(2)(A) applies to the use of a public facility operated by the legislature as described in the facts that are before us. For this reason, we find that the use does not violate the Legislative Ethics Act and is therefore a permissible use.

Adopted by the Select Committee on Legislative Ethics on: November 19, 2009.

Members present and concurring in this opinion were:

Representative Berta Gardner

Representative Carl Gatto, alternate member

Senator Gary Stevens

Herman G. Walker, Jr., public member

H. Conner Thomas, public member

Dennis "Skip" Cook, public member

Members present and dissenting from this opinion were:

Gary J. Turner, Chair

Members absent were:

Senator Tom Wagoner, present for discussion but absent for the vote

Ann Rabinowitz, public member

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Alaska State Legislature

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HOUSE SUBCOMMITTEE COMPLAINT H 12-02

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 12-02 and determined:

1. The House Subcommittee received a properly filed complaint dated February 23, 2012.
2. The complaint alleged the following:
 - a.) Ms. Sawyer allowed state resources to be used for a “nonlegislative purpose” and for the “private benefit” of Mr. David Heckert, Alaska Regional Director of the organization, Stop Islamization of America (SIOA) Alaska Chapter, in violation of AS 24.60.030(a)(2).
 - Ms. Sawyer allowed Mr. Heckert to use the Wasilla Legislative Information Office (LIO), equipment and services over several months for work related to SIOA.
 - b.) Ms. Sawyer allowed state resources to be used for a “nonlegislative purpose” and for the “private benefit” of SIOA in violation of AS 24.60.030(a)(2).

- Ms. Sawyer allowed SIOA to use state equipment and services for activities related to at least two meetings of the organization held at the Wasilla LIO under the guise of a legislative meeting for House Bill 88, Use of Foreign Law.
 - Ms. Sawyer provided a key to the Wasilla LIO to Mr. Heckert which allowed him unlimited access and use of a state facility.
- c.) Ms. Sawyer performed “nonlegislative” work on government time with the use of state resources and for her “private benefit” and that of SIOA all of which were in violation of AS 24.60.030(a)(2).
- Ms. Sawyer assisted Mr. Heckert with activities he performed at the Wasilla LIO related to SIOA including helping organize and facilitate meetings. These meetings were advertised as a discussion of HB 88 but in reality were recruitment meetings where funds were solicited for the organization.

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(a)(2), Prohibitions related to conflicts of interest and unethical conduct.

AS 24.60.030(a)(2) A legislator or a legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, . . . or for the private benefit of the legislator, legislative employee, or another person;

AS 24.60.990(a)(2) “benefit” includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, or 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.

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.
- Transcript of the August 3, 2011 meeting held at the Wasilla LIO.
- Handouts from the August 3, 2011 meeting held at the Wasilla LIO.
- National and Alaska SIOA web site pages.
- Internet pages noticing interim meetings of HB 88 and Alaska SIOA meetings.
- HB 88 and the packet of materials provided for Legislative Committee Meetings from the Legislature's BASIS web site.
- HB 88 committee meeting minutes from the 2011 House State Affairs meetings of March 17 and 24, and the House Judiciary meetings of March 30 and April 1.
- Transcripts and/or summaries of six interviews.
- Ms. Sawyer's emails related to HB 88 and SIOA.
- Legislature Personal Information and Materials Receipt Form; Use of Legislative Affairs Agency Equipment, Space and Staff Policy; Legislative Affairs Agency Application for Keys; and Legislative Affairs Agency Keys, Parking Permits and Other Accountable Property Policy.
- Other applicable background materials.

FINDING OF PROBABLE CAUSE

The House Subcommittee finds that, after a thorough investigation, the actions of Ms. Sawyer as outlined in 2(a), 2(b), and 2(c), were in violation of AS 24.60.030(a)(2).

The committee determined that Ms. Sawyer lost sight of the purpose of HB 88 and became personally and obsessively involved with SIOA and its mission. In at least three emails from March 2011, the authors stressed that the bill was about "protecting constitutional rights" and not about Sharia law. One email in particular from a national non-profit, non-partisan, national security organization stated, "... ease up on the Sharia/Islam angle." Even Ms. Sawyer seemed to be cognizant of her obsession as she stated in a March 2011 email, "My co-workers wonder if I'm getting obsessed with Sharia." SIOA supported HB 88 but the committee determined that their main mission appeared to be promoting their organization and its mission with HB 88 as a validation point.

