

Alaska State Legislature

Select Committee on Legislative Ethics

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Ethics Committee Meeting

March 28, 2019 – 10:30 a.m. to 1:00 p.m.
Fahrenkamp Room, Juneau

(Meeting will be teleconferenced)

Anchorage Only: 563-9085

Juneau Only: 586-9085

Outside Anchorage or Juneau: 1-844-586-9085

FULL COMMITTEE: Open Session (+) indicates background material in packet

1. CALL THE MEETING TO ORDER
2. WELCOME NEW HOUSE LEGISLATORS
3. APPROVAL OF AGENDA (+)
4. APPROVAL OF MINUTES
 - a. January 31, 2019 Full Committee Minutes (+)
5. PUBLIC COMMENT
6. ELECTION OF HOUSE COMMITTEE CHAIR AND VICE-CHAIR FOR 2019-2020 (+)
7. ADVISORY OPINIONS
 - a. AO 19-02 (+)
 - b. AO 19-03 (+)
 - c. AO 19-04 (+)
 - d. AO 19-05 (+)
8. CHAIR/STAFF REPORT
 - a. H 17-03 COMPLAINT UPDATE
 - b. 2019 ETHICS TRAINING
9. 2019 LEGISLATION UPDATE
10. OTHER BUSINESS
11. ADJOURN

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**ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS**

JANUARY 31, 2019

8:30 AM

FULL COMMITTEE

8:31:47 AM

1. CALL THE MEETING TO ORDER

Chair Dennis "Skip" Cook called the meeting to order at 8:00 a.m.

At Chair Cook's direction, Jerry Anderson called roll.

Roll Call

Senator John Coghill
Senator Tom Begich
Senator Elvi Gray-Jackson (alternate for Senator Tom Begich)
Senator David Wilson (alternate for Senator John Coghill)
Dennis "Skip" Cook
Conner Thomas
Joyce Anderson
Deb Fancher
Lee Holmes

Others

Jerry Anderson
Jacqueline Yeagle
Dan Wayne

2. WELCOME NEW LEGISLATORS

Chair Cook welcomed Senator Tom Begich and alternates Senator Elvi Gray-Jackson and Senator David Wilson to the Ethics Committee.

3. APPROVAL OF AGENDA

Chair Cook entertained a motion to approve the agenda.

Conner Thomas moved to approve the agenda.

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No objection. The agenda was approved.

4. APPROVAL OF MINUTES

Chair Cook entertained a motion to approve the draft minutes of the November 1, 2018 Full Committee meeting.

Lee Holmes moved to approve the draft November 1, 2018 Full Committee minutes.

No objection. The draft November 1, 2018 Full Committee minutes were approved.

Chair Cook entertained a motion to approve the draft minutes of the November 1, 2018 House Subcommittee meeting.

Conner Thomas moved to approve the draft November 1, 2018 House Subcommittee minutes.

No objection. The draft November 1, 2018 House Subcommittee minutes were approved.

Chair Cook entertained a motion to approve the draft minutes of the November 1, 2018 Senate Subcommittee meeting.

Lee Holmes moved to approve the draft November 1, 2018 Senate Subcommittee minutes.

No objection. The draft November 1, 2018 Senate Subcommittee minutes were approved.

5. PUBLIC COMMENT

No public comment.

6. ELECTION OF COMMITTEE CHAIRS FOR 2019-2020

Chair Cook invited nominations for chair of the Senate Subcommittee, explaining that the Senate Subcommittee chair would also be the chair of the Ethics Committee.

Conner Thomas moved that Joyce Anderson chair the Senate Subcommittee.

Chair Cook invited additional nominations.

There were no additional nominations. At Chair Cook's direction, Jerry Anderson conducted a roll call vote for Senate Subcommittee Chair.

Roll Call

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Senator John Coghill	Y
Senator Tom Begich	Y
Dennis “Skip” Cook	Y
Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Lee Holmes	Y

The committee elected Joyce Anderson chair of the Senate Subcommittee by 7-0.

Chair Cook explained there would be no action on House Subcommittee chair because the House is not yet organized.

Chair Cook invited nominations for vice chair of the Senate Subcommittee.

Conner Thomas moved Deb Fancher for vice chair of the Senate Subcommittee.

At Chair Cook’s direction, Jerry Anderson conducted a roll call vote for Senate Subcommittee Vice Chair.

Senator John Coghill	Y
Senator Tom Begich	Y
Dennis “Skip” Cook	Y
Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Lee Holmes	Y

The committee elected Deb Fancher vice chair of the Senate Subcommittee by 7-0.

Chair Cook congratulated both Joyce Anderson and Deb Fancher and announced he would continue to chair the meeting and Joyce Anderson would chair the next.

7. ADVISORY OPINION 19-01

Chair Cook invited Dan Wayne to present an overview of Advisory Opinion 19-01.

With Chair Cook’s agreement, Jerry Anderson explained that the requestors of the advisory opinion had waived confidentiality, which allows for the discussion and vote to be held in a public session rather than in an executive session.

Dan Wayne stated that he is a legislative counsel working in the Legislative Legal office, a nonpartisan legal office that advises legislators and the legislature. Legislative Legal also participates in drafting Ethics Committee advisory opinions. Wayne explained that he was the head drafter of Advisory Opinion 19-01, along with considerable help from colleagues.

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Dan Wayne said there were a lot of parts and subparts to the advisory opinion request. Wayne noted that the advisory opinion does not have a conclusion due to what would have been the length of the draft opinion with the conclusion.

Dan Wayne explained that most of questions asked were about private meetings and committee meetings so he started with the thought that most committee meetings are public meetings.

Dan Wayne read the new language in AS 24.60.030(e)(3) on page 3 of the opinion.

(3) except as provided in (g) of this section or while participating in a public discussion or debate, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of a person...

Dan Wayne said that if you read the exception broadly, a committee meeting is public so it is a public discussion and there were no limitations, but the problem is that it could “swallow the rule” that was made specifically for committee hearings. It did not make sense to interpret it that way and so, Wayne explained, he interpreted it a little differently in the draft.

Dan Wayne suggested he field questions from the committee rather than going through each part separately.

Chair Cook agreed and asked committee members for questions.

Senator Coghill asked for repetition of the section about committee meetings because he wanted to have the actual verbiage being discussed.

Dan Wayne reiterated that in HB 44 there are two new rules having to do with committees. One is AS 24.60.030(e)(3), of which Wayne re-read a part: ... except as provided in (g) of this section or while participating in a public discussion or debate....

AS 24.60.030(e)(3) also cross-references AS 24.60.030(g), which previously made no reference at all to committees. Legislators needed only to declare a conflict when voting on the floor. HB 44 amended that rule. Now a legislator “shall declare a conflict of interest before voting on a question before a committee of the legislature.” The opinion says that nevertheless, even though there is no requirement to announce [a conflict of interest] at other times, we [the committee] recommend the legislator declare the conflict of interest even for the limited purpose of discussing the matter.

Dan Wayne suggested that the committee recommend that legislators declare the conflict because the [the purpose of the] Ethics Act is to inspire trust in government, and advocating in a committee hearing for a piece of legislation in which a legislator has a conflict of interest could be negatively perceived by the public.

The draft later refers to how the language in AS 24.60.030(g) affects the prohibition in AS 24.60.030(e)(3). AS 24.60.030(g) declares that legislators have to declare a conflict before

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voting; it does not say that legislators with a conflict can't vote. However, legislators could not sponsor or offer amendments to that legislation

Senator Coghill asked Dan Wayne for confirmation of his understanding that in committee legislators can argue legislation in which they have a conflict but not sponsor or offer amendments to the legislation. But on the floor, legislators have to declare and ask for excusal. Senator Coghill also asked if legislators would be able to offer amendments on the floor.

Dan Wayne responded that AS 24.60.030(g) says legislators shall declare a conflict and request to be excused from voting on a question before a house of the legislature. It does not say that a legislator cannot offer amendments.

Sen Coghill asked when it comes to exerting influence or action is a legislator permitted to advocate for a bill during meeting with other committee members, other legislators and private people.