Ms. Sawyer allowed Mr. Heckert to work for several months or longer at the Wasilla LIO. He was there almost every day for at least several hours and at times all day. Ms. Sawyer provided Mr. Heckert with her personal laptop and internet card to use while at the LIO. She also provided a cell phone number for SIOA

using her family plan. The committee was unable to determine exactly what activities Mr. Heckert performed while at the LIO. However, Ms. Sawyer inferred that Mr. Heckert was performing research for HB 88 and working on slide presentations. The committee concluded the slide presentation at the August 3, 2011, meeting was one such presentation.

Ms. Sawyer acknowledged that she occasionally accessed the SIOA Yahoo account from her state computer. Investigative materials show that Ms. Sawyer, during the regular work day, used state equipment to help plan activities related to an October, 2011, SIOA conference. Ms. Sawyer acknowledged that she allowed Mr. Heckert to use the Wasilla LIO projector for several presentations outside of the Wasilla LIO. Evidence showed that Ms. Sawyer allowed Mr. Heckert access to the key to the Wasilla LIO for approximately two weeks which allowed him unlimited access and use of a state facility. Ms. Sawyer was out of town during this time period.

The committee determined that the August 3, 2011 meeting held at the Wasilla LIO was in actuality an SIOA meeting. The participant sign-in sheet was an SIOA sign-in sheet. Mr. Heckert asked for donations of money and airline miles for an SIOA conference planned for October. Cupcakes and cookies were available for participants that had a symbol on them that reflected SIOA philosophy. The slide presentation ended with a picture of a man holding a sign that was political in nature. HB 88 was only briefly mentioned twice during the approximately two hour meeting. No staff from former Representative Carl Gatto's office attended the meeting which is customary when a legislative office holds an interim meeting. Mr. Heckert opened and closed the Wasilla LIO building with Ms. Sawyer's key.

RECOMMENDATION

The committee, under authority of AS 24.60.178(b)(4), is recommending that Ms. Sawyer be terminated effective immediately. The committee also recommends that Ms. Sawyer never be reemployed by the Legislature again. A copy of this decision will be placed permanently in Ms. Sawyer's personnel file with the Legislative Affairs Agency.

The committee will notify Ms. Sawyer's appointing authority, Representative Hughes, of this decision and recommended sanction. Under AS 24.60.176(a), the appointing authority may not question the committee's findings of fact. Representative Hughes may act on the committee's recommendation or impose a different sanction pursuant to AS 24.60.176(a). Representative Hughes may request the House Rules Committee to act on her behalf under the provisions of AS 24.60.176(b)(5).

The committee acknowledges that termination of a legislative employee is serious. Based on the investigation, the committee determined that Ms. Sawyer was unable to distinguish where the bright line should be drawn between promoting HB 88 and

activities related to SIOA's agenda to promote their organization and its mission. Many of Ms. Sawyer's emails contained statements that related to both SIOA activities and HB 88 in the same email. Additionally, some emails Ms. Sawyer sent from her legislative email address contained SIOA contact information and her personal cell phone number. The committee determined the two became interchangeable in Ms. Sawyer's eyes. Ms. Sawyer was advised on August 15, 2011, by Ethics Committee staff, to separate activities related to HB 88 from activities related to SIOA. However, written documentation showed that she continued to use state resources for activities related to SIOA and combined legislative business with SIOA activities. In addition, the committee was concerned about Ms. Sawyer's lack of candor and cooperation during the investigation and her unwillingness to acknowledge the ethical issues raised by her actions.

The committee recognized that Ms. Sawyer was out of town due to a family emergency when the August 3, 2011 meeting was held. However, the meeting had already been scheduled and according to Ms. Sawyer the format was to be similar to previous meetings held. The committee concluded, based on Ms. Sawyer's interview and written response to the complaint, that she blamed everyone else for what occurred at the August 3, 2011 meeting but herself.

Further, based on investigative interviews, the committee concluded that Ms. Sawyer did not regularly update former Representative Gatto on activities related to HB 88 and SIOA; particularly Mr. Heckert's activities while at the Wasilla LIO and the purpose/agenda of multiple meetings and presentations set up by Ms. Sawyer.