Dan Wayne replied that Advisory Opinion 18-05 says that if a meeting is open to the public in accordance with AS 24.60.037, the exception in AS 24.60.030(e)(3) applies, which allows legislators to participate in a public discussion or debate and discuss or advocate for a bill. A legislator may not participate in a meeting that does not meet the open meetings guidelines in AS 24.60.037.

Senator Coghill asked if he could go into another legislator's office and have a discussion about a bill on which he has declared a conflict.

Dan Wayne replied that the draft Advisory Opinion says: Like a caucus meeting, a private meeting between two or more members of a legislative committee is not public. Therefore, although the answer to your question may depend on the applicable facts in each instance, generally the answer is no; a legislator with a conflict under AS 24.60.030(e)(3) relating to a bill may not discuss or advocate for the bill during private meetings with other committee members.

Senator Coghill asked for confirmation that the prohibition applies to other committee members or other legislators. Senator Coghill that it could also be a barrier to private meetings with individuals involved in activities in which the legislator is also involved.

Dan Wayne affirmed Senator Coghill's understanding.

Conner Thomas asked Dan Wayne to synopsise the draft Advisory Opinion for attendees. Dan Wayne complied while also fielding questions from the committee.

38:53

After Dan Wayne read the first question, Joyce Anderson asked for confirmation of her understanding that a legislator is required to declare a conflict before voting but not necessarily before that point. Joyce Anderson added that in another paragraph, the draft Advisory Opinion

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recommends declaring earlier than that even though statute requires declaring a conflict before voting.

Dan Wayne confirmed Joyce Anderson's understanding of that point.

Dan Wayne read question two: During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill. Wayne then read from the answer: Yes, as explained in our response to question 1 above, AS 24.60.030(e)(3) allows a legislator to discuss, debate, advocate, or testify on a matter where the legislator has a conflict if part of "a public discussion,, or debate." Wayne added this was also addressed in Advisory Opinion 18-05.

41:50

Dan Wayne read question three: Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members. Wayne said that because it is similar to a caucus meeting, which is private, the answer is no, and the answer is no in a private meeting between two or more legislators.

Senator Begich proposed a hypothetical scenario: What should legislators do when a topic arises in which they have a conflict? Leave the room?

Dan Wayne replied he did not think the rule would necessarily interpret it that way.

Chair Cook suggested that in that situation at a minimum the legislator should declare the conflict.

Dan Wayne agreed that is probably a good place to start and whether the legislator leaves the room depends on the circumstances.

Senator Begich stated that each of the legislators is a content specialist in some area and he asked if legislators would be able to offer content specific information without advocating or opposing the legislation.

Dan Wayne said in a private meeting, the answer would be no.

Senator Begich asked for confirmation of his understanding that this prohibition disallows those legislators who are citizen legislators from discussing with private individuals items related to their job outside of the legislature that could come before the legislature or are already in legislation.

Dan Wayne replied that he was hearing two questions. The rule does not prohibit a legislator from discussing an item that *might* come before the legislature. It applies to items that *are* before the legislature.

Senator Begich further explored whether in their occupational capacity outside of session legislators can have private discussions about legislative matters.

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Dan Wayne repeated his understanding that Senator Begich was referring to pending legislation where there is a conflict of interest. Dan Wayne read sections of AS 24.60.030(e)(3):

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

(3) except as provided in (g) of this section or while participating in a public discussion or debate, take or withhold official action or exert official influence...

Dan Wayne explained that a legislator would not necessarily be exerting official action or influence in the scenario described.

...that could substantially benefit or harm the financial interest of a person

(A) who is a member of the legislator's immediate family;

(B) by whom the legislator or a member of the legislator's immediate family is employed;

(C) with whom the legislator is negotiating for employment;

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.

Dan Wayne suggested that Senator Begich was referring to (D) in his hypothetical question. Wayne said that if a legislator is in the room with someone from whom pay is received and that person asks about pending legislation where the legislator has a conflict of interest or the person asking would substantially benefit or be substantially harmed, legislators should make a decision about whether they should be having the conversation. If the legislator's actions are perceived as official, then it might be a problem but it is situation-specific.

Senator Coghill spoke about what a conflict of interest is and noted that he appreciates the narrow category about which Dan Wayne was speaking but AS 24.60.030(g) broadens the category again because now it refers to any financial interest in a: business, investment, real property, lease, or other enterprise if the interest is substantial. Senator Coghill added that AS 24.60.030(g) then defines "substantial interest" – greater than the effect on the general public – which is very broad and which becomes difficult for a legislator to narrow down.

Dan Wayne agreed that AS 24.60.030(g) is broader in one sense in that it refers to the effect "if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on the general public of the state. Wayne added that the phrase "the effect on the general public of the state" is a big change. It used to say, "substantial class of persons." Under the old rule, if a legislator was a dentist and there was dental legislation and all dentists would benefit in the same way, the legislator would have been okay because he or she was only a small part of the dental profession. Now, a legislator is just a small part of the general public and if there is dental legislation, a legislator needs to maintain a greater distance from the legislation.

Dan Wayne continued by saying the changes from "equity or ownership interest" to "financial interest" may not be a big change, depending on how it is interpreted. Financial interest is now defined in AS 24.60.990 as "ownership of an interest or an involvement in a business, including

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a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.”

Dan Wayne repeated that the rule only requires a legislator to declare a conflict and to ask to abstain from voting. Other than that, a legislator can still advocate, discuss, vote if required or allowed to by the body.

55:50

Chair Cook noted it seems the statute is broad in that it refers to the development, drafting, consideration, sponsorship, enactment, defeat, and so on as well as legislation that has already been introduced rather than coming into effect only after there is a bill.

Dan Wayne agreed with Chair Cook and explained that earlier he had been referring to hypothetical legislation. Wayne made a distinction between discussing hypothetical legislation and requesting a draft of a bill that would use legislative resources that would substantially benefit or harm someone. If a legislator looks at a bill that would substantially benefit his or her family but believes it is good for the state, AS 24.60.030(g) might put a damper on that action

Senator John Coghill addressed his concern that a bill can also cause economic harm to a legislator. Senator Coghill advised that “harm” needs to be quantified as well as “benefit”. Both are broad terms. Senator John Coghill asked Dan Wayne if generally the statute would be looked at from the lens of financial benefit rather than financial harm.

Dan Wayne read the section of statute that says, “take or withhold official action or exert official influence that could substantially benefit or harm the financial interest...” Dan Wayne noted that is one thing about AS 24.60.030(e)(3) that makes it difficult – every word or couple of words is another a filter that must be applied and key terms like “substantially benefit or harm” now have definitions.

Senator John Coghill asked if a piece of legislation is going to bankrupt him would he be prohibited from talking about it.

Chair Cook addressed Senator John Coghill’s question by saying that the question posed is an issue included in the next draft advisory opinion.

Dan Wayne said he did not know if confidentiality had been waived with regard to that advisory opinion request.

Jerry Anderson replied that confidentiality had been waived but the opinion is not yet available.

Senator Coghill said that is another chilling effect that legislators will have to consider in this legislative session.

Dan Wayne asked if it would be okay to move on to question four. Chair Cook agreed.

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Dan Wayne read: Can a legislator (with a conflict) discuss or advocate for a bill during private meetings with other legislators (that are not on the committee), including legislators in the other body? Wayne said that in the draft the answer is no. The exceptions for voting in committee or in public discussion or debate do not apply because it is private, not public. Wayne then read a section of the answer that says: Therefore, based on AO 18-05 and the facts you have provided, a legislator with a conflict under AS 24.60.030(e)(3) relating to a bill may not discuss or advocate for the bill during a private meeting with one or more legislators that are not on the committee, even if they are in the other house of the legislature.

1:01:50

Dan Wayne reminded the committee that when the committee answers advisory opinion questions, it is limited to answering questions based on the Ethics Act and based on the facts presented. In the AO 19-01 request, not a lot of facts were provided with each question. At the end of the draft it says: In determining whether future conduct like that described in the hypothetical facts violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider. He added that the statement applies to all of the answers.

Dan Wayne moved on to question five: Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens? The answer is no because it is a private meeting about a bill in which a legislator has a conflict under AS 24.60.030(e)(3).

Dan Wayne then moved on to question six: Can a legislator (with a conflict), during the public committee meeting (a) offer amendments to the bill? Wayne read from the draft advisory opinion: No. While the offer might occur during public discussion and debate, it is nevertheless official action or official influence prohibited by AS 24.60.030(e)(3). As noted above in our response to question 2, and in AS 18-05, a legislator's introduction or sponsorship of legislation is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and choosing to do so in spite of a conflict of interest would be contrary to goals of the Act set forth in AS 24.60.010.

Dan Wayne added that this a new rule and continued: Moreover, sponsoring an amendment or other legislation requires taking official action or exerting official influence beyond participating in discussion or debate or voting [which is allowed]. It requires the legislator to make at least one formal motion, and in most instances it requires the legislator to request assistance from staff to prepare the legislation.

Dan Wayne noted footnote number three, which cites previous committee decisions AO 11-05 and AO 07-01 advising that a legislator's introduction of a bill that could substantially benefit the legislator's employer, would be of special concern to the committee in connection with AS 24.60.030(e) if the bill were introduced at a time when the legislator is negotiating terms of employment with that employer, which was the rule.

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Dan Wayne addressed question six, part b: What about voting on amendments offered by others? Wayne said yes, because voting is allowed.

Senator Tom Begich asked Dan Wayne to clarify if in public it would be allowed to question another legislator if the legislation under discussion would cause that legislator financial harm.

Dan Wayne advised that with respect to committee meetings, which were addressed in the question, the answer would be yes as far as the rules are concerned. And the legislator can respond to the question because it is part of a public discussion or debate. But, Wayne cautioned, it depends on whether the person wants to ask that kind of question of a colleague.

Dan Wayne moved on to question 6, part c: Can a legislator vote on the motion to move the bill from committee? Dan Wayne said that the answer is yes as explained in part b, the vote on a motion to move a bill from committee is a vote “on a question before a committee of the legislature.”

1:09:26

Dan Wayne moved on to question six, part d: Can [a legislator] sign the committee report with a recommendation (“do pass,” “do not pass,” “amend”)? Dan Wayne said that the answer is yes.

Dan Wayne addressed question six, part e: Can [a legislator] sign the committee report “no recommendation”? Dan Wayne said that the answer is yes because it is part of voting.

1:09:56

Dan Wayne moved to question seven: According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committees. When a member has a conflict, would the member have to abstain from signing the report or sign the report “no recommendation” in order to comply with the law? Dan Wayne said the answer is no and read from the draft advisory opinion: ...signing a committee report with or without a recommendation, is part of voting on a question before a committee of the legislature...

Dan Wayne addressed question eight: Would a legislator with a “large enough” immediate family, who received more than \$10,000 in the aggregate from the Permanent Fund Dividend Corporation in October 2018 be prohibited from (a) taking official action of a bill related to the Permanent Fund Dividend (PFD) or supplemental dividend payment? (b) discussing or advocating for a PFD bill during private meetings with other committee members? (c) Discussing or advocating for a PFD bill during private meetings with other legislators, including members of the other body? (d) Discussing or advocating for a PFD bill during private meetings with constituents, or, generally, other citizens? (e) Discussing or advocating for the management or asset allocation of the Permanent Fund investments?

Dan Wayne responded by reading the first sentence of the draft advisory opinion answer: Regardless of whether a member of the legislator's immediate family, or the entire family, receive permanent fund dividends with a cumulative value greater than \$10,000, the answer to

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each of the foregoing questions, ... is no. A legislator is not prohibited from doing those things under AS 24.60.030(e)(3).

Dan Wayne continued reading the answer: In order for a prohibition under AS 24.60.030(e)(3) to apply, the action or influence targeted by that provision must "substantially benefit or harm" the "financial interest" of a person under subparagraphs (A) - (D) [of AS 24.60.030(e)] ... including "a member" of the legislators immediate family. For purposes of AS 24.60.030, "substantially benefit or harm" means "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state. A member of the general public of the state, including a legislator, may have an immediate family large enough to be eligible for and receive permanent fund dividends for one benefit year with a value, when added together, that exceeds \$10,000, regardless of legislative status. Therefore, the benefit to the legislator is no greater than the effect on the financial interest of the general public of the state.

Dan Wayne said that is a good example and maybe the only one where everyone is affected the same way and continued reading the last paragraph of the answer: Based on the facts you have provided, the legislators interest in the Permanent Fund, the Permanent Fund Dividend program, or a permanent fund dividend received by the legislator or a member of the legislator's immediate family, is not a financial interest as defined in the Act.

Jerry Anderson asked if the Permanent Fund Corporation is a person under the definition.

Dan Wayne responded that he did not know.

Jerry Anderson said, "Isn't the question answered under the definition of person under AS 01.10.60.

Dan Wayne responded that it may not be part of the legislation because the ethics committee does not interpret areas of law other than the Ethics Act.

Jerry Anderson said that in other advisory opinions terms from general statutory language has been used. Jerry Anderson suggested the answer to that question may help legislators when interpreting the statute.

1:15:44

Dan Wayne responded AS 24.60.030(e)(3) talks about matters that affect persons and whether or not the entity is a person is important in all of this but he does not think it's necessary to consider the definition of person in order to answer this question because it is answered resoundingly by the fact it affects everyone the same way.

Senator John Coghill advised that there are public corporations that significantly benefit individuals and it may be better to not look too closely at that question.

Dan Wayne said that he always advises the committee not to get into other areas of the law if it's not necessary to do so.

1:17:27

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Dan Wayne moved to question nine: If a bill authorizes a supplemental payment of a Permanent Fund Dividend in an amount that is a large percentage of the income of an immediate family member of legislator, would that constitute a “substantial benefit” to that family member? Wayne said the answer is no and added that the answer in the draft advisory opinion includes a reference to question eight in which it explains that everyone is treated the same under the PFD program.

Dan Wayne went on to read the question and answer to question nine, part a: If yes, would a legislator be prohibited from taking official action on that bill? Because the answer to question 9 is "no", the response to question (9)(a) is necessary.

Dan Wayne moved on to question nine, part b: What qualifies as a substantial benefit? Dan Wayne read the answer: That term is not defined in the Act. Dan Wayne added that the term “substantial benefit or harm” is defined.

1:18:30

Dan Wayne reviewed the conclusion. Wayne mentioned that he included the language relating to the Ethics Act foundational principles in AS 24.60.010, which was cited in the last advisory opinion and dealt with similar issues. That section advises legislators in situations where he or she is uncertain whether to declare a conflict, public perception is relevant.

Joyce Anderson recommended a few language changes for consistency in the draft advisory opinion. Dan Wayne and the committee reviewed Joyce Anderson’s recommended language changes and others that had been discussed earlier in the discussion.

Chair Cook asked if the committee were ready to act on the draft advisory opinion.

Conner Thomas moved to adopt draft Advisory Opinion 19-01 as amended during discussion.

Chair Cook asked for further discussion. No further discussion.

Chair Cook directed Jerry Anderson to read the summary and conduct a roll call vote.

Jerry Anderson read the summary: Formal Advisory Opinion AO 19-01 advises whether specific actions including to take or withhold official action or exert official influence and declaring a conflict and voting are proper under AS 24.60.030(e) and (g) in specified situations. Roll Call Vote to concur or not concur with the draft opinion. A vote of YES will be a vote to concur with the draft opinion. A vote of NO will be to not concur with the draft opinion.

Jerry Anderson conducted a roll call vote whether to concur with draft Advisory Opinion 19-01 as amended.

Roll Call

Conner Thomas	Y
Joyce Anderson	Y
Deb Fancher	Y
Lee Holmes	Y

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Senator John Coghill	Y
Senator Tom Begich	Y
Dennis “Skip” Cook	Y

The committee concurred with draft Advisory Opinion 19-01 by a vote of 7-0.

1:46:09

Following the roll call vote, the committee and Dan Wayne reviewed again the language changes agreed to during the discussion.

The committee recessed.