The committee noted that Ms. Sawyer was first hired as a legislative employee in 2002 and had attended numerous ethics training sessions over the years; and, therefore was very much aware of the fact state resources could not be used for nonlegislative purposes or for the private benefit of anyone. The committee finds that Ms. Sawyer could have avoided this situation by exercising good judgment and/or contacting the Ethics Office for advice when the above stated activities became intertwined and ultimately questionable.



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

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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.")

Alaska State Legislature

Select Committee on Legislative Ethics

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P.O. Box 101468
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99510 - 1468

HOUSE SUBCOMMITTEE COMPLAINT H 07-07

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee hereby finds that there is probable cause to believe that Representative Mike Kelly violated the Ethics Code.

The House Subcommittee investigated allegations contained in complaint H 07-07 and determined that:

1. The House Subcommittee received a properly filed complaint against Representative Mike Kelly dated June 28, 2007. The complaint fell within the two-year statute of limitations.
2. The complaint alleged the following:
 - That Representative Kelly used his legislative email address and state resources to send an email on February 27, 2007, to twenty-three Republican House members and eleven Republican Senate members encouraging them to make a donation to a web site advocating to "Vote Yes for Marriage" on the April 3, 2007, state-wide advisory vote question in violation of AS 24.60.030(a)(5).

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: April 17, 2007, June 28, 2007 and September 28, 2007.

- On June 28, 2007 the subcommittee adopted a Scope of Investigation focusing on AS 24.60.030(a)(5), prohibitions related to the use of public funds, facilities, equipment, services, or another government asset or resource.

AS 24.60.030(a)(5) A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning;

The subcommittee reviewed and analyzed the following:

- AS 24.60.030(a)(5) Prohibitions related to conflicts of interest and unethical conduct
- Email of February 27, 2007 from Representative Kelly to thirty-four legislators
- Written statement from Representative Kelly dated July 20, 2007

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee finds the actions of Representative Kelly, use of his legislative email address to solicit donations for a state-wide advisory vote question, violated AS 24.60.030(a)(5) in that state resources were used for the purpose of political fund raising and campaigning.

RECOMMENDATION:

In light of Representative Kelly's letter acknowledging the email communication was inappropriate and should have been sent from a non-state email account and computer and his statement indicating this type of action will not occur in the future, the subcommittee determined no further corrective action was required.



Herman G. Walker, Jr., Chair

Adopted this 28th day of September 2007
by a majority of the House Subcommittee

Members Participating

Herman G. Walker, Jr., Chair
Dennis "Skip" Cook
Ann Rabinowitz
H. Conner Thomas
Gary J. Turner
Representative Bob Roses

Member Absent

Representative Berta Gardner

Alaska State Legislature

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TO: Senator Hollis French
Chair, Senate Judiciary Committee

FROM: Joyce Anderson, Administrator

DATE: April 24, 2007

RE: Amendment to HB 109

The House Subcommittee on Legislative Ethics met on April 17, 2007 and discussed the subject of conflict of interest in regard to political fund raising and campaigning. The subcommittee determined language in AS 24.60.030(a)(5)(C) “telephone or facsimile use that does not carry a special charge” should be deleted.

Further, in AS 24.60.030(a)(2) the same exception is stated in (C) and should be removed. This section prohibits the use of state resources for a nonlegislative purpose, for involvement in or support of or opposition to a partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person but does not prohibit the use of the telephone or fax that does not carry a special charge.

The rationale for the change is as follows.

1. The language in AS 24.60.030(a)(5)(C) and AS 24.60.030(a)(2)(C) allows for an exception to the use of the phone and fax and does not place a ‘de minimis’ restriction on the use.
2. By removing the language in (C) in both sections the use of the phone or fax would fall within the ‘de minimis’ use of state funds, facilities, equipment, services, or another asset or resource as stated in AS 24.60.030(a)(2)(A) and AS 24.60.030(a)(5)(A).
3. By deleting the language in AS 24.60.030(a)(5)(C) and AS 24.60.030(a)(2)(C), the use of state resources would be applied consistently across the board.

The subcommittee suggested an amendment be drafted to be introduced when HB 109 is heard in the Senate.

Attached are the relevant statutes. Please give me a call if you have questions.



Limited Capital Budget? Options to Offer Constituents



Time: Noon

Date: March 14, 2014

Place: Finance Room #519

Join us for lunch on Friday, March 14th, for a discussion of capital projects on a limited budget . You don't want to just say "no" to constituents asking for capital funding so here is some advice you can share. We will talk about ways to reduce project costs and find additional sources of funding. A panel of Alaskan funders will talk about what they are seeing in project funding plans and the future of their capacity to fund projects.