CHAIR/STAFF REPORT

10:10:39 AM

Chair Cook called the meeting back to order and directed Jerry Anderson to present the staff report.

Jerry Anderson began his report by thanking Chair Cook and Conner Thomas for each serving over 20 years as a member of the Select Committee on Legislative Ethics.

Jerry Anderson informed the committee he would be requesting the new chair approve a credit card for Jacqui Yeagle with a \$1,000 credit limit and to approve an increase in his credit limit to \$2,000.

Jerry Anderson brought to the committee’s awareness that a number of legislative employees have accepted tickets to unsanctioned events. Legislative employees may accept tickets to unsanctioned events but the value of those tickets is limited to less than \$250 in a calendar year from an individual source. In the event a legislative employee accepts a ticket valued at \$250 or more, rather than initiating a complaint, the employee is asked to pay back the price of the ticket. Jerry Anderson added that those individual cases are not necessarily reflected in the management log. Jerry Anderson also added that he is emphasizing in training that employees be aware of the situation.

Jerry Anderson directed the committee to the management log in the packet. Jerry Anderson explained that the management log is a tool used to track informal advice provided and said routine requests are not included in the report. Jerry Anderson asked for and answered questions from the committee about the management log.

11:56:02

Senator Tom Begich identified himself as one of the recipients of informal advice included in the management log: May a legislator post a notice on social media for a candidate forum which has all candidates running for an office? Senator Begich explained that he had called and talked to Jerry Anderson and Jerry had advised that Senator Begich not post the information on his state page. Senator Begich said that he had followed Jerry Anderson’s advice but emphasized that part of his role as a senator is to inform constituents of events and he specifically asked about this

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event because every single candidate running for office was invited and it was not a partisan event.

Senator Begich asked for enlightenment from the committee regarding this particular instance. Committee members and discussion took place. After other committee members asked clarifying questions of Senator Begich, Lee Holmes responded that he would not look at a forum for all candidates as an ethical issue as long Senator Begich had not been participating as a candidate.

Joyce Anderson said that she agreed with Lee Holmes.

Chair Cook suggested adding the word “nonpartisan” to the advertising might also be helpful.

Conner Thomas asked Jerry Anderson what his thoughts were with regard to the question.

Jerry Anderson explained he looked at the language in AS 24.60.030(a)(5) where it says: “for the purpose of political fund raising or campaigning,” and concluded the forum could have been a potential violation of the Ethics Act.

Conner Thomas said that he could see why Jerry Anderson interpreted Senator Begich’s question the way that he had because regardless of whether it was partisan or nonpartisan, it was campaigning and that is the focus of AS 24.60.030(a)(5).

Senator John Coghill added that just because a group is nonpartisan does not mean they are not an advocacy group. Senator Coghill also advised there is a difference between an invitation and an announcement. Senator Coghill suggested the nuances are important to distinguish.

Chair Cook asked the committee what action they wished to take on the matter.

Senator Begich said that he would submit a request for a formal advisory opinion.

Jerry Anderson referred to the letter from the Chief Justice Joel Bolger to Senate President Cathy Giessel and the House Speaker naming Conner Thomas to another term as member of the Ethics Committee. Confirmation by the legislature will commence when both bodies are organized.

Jerry Anderson reported that an alternate public member is still needed and asked the members to refer anyone interested to the Chief Justice for consideration.

Lee Holmes asked how the committee stands in terms of restrictions in the number of members from each political party.

Jerry Anderson responded that at this time, a number of the members are registered nonpartisan and so a potential alternate member could come from either party.

Joyce Anderson added that in the past there had been an attempt to have members from geographically diverse areas of the state.

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Jerry Anderson reviewed the yearly data provided in the packet, noting specifically that the number of board membership disclosures increased over time reflecting what he believes to be a result of the greater emphasis in ethics training about the broad definition of board membership. Jerry Anderson also reminded committee members that annual disclosures are due this year on February 14, 2019, and that date will be publicized in the newsletter to be issued the first week of February.

Jerry Anderson reviewed the sections from the COGEL report referring to the ethics committee activities in 2018. Anderson reported that information sharing is really the value of COGEL. For instance, in conversation with other COGEL attendees, he learned that some entities have searchable databases and he is working with IT to make the committee's informal advice searchable.

Conner Thomas said the plenary sessions are excellent, bringing in people from all over the country. Deb Fancher reported she attended a lot sessions about sexual harassment. Fancher noted that the term "sexual harassment" is an outdated term and instead the emphasis is on "creating a culture of respect". Fancher agreed with Conner Thomas that the plenary sessions were fantastic. Chair Cook also agreed it was a good conference. Chair Cook noted he is fascinated by the nature of the issues in which other attendees are involved and the number of staff required to handle the issues. Chair Cook said next year's conference will be in Chicago.

Jerry Anderson stated that the only unpaid fine is that of former Representative Alan Dick's and he is making payments

Jerry Anderson referenced new publications, the 2018 Advisory Opinions, 2018 Public Decisions, and the Standards of Conduct Handbook. All publications are available to members and are being distributed as applicable to legislative offices and employees. Updated statutes are not included because they were not available at the time of publishing but will be distributed at a later time and will be online as well.

8. 2019 ETHICS TRAINING

Jerry Anderson updated the committee on 2019 ethics training activities. All legislators, legislative staff, legislative employees, and public members of the Ethics Committee are required to take training this year. Anderson reported that gifts and the gift exceptions rules are emphasized in training.

To date, 447 individuals have been trained over seven sessions. At least 31 individuals have not taken training yet. Additional trainings are planned.

The Human Rights Commission is presenting a one-and-a-half-hour training during refresher training, leaving only one hour and twenty minutes for regular topics in the refresher ethics training, a total of three hours. New employees attended two three-hour sessions for a total of six hours for both Human Rights Commission training and ethics training. A special training for new legislators was held in December.

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Senator John Coghill added that new employees are anticipated after the House organizes. Jerry Anderson responded that the new employee training was recorded and it will be available as a training mechanism after live-trainings are complete.

Senator Tom Begich asked if individuals who have not attended training will be notified. Jerry Anderson responded that notification would be sent to noncompliant legislative employees and to the rules chair.

Joyce Anderson asked how many new legislators attended the December training. Jerry Anderson responded that 11 new legislators had attended and reported there were lots of good questions.

Jerry Anderson reported that gifts and gifts exceptions rules are emphasized in training. Joyce Anderson suggested a couple of changes to the gift rules handout to which Jerry Anderson agreed.

2:43

9. BUDGET

Jerry Anderson directed the committee to the budget documents, which include the FY19 budget summary and the FY20 budget request.

10. CONTRACT REPORT

Jerry Anderson directed the committee's attention to the contracts approved by the committee at the November 1, 2018 meeting for Brent Cole and Monique Rapuzzi. No money has been spent for Monique Rapuzzi. Some money has been spent for Brent Cole on the Representative Eastman matter (Complaint H 17-03). Jerry Anderson suggested amending the Brent Cole contract to \$5,000.

Chair Cook entertained a motion to increase the amount in the Brent Cole contract.

Deb Fancher moved to amend the contract.

Conner Thomas asked if \$5,000 would be enough. Jerry Anderson responded affirmatively.

At Chair Cook's direction, Jerry Anderson conducted a roll call vote.

Joyce Anderson	Y
Deb Fancher	Y
Lee Holmes	Y
Senator John Coghill	Y
Dennis "Skip" Cook	Y
Conner Thomas	Y
Senator Tom Begich	Y

The motion passed 7-0 authorizing an increase of the Brent Cole contract to \$5,000.

11. 2019 LEGISLATION UPDATE

Jerry Anderson reported he was unaware of any legislation the committee needed to review.

Senator John Coghill reported that discrete changes to HB 44 are being drafted.

Joyce Anderson asked Senator Coghill if the changes were related to the conflict of interest issues or other issues.

Senator John Coghill reported the changes are related to AS 24.60.030(e) and AS 24.60.030(g).

Senator Tom Begich added they hope to keep it to only those sections.

12. OTHER BUSINESS

Chair Cook stated that the only other business is the date of the next meeting. Chair Cook reported he had asked Dan Wayne when draft Advisory Opinion 19-02 might be ready and Dan Wayne was uncertain. Chair Cook recommended waiting to schedule a meeting and asked Joyce Anderson her opinion.

Joyce Anderson agreed.

13. ADJOURN

Chair Cook entertained a motion to adjourn.

Conner Thomas made a motion to adjourn.

No objections.

The meeting adjourned at 11:20 AM.

[11:19:49 AM](#)

Article 3. Legislative Ethics Committee; Opinions; Complaints.

Sec. 24.60.130. Select committee on legislative ethics.

(a) There is established as a permanent interim committee within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of nine members, in two subcommittees, as follows:

(1) the senate subcommittee, which consists of two members of the senate, one of whom shall be a member of the minority organizational caucus, if any, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate, and includes the five public members appointed under (3) of this subsection;

(2) the house subcommittee, which consists of two members of the house, one of whom shall be a member of the minority organizational caucus, if any, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house, and includes the five public members appointed under (3) of this subsection; and

(3) five public members who are selected by the Chief Justice of the Alaska Supreme Court and who are ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house.

(c) No more than one public member may be a former legislator and no more than two public members of the committee may be members of the same political party.

(d) The members of each subcommittee shall elect a chair and a vice-chair, who serve a term of two years. Neither a chair nor a vice-chair may be a member of the legislature. An officer may not hold the same office for more than two consecutive terms. The vice-chair shall act as chair in the absence of the chair. The chair selected by the senate subcommittee shall chair the full committee beginning the first day of the regular session in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee beginning the first day of the regular session in even-numbered years.

(e) Except as provided in this subsection, a vacancy on the committee shall be filled under (b) of this section. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the first regular session of a legislature or during the interim between regular sessions of that legislature serves without concurrence or ratification through the 10th day of the second regular session of the legislature. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the second regular session of a legislature or during the interim after the second regular session serves without concurrence or ratification through the convening of the first regular session of the next legislature.

(f) The committee may contract for professional services and may employ staff as it considers necessary. A committee employee, including a person who provides personal services under a contract with the committee, may not be a legislator, an elected or appointed official of a state or local governmental entity, an officer of a political party, a candidate for public office, or a registered lobbyist. The legislative council shall provide office space, equipment, and additional staff support for the committee. The committee shall submit a budget for each fiscal year to the finance committees of the legislature and shall annually submit an estimated budget to the governor for information purposes in preparation

of the state operating budget. Public members of the committee serve without compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions under [AS 39.20.180](#).

(g) Each legislative member serves for the duration of the legislature during which the member is appointed. Each public member serves for a term that commences on the date the member is ratified and ends on the first day of the third regular session that follows the ratification. A public member whose term has expired continues in office until a successor has been appointed and ratified or until the 30th calendar day of the first legislative session that follows the successor's appointment, whichever is earlier. A member of the committee may be removed from membership on the committee for failure to carry out the person's duties as a member of the committee. A legislator may be removed with the concurrence by roll call vote of two-thirds of the full membership of the house of the legislature to which the member belongs. A public member may be removed with the concurrence by roll call vote of two-thirds of the full membership of each house of the legislature.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an employee whose work is supervised by the member or an advisory opinion requested by the member. If a regular legislative member of the committee is disqualified under this subsection from participating in a proceeding involving a complaint, the member's alternate shall be designated under [AS 24.60.131](#).

(i) A quorum of the committee consists of a majority of the members and must include at least two legislative members and three public members. A quorum of a subcommittee established under this section consists of a majority of the members of the subcommittee and must include at least one legislative member and three public members. A vote of a majority of the members appointed to the committee or a subcommittee is required for official action.

(j) Except to the extent that a provision would prevent the committee from complying with the confidentiality provisions of this chapter, the committee is subject to [AS 44.62.310](#) 44.62.319 (Open Meetings Act) and to the procurement provisions adopted by the legislative council under [AS 36.30.020](#). In this subsection, "committee" includes a subcommittee.

(k) A member or an employee or contractor of the committee may obtain access to closed committee files containing information that is made confidential by law only if the committee determines that the person has a need to obtain access to the closed files that relates to the official duties of the committee and the person seeking access.

(l) The committee or a subcommittee shall meet at the call of the chair or a majority of the members. The committee or a subcommittee may meet by teleconference.

Alaska State Legislature

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DRAFT

February 18, 2019

ADVISORY OPINION 19-02

You are two senators and you have asked 18 questions,¹ based on hypothetical facts provided with each, as follows:²

Questions Presented

- 1. Should a legislator (with a conflict) declare a conflict on the record when the bill will harm the financial interests of the legislator or the legislator's immediate family?*
- 2. Can a legislator (with a conflict) sponsor or co-sponsor a bill when the bill will harm the financial interests of the legislator or the legislator's immediate family?*
- 3. During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill when the bill will harm the financial interests of the legislator or the legislator's immediate family?*
- 4. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members when the bill will harm the financial interests of the legislator or the legislator's immediate family?*

¹ You have waived confidentiality under AS 24.60.160.

² For purposes of this opinion we have not altered the wording of the questions and facts you have presented.

5. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other legislators (that are not on the committee), including legislators in the other body, when the bill will harm the financial interests of the legislator or the legislator's immediate family?

6. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens, when the bill will harm the financial interests of the legislator or the legislator's immediate family?

7. Can a legislator (with a conflict), during the public committee meeting on a bill that will harm the financial interests of the legislator or the legislator's immediate family:

a. Offer amendments to the bill?

b. Vote on amendments offered by others?

c. Vote on the motion to move the bill from committee?

d. Sign the committee report with a recommendation ("do pass," "do not pass," "amend")?

e. Sign the committee report "no recommendation"?

8. According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committee. When a member has a conflict, and the bill would harm the financial interests of the legislator or the legislator's immediate family, would the member have to abstain from signing the report or sign the report "no recommendation" in order to comply with the law?

9. What constitutes "substantial harm" to a legislator or a legislator's immediate family under AS 24.60.030(e)(3)?

10. Can a legislative committee sponsor a bill if the chairperson of that same committee is conflicted?

11. Can an office of the chairperson carry a committee bill if the chairperson is conflicted?

12. Can a legislator (with a conflict) request that Leg. Legal draft a blank sponsor bill on the conflicted subject matter?

13. Can a legislator (with a conflict) sponsor and/or draft amendments in committee or on the floor?

14. Can a legislator (with a conflict) sponsor and/or vote on amendments in committee, or on the floor, on the conflicted subject matter?

15. Can a legislator (with a conflict) request that Leg. Legal draft amendments before there has been a committee or floor session about the conflicted subject matter and before the legislator has been able to give public notice of the conflict?

16. Can a legislator (with a conflict) hold a meeting in their office with a group that represents the topic of the conflict?

(a) If the answer is "yes;" if the group is supporting (or opposing) a specific bill that would have an impact on the conflicted legislator or immediate family member, can a legislator:

(1) Discuss the bill?

(2) Advise the group on actions, activities, or possible amendments?

(3) Indicate whether the legislator supports or opposes the bill?

17. Is it possible for a legislator to have a conflict one year (say 2017), not have a conflict next year (in 2018), then have a conflict again (in 2019)? For example: Take a commercial guide who makes over \$10,000 guiding in 2017, doesn't make any money in 2018 then makes over \$10,000 in 2019. The guide would only have to declare a conflict for the times where they made over \$10,000 in the preceding 12 months,

correct?

18. Does a legislator have to declare a conflict if they think they'll make over \$10,000 in the upcoming year (for example: the summer of 2019), if they are reviewing 2019 legislation directly related to the activity the legislator anticipates earning the money (over \$10,000) from?

Statement of Facts

For purposes of this opinion, we rely solely on the hypothetical facts accompanying the foregoing questions.

Discussion

Your questions refer to "the bill," which we interpret to mean SCS CSSSHB 44(STA), a bill enacted into law during the 30th Alaska State Legislature that changed certain provisions of the Legislative Ethics Act (Act), including declaration of conflicts of interest, the taking or withholding of official action, and exerting official influence on matters. One of provisions changed by the bill was AS 24.60.030(e)(3), which now provides in relevant part:

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

...