◆ [Learn More](#)

Chris Kowalczewski: 907 747-0590 ckowalczewski@forakergroup.org

Presenter: Chris Kowalczewski, The Foraker Group

Panel Participants:

Diane Kaplan: Rasmuson Foundation

Jeff Jessee: Alaska Mental Health Trust Authority

Elizabeth Ripley: Mat-Su Health Foundation



Catering By: Abby's Kitchen



Senator McGuire invites you to

A Lunch and Learn Presentation

on Child Maltreatment in Alaska &
Translating Research into Action



by Alaska Children's Justice Act Task Force
Beltz Room 105, TSLOB
February 5, 2015
12 – 1 p.m.



Common Core Lunch n' Learn

This is an opportunity for all to come learn about the four pillars of Common Core:

- Standards
- Assessments
- Data Systems
- School Accountability

Representative Reinbold will be discussing how the Common Core impacts Alaska education.

Lunch is provided!

Please Join Us:
This Wednesday,
February 18
12:00-1:00 PM
State Capitol, Rm. 106



Distributed By: Representative Reinbold



Legislative Lunch & Learn

**Arts and Humanities
Enriching and Empowering
Alaska Communities**

NOON | Wednesday, January 28, 2015

Butrovich-Fahrenkamp Room, State Capitol

Brought to you by
The Alaska State Council on the Arts
Alaska Historical Society
Alaska Humanities Forum
Museums Alaska
Representative Muñoz



Partners Reentry Center

You're invited to a Lunch & Learn Sponsored by Representatives Keller and LeDoux

When: Monday, February 23rd 2015

Time: 12:00 - 1:00pm

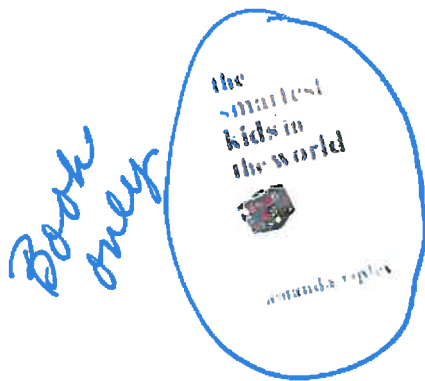
Where: Capitol 106

- Learn about the Partners Reentry Center's success with reentry
- Join us for a discussion on "**Reducing Recidivism in Alaska**" including:
 - How to rethink reducing recidivism
 - How our program is financially impactful
 - Getting a glimpse at who we are helping
 - See what is new in Reentry

YOU ARE INVITED TO LUNCH & LEARN

MEET AND HEAR FROM ALASKAN TEACHERS THAT LOVE WORKING
WITH ALASKAN STUDENTS EVERY DAY!

JACOB BERA, NATIONAL BOARD CERTIFIED ART TEACHER
MARY JANIS, NATIONALLY RECOGNIZED KINDERGARTEN TEACHER
JENNIFER WAISANEN, NATIONAL BOARD CERTIFIED TEACHER
BOB WILLIAMS, NBCT & 2009 ALASKA TEACHER OF THE YEAR



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NOON
CAPITOL ROOM 106
FREE LUNCH PROVIDED!

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LUNCH & LEARN: TRIBAL SOVEREIGNTY AND CRIMINAL JURISDICTION

**Thursday, March 12th
12:00-12:45 in the Beltz
Free Lunch from
*Abbey's Kitchen!***

The problems of domestic violence, alcohol abuse, and sexual assault are pervasive in rural Alaska Native communities. National coverage of this epidemic has prompted calls for reform to give Alaska Natives additional sovereignty to combat these problems.

**Come eat FREE LUNCH from Abby's Kitchen on
March 12th from 12:00-12:45 in the Beltz and
learn about what the Alaska State Legislature
can do to help.**

Samuel Gottstein, an Academic Law Fellow at the Clough Center for the Study of Constitutional Democracy, will discuss how granting limited criminal jurisdiction to Alaska Native communities would be cost-effective, avoid federal overreach, and make rural Alaska Native communities safer. Be sure to bring questions and an appetite!

Sponsored by: Senators Ellis, Gardner, Wielechowski