(3) except as provided in (g) of this section or while participating in a public discussion or debate, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of a person

(A) who is a member of the legislator's immediate family;

(B) by whom the legislator or a member of the legislator's immediate family is employed;

(C) with whom the legislator is negotiating for employment;

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.³

Where your questions refer to "conflict" or "conflict of interest" we understand they refer to a conflict of interest under AS 24.60.030(e)(3), which prohibits the taking or withholding of official action or exerting of official influence, in certain narrowly proscribed circumstances. "Official influence" is not defined by the Act, however, we have previously found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction."⁴

As a preliminary matter we note that the prohibition under AS 24.60.030(e)(3) does not apply in a circumstance when the sole effect of the prohibited conduct would be to substantially benefit or harm the financial interest of a person who is not listed in AS 24.60.030(e)(3)(A)-(D). While AS 24.60.030(e)(3) clearly *implies* that the financial interest of a legislator or another person who is not listed might indirectly benefit or be indirectly harmed by legislation that could directly and substantially harm or benefit the financial interest of a person who is listed in (e)(3)(A)-(D)), the prohibition explicitly covers only benefit or harm to those persons listed in (e)(3)(A)-(D). However,

³ Ch. 61, SLA 2018; SCS CSSH B 44(STA) took effect July 20, 2018. Before then, AS 24.60.030(e)(3) applied only to official action that, taken or withheld, could "substantially benefit or harm the financial interests of a person with whom the legislator is negotiating for employment."

⁴ AO 19-01, *citing* AO 11-05 regarding our advice in AO 07-01 that a legislator's introduction of a bill that could substantially benefit the legislator's employer would be of special concern to the committee in connection with AS 24.60.030(e), if the bill were introduced at a time when the legislator is negotiating terms of employment with that employer.

AS 24.60.030(e)(3) does not *explicitly* prohibit a legislator from taking or withholding official action or exerting official influence when the sole effect of doing so could substantially benefit or harm the financial interest of the legislator, and not a person listed in AS 24.60.030(e)(3)(A)-(D). ⁵

Other conflicts of interest are not covered by AS 24.60.030(e)(3). For example, AS 24.60.030(e)(3) applies only to a "financial interest," which is defined in AS 24.60.990(a)(6), as:

"[F]inancial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit[.]

We also note as a preliminary matter that AS 24.60.030(e)(3) contains two exceptions: an exception allowing participation in public discussion or debate, and an exception for voting.⁶ We advised in AO 19-01 that the exception for voting encompasses signing a committee report on a bill after voting on the bill in a committee meeting. Our reasoning with regard to the voting exception was based on language in AS 24.60.030(e)(3), saying "except as provided in (g) of this section," and language in AS 24.60.030(g) requiring a legislator with a conflict of interest to declare the conflict of interest "before voting on a question before a committee of the legislature."⁷ We advised that with respect to a

⁵ Nevertheless, in those circumstances other provisions of the Act still apply, including a requirement under AS 24.60.030(g) that a legislator who has a conflict of interest under AS 24.60.030(g) declare a conflict of interest before voting on a related question before a committee of the legislature, and request to be excused from voting on a related question before a house of the legislature.

⁶ AO 18-05, AO 19-01.

⁷ AS 24.60.030(g) reads:

committee vote "before voting" implies that once the legislator declares a conflict the legislator may vote, and signing the committee report on the legislation after the vote is allowed because the signing is a part of the voting.

1. Should a legislator (with a conflict) declare a conflict on the record when the bill will harm the financial interest of the legislator or the legislator's immediate family?

Depending on applicable facts in a particular matter, the answer may be yes or no. AS 24.60.030(g) requires a legislator with a conflict of interest to declare the conflict "before voting on a question before a committee of the legislature," and to "request to be excused from voting on a question before a house of the legislature."⁸ AS 24.60.030(g) does not require a legislator to declare a conflict on the record at any other time. Regardless of whether the action or influence may benefit or may harm the financial interest at issue, if the conflict of interest is one described in AS 24.60.030(e)(3), the legislator may not take or withhold official action or exert official influence, except to vote or to participate in a public discussion or debate.⁹

In AO 19-01 we advised that even when a legislator with a conflict of interest under AS 24.60.030(e)(3) is permitted by (e)(3) to participate in a public discussion or debate,

[W]e recommend that the legislator declare the conflict of interest — even for the limited purpose of discussing the matter. Depending on the facts,

(g) Unless otherwise required by the Uniform Rules of the Alaska State Legislature, a legislator shall declare a conflict of interest before voting on a question before a committee of the legislature, and shall request to be excused from voting on a question before a house of the legislature, if the legislator or a member of the legislator's immediate family has a financial interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on the general public of the state. However, notwithstanding (e)(3) of this section and the limitations of this subsection, a legislator may vote on an appropriation bill that meets the requirements of AS 37.07.020(a) or 37.07.100.

⁸ Requesting to abstain would necessarily involve declaring the conflict.

⁹ AO 19-01.

in some instances a failure to declare the conflict when discussing the matter may create an appearance of ethical impropriety that undermines the Act's goal of assuring "the trust, respect, and confidence of the people of this state."¹⁰

2. Can a legislator (with a conflict) sponsor or co-sponsor a bill when the bill will harm the financial interests of the legislator or the legislator's immediate family?

No. If the bill will "substantially benefit or harm" the financial interests of a person who is a member of the legislator's immediate family under AS 24.60.030(e)(3).¹¹ As we advised in AO 18-05 and AO 19-01, a legislator's introduction or sponsorship of legislation is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and choosing to do so in spite of a conflict of interest would be contrary to goals of the Act as set forth in AS 24.60.010. Moreover, sponsoring or cosponsoring legislation of any kind requires taking official action or exerting official influence beyond participating in discussion or debate or voting. It may require the legislator to make formal motions, file paperwork, and, in most instances, request research, drafting, and other assistance by legislative employees. If the legislator has a bill-related conflict under AS 24.60.030(e)(3), the legislator is prohibited from taking or withholding official action on the bill, other than participating in a public discussion or debate, or voting.¹²

3. During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill when the bill will harm the financial interests of the legislator or the legislator's immediate family?

¹⁰ See AS 24.60.010(1).

¹¹ See the preliminary discussion in this opinion.

¹² As we advised in AO 19-01, voting includes signing committee reports. It may also encompass other official action closely related to voting.

AS 24.60.030(e)(3) allows a legislator to discuss, debate, advocate, or testify on a matter where the legislator has a conflict of interest under AS 24.60.030(e)(3), "while participating in a public discussion or debate."¹³

4. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members when the bill will harm the financial interests of the legislator or the legislator's immediate family?

Like a caucus meeting, a private meeting between two or more members of a legislative committee is not public. Therefore, although the answer to your question may depend on the applicable facts in each instance, generally the answer is no; a legislator with a conflict under AS 24.60.030(e)(3) relating to a bill may not discuss or advocate for the bill during private meetings with other committee members, regardless of whether the bill will benefit the financial interests at issue or harm the interests.¹⁴

5. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other legislators (that are not on the committee), including legislators in the other body, when the bill will harm the financial interests of the legislator or the legislator's immediate family?

No. Although it may depend on applicable facts in each situation, we would probably consider the discussion or advocacy "exert[ing] official influence" under AS 24.60.030(e)(3), which prohibits taking or withholding of official action or exerting official influence that could substantially benefit or harm the financial interest of a person under AS 24.60.030(e)(3)(A) - (D). If so, exceptions in AS 24.60.030(e) that might otherwise allow the legislator with the conflict to exert official influence do not apply.

In our response to question (3)(C) of AO 18-05, we advised that a legislator with a conflict of interest under AS 24.60.030(e)(3)(D) may not, except while participating in a

¹³ See AO 19-01.

¹⁴ AO 18-05; AO 19-01.

public discussion or debate or voting in accordance with AS 24.60.030(g), take or withhold official action or exert official influence that could "substantially benefit or harm" the financial interest of a person "from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income." Accordingly we advised in AO 18-05, and later in our reply to question (4) in AO 19-01, that a legislator with a conflict of interest under AS 24.60.030(e)(3)(D) would, "in an informal or non-public discussion . . . be prohibited from taking any official action or exerting official influence, including advocating for the bill" The same would be true of other types of legislation, in addition to bills.

Therefore, based on the facts you have provided, during a private meeting with one or more legislators that are not on the committee, a legislator with a conflict under AS 24.60.030(e)(3) that relates to a piece of legislation, may not take or withhold official action or exert official influence on that legislation, including discussing or advocating for the legislation — even with legislators who are from the other house of the legislature.

6. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens, when the bill will harm the financial interests of the legislator or the legislator's immediate family?

Although the answer to this question may depend on the applicable facts in each instance, generally the answer is no — for reasons explained in our responses to questions 4 and 5, above. A legislator's discussion of, or advocacy for or against, proposed legislation in any kind of meeting would probably constitute official action, official influence, or both, and because the meeting you have described is private, not public, the public discussion or debate exception in AS 24.60.030(e)(3) would not apply.

However, in some instances, discussion of a matter may or may not be considered official action, depending on the applicable facts. For example, absent applicable facts indicating otherwise, we would not presume that a legislator's private discussion of pending

legislation with a family member is official "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction,"¹⁵ because the legislator would be acting in a personal and nonlegislative role, and therefore we typically would not find that it constitutes official action. On the other hand, a legislator's private discussion of pending legislation with a person who is a registered lobbyist, a legislative employee, or another legislator might be presumed to be official action, absent facts indicating otherwise. In either of these two examples, however, even if official action is taken or withheld, or official influence exerted, the prohibitions in AS 24.60.030(e)(3) do not apply unless the legislator has one or more of the four conflicts of interest under AS 24.60.030(e)(3)(A) - (D).

7. Can a legislator (with a conflict), during the public committee meeting on a bill that will harm the financial interests of the legislator or the legislator's immediate family:

a. Offer amendments to the bill?

No. As we found in AO 19-01, while the offer of an amendment might occur during public discussion and debate, it is nevertheless official action or official influence prohibited by AS 24.60.030(e)(3). A legislator's introduction or sponsorship of legislation is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and choosing to do so in spite of a conflict of interest would be contrary to goals of the Act set forth in AS 24.60.010.¹⁶ Moreover, sponsoring an amendment or other legislation requires taking official action or exerting official influence beyond participating in public discussion or debate or voting. For purposes of this opinion, we assume as fact that among other things, it requires the legislator to make at least one formal motion, and in most instances requires the legislator to request assistance from staff to prepare the legislation.

¹⁵ AS 24.60.990(a)(10) defines "legislative action," which we have determined is included in the term "official action."

¹⁶ AO 18-05; AO 19-01.

b. Vote on amendments offered by others?

Yes. The prohibitions in AS 24.60.030(e)(3), against taking or withholding official action or official influence in certain instances, are limited by the provision "except as provided in (g) of this section," which requires legislators who have a conflict of interest to declare it "before voting on a question before a committee of the legislature. . . ." We found in AO 19-01 that the provision "except as provided in (g) of this section" is an exception to the prohibitions in AS 24.60.030(e)(3) that allows a legislator to vote on a question before a committee of the legislature even though the legislator has a related conflict of interest under AS 24.60.030(e)(3), so long as the legislator declares the conflict before voting.

c. Vote on the motion to move the bill from committee?

Yes, for reasons explained in (b) of this question. A vote on a motion to move a bill from committee is a vote "on a question before a committee of the legislature."

d. Sign the committee report with a recommendation ("do pass," "do not pass," "amend")?

Yes, for reasons explained in (b) of this question. As we advised in AO 19-01, signing the committee report is part of voting "on a question before a committee of legislature." Depending on applicable facts in a particular matter, it may also encompass other official action closely related to voting.

e. Sign the committee report "no recommendation"?

Yes. See answer to (d) of this question.

8. According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committee. When a

member has a conflict, and the bill would harm the financial interests of the legislator or the legislator's immediate family, would the member have to abstain from signing the report or sign the report "no recommendation" in order to comply with the law?

No. We advised in AO 19-01 that signing a committee report, with or without a recommendation, is part of voting on a question before a committee of the legislature and therefore a member is not required to abstain from signing the report in order to comply with AS 24.60.030(e)(3). The answer is the same here, regardless of whether the bill may result in a benefit or a harm to the financial interests at issue.

Also note that benefit or harm to the financial interests of the legislator may not be at issue in a scenario like the one you have described, depending on specific facts. As noted in our response to question (6) of this opinion, even if official action is taken or withheld, or official influence exerted, the prohibitions in AS 24.60.030(e)(3) do not apply unless the legislator has one or more of the four conflicts of interest under AS 24.60.030(e)(3)(A) - (D). AS 24.60.030(e)(3) does not prohibit a legislator from taking or withholding official action or exerting official influence when the sole effect of doing so would be to substantially benefit or harm the financial interest of the legislator or a person who is not listed in AS 24.60.030(e)(3)(A) - (D).

9. What constitutes "substantial harm" to a legislator or a legislator's immediate family under AS 24.60.030(e)(3)?

The term "substantial harm" does not appear in AS 24.60.030(e)(3), or elsewhere in the Act. In order for a prohibition under AS 24.60.030(e)(3) to apply, the action or influence targeted by that provision must "substantially benefit or harm" the "financial interest" of a person under subparagraphs (A) - (D) of that paragraph, including "a member" of the legislators immediate family. For purposes of AS 24.60.030, "substantially benefit or harm" means "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state."¹⁷

¹⁷ AS 24.60.030(j)(2).

10. Can a legislative committee sponsor a bill if the chairperson of that same committee is conflicted?

Yes, if by conflicted you mean "has a conflict of interest under AS 24.60.030(e)(3)."¹⁸ However, the bill's sponsorship by the committee does not relieve the chairperson from compliance with the Act, including AS 24.60.030(e)(3) and AS 24.60.030(g). For example, if the chairperson has a conflict of interest under AS 24.60.030(e)(3), the chairperson can discuss and advocate for the bill in a public committee meeting or a floor session, and vote on the bill or legislation related to the bill, but is prohibited from taking or withholding other official action.

11. Can an office of the chairperson carry a committee bill if the chairperson is conflicted?

No. Carrying a committee bill would require the chairperson's office staff to take official action as directed by the chairperson, and the chairperson's direction of staff would constitute official action. Moreover, because a chairperson's office staff work directly for the chairperson, action taken by the chairperson's office staff with regard to the legislation would also constitute official action by the chairperson.

12. Can a legislator (with a conflict) request that Leg. Legal draft a blank sponsor bill on the conflicted subject matter?

No. Requesting a legislative employee to draft a bill is an official action. Although "official action" is not defined in the Act, we have previously found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction."¹⁸

¹⁸ AO 19-01.

As noted throughout this opinion and AO 19-01, there is no exception in AS 24.60.030(e)(3) allowing a legislator who has a conflict of interest under that section to take official action other than participating in a public discussion or debate or voting.

13. Can a legislator (with a conflict) sponsor and/or draft amendments in committee or on the floor?

No. Sponsoring or drafting an amendment, in a legislative committee or floor session or anywhere else, is an official action. As noted throughout this opinion and AO 19-01, there is no exception in AS 24.60.030(e)(3) allowing a legislator who has a conflict of interest under that section to take official action other than participating in a public discussion or debate or voting. Moreover, a legislator's introduction or sponsorship of legislation, including an amendment, is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and, when a legislator has an ethical conflict of interest in a matter, the legislator's introduction of or sponsoring legislation on the matter is contrary to goals of the Act set forth in AS 24.60.010.¹⁹

14. Can a legislator (with a conflict) sponsor and/or vote on amendments in committee, or on the floor, on the conflicted subject matter?

If the conflict is under AS 24.60.030(e)(3) the answer is yes with respect to voting on an amendment or other legislation in a legislative committee meeting or floor session, because there is an exception under AS 24.60.030(e)(3) for voting.²⁰ However, the answer is no with respect to sponsoring or drafting an amendment, in a legislative committee or floor session or anywhere else, because that is an official action. As noted throughout this opinion and AO 19-01, there is no exception in AS 24.60.030(e)(3) allowing a legislator who has a conflict of interest under that section to take official

¹⁹ AO 18-05; AO 19-01.

²⁰ AO 19-01. Note, however, that AS 24.60.030(g) would require the legislator to declare the conflict of interest before voting in a committee, and request to abstain before voting in a floor session.

action other than participating in a public discussion or debate or voting.

15. Can a legislator (with a conflict) request that Leg. Legal draft amendments before there has been a committee or floor session about the conflicted subject matter and before the legislator has been able to give public notice of the conflict?

No, based on our response to questions (12) - (14) of this opinion.

16. Can a legislator (with a conflict) hold a meeting in their office with a group that represents the topic of the conflict?

Based on available facts and our answer to question 6 in this opinion, the answer to this question is no. Unless the applicable facts in a particular instance indicate otherwise, we will presume, as we do here, that a meeting like the one you have described is a private meeting. In the facts before us the legislator has a conflict of interest under AS 24.60.030(e)(3), and therefore, except for voting or while participating in a public discussion or debate, the legislator is prohibited from taking or withholding official action, or exerting official influence if doing so could substantially benefit or harm the financial interest of a person listed in AS 24.60.030(e)(3)(A) - (D). Even if the persons with whom the legislator is privately meeting are not on that list, the legislator's conflict does not go away.

As we noted in our answer to question 6 of this opinion, there may be instances where a legislator with a conflict of interest under AS 24.60.030(e)(3) can meet privately with certain persons and discuss the legislation causing the conflict. Those instances include circumstances where the legislator is clearly not acting in a legislative role, and not taking or withholding official action, or exerting official influence. However, we also noted that those instances generally do not include discussions with legislative employees, registered lobbyists, or other legislators, and we add to that list "a group that represents the topic of the conflict." In those instances there is a rebuttable presumption that the legislator is acting in a legislative role, and holding the meeting is official action

prohibited by AS 24.60.030(e)(3).

17. Is it possible for a legislator to have a conflict one year (say 2017), not have a conflict next year (in 2018), then have a conflict again (in 2019)? For example: Take a commercial guide who makes over \$10,000 guiding in 2017, doesn't make any money guiding in 2018, then makes over \$10,000 in 2019. The guide would only have to declare a conflict for the times where they made over \$10,000 in the preceding 12 months, correct?

Yes, depending on applicable facts in a particular instance, including the facts in your example, which we understand as describing a legislator and commercial guide who makes over \$10,000 guiding in 2017, doesn't make any money guiding in 2018, then makes over \$10,000 guiding for one employer in 2019, it is possible. The facts of your example are covered by AS 24.60.030(e)(3)(D), which targets only "more than \$10,000" received "in the immediately preceding 12-month period." If, under those facts, 2018 is the 12-month period at issue, there is no conflict under AS 24.60.030(e)(3)(D) because there was no income in the 12-month period. However, it is important to note that a 12-month period and a calendar year are two different things; if the 12-month period immediately preceding the official action being considered were to straddle two calendar years, then under your facts there may be a conflict under AS 24.60.030(e)(3)(D).

18. Does a legislator have to declare a conflict if they think they'll make over \$10,000 in the upcoming year (for example: the summer of 2019), if they are reviewing 2019 legislation directly related to the activity the legislator anticipates earning the money (over \$10,000) from?

No, absent additional facts, and based on our responses to question (8) of this opinion, the legislator in the circumstances you describe would not have to declare a conflict of interest under AS 24.60.030(e)(3), because only the legislator's financial interest would benefit and therefore the legislator would not have a conflict of interest under AS 24.60.030(e)(3). However, nothing in the Act would prohibit the legislator from

mentioning the potential benefit to a financial interest, if only to forestall concerns that may arise if someone else knows of that potential benefit and misperceives the legislator's conduct as a violation of the Act.

Conclusion

In addition to the foregoing advice, it is worth noting that, as we advised in AO 07-07:

The legislature set forth the Act's foundational principles in AS 24.60.010, and the first one, AS 24.60.010(1), says:

(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;

Creating the appearance of impropriety while in office is inconsistent with this principle. In previous advisory opinions the committee has indicated that the appearance of impropriety would be a factor the committee would consider in determining whether or not the Legislative Ethics Act has been violated.²¹

Compliance with the Act is the individual responsibility of each person to whom it applies.²² In determining whether future conduct like that described in the hypothetical facts violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider.²³

²¹ See AO 85-04, AO 94-08, AO 94-10, AO 96-04, AO 96-07, AO 99-01, and AO 05-01.

²² AS 24.60.010(7).

²³ AO 18-05.

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

Joyce Anderson, Chair	yes	no	absent
Representative _____	yes	no	absent
Representative _____	yes	no	absent
Senator John Coghill	yes	no	absent
Senator Tom Begich	yes	no	absent
Dennis "Skip" Cook	yes	no	absent
H. Conner Thomas, public member	yes	no	absent
Lee Holmes, public member	yes	no	absent
Deborah Fancher, public member	yes	no	absent

DCW:mjt

19-073.mjt

February 19, 2018

DRAFT ADVISORY OPINION 19-04

You are a legislator and therefore covered by the Legislative Ethics Act (the Act). You have requested an advisory opinion concerning facts and circumstances that you have related. Except as otherwise specifically noted in this opinion, the committee relies on facts that you have described in answering your questions.

Questions Presented

1. Does the Act prohibit a legislator who works part time for an employer who paid the legislator less than \$10,000 in the immediately preceding 12-month period from meeting privately, as a legislator, with that employer?

2. Does the Act permit a legislator who has a conflict of interest under AS 24.60.030(e) to meet with a person, including a constituent, a group, or the employer described in question (1), in a legislative office or conference room, regarding the matter in which the legislator has the conflict of interest, if the legislator posts a public notice of the meeting — through the office of the House Secretary or Senate Secretary — and the meeting is open to the public?

Facts

You are employed part time, periodically, by an employer outside of the legislature from whom you have received less than \$10,000 in the immediately preceding 12-month period. The meeting described in the questions presented would be held in a legislative committee room, a legislative conference room, or the office of an individual legislator.

Discussion

AS 24.60.030(e)(3) provides as follows:

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

(3) except as provided in (g) of this section or while participating in a public discussion or debate, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of a person

(A) who is a member of the legislator's immediate family;

(B) by whom the legislator or a member of the legislator's immediate family is employed;

(C) with whom the legislator is negotiating for employment;

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.¹³

"Official influence" is not defined by the Act, however, we have previously found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action

¹³ Ch. 61, SLA 2018; SCS CSSH B 44(STA) took effect July 20, 2018. Before then, AS 24.60.030(e)(3) only applied to action that, taken or withheld, would substantially benefit or harm the financial interests of a person with whom the legislator is negotiating for employment.

or inaction."²

For purposes of AS 24.60.030, "substantially benefit or harm" means "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state."³ "Financial interest" is defined for purposes of the Act under AS 24.60.990(a), as follows:

(6) "financial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

1. Does AS 24.60.030(e)(3) prohibit a legislator who works part time for an employer who paid the legislator less than \$10,000 in the immediately preceding 12-month period from meeting privately, as a legislator, with that employer?

Because you have not received more than \$10,000 of income from the employer in the immediately preceding 12-month period, the conflict of interest described under AS 24.60.030(e)(3)(D) does not apply. However, because you remain employed by the employer, the conflict of interest under AS 24.60.030(e)(3)(B) does apply, but only to taking or withholding of official action or exerting official influence by you that could substantially benefit or harm the financial interest of your employer.⁴ If there is a piece

² AO 19-01, citing AO 11-05 regarding our advice, in AO 07-01, that a legislator's introduction of a bill that could substantially benefit the legislator's employer would be of special concern to the committee in connection with AS 24.60.030(e), if the bill were introduced at a time when the legislator is negotiating terms of employment with that employer.

³ AS 24.60.030(j)(2).

⁴ Other provisions of the Act may also apply, including AS 24.60.030(g), which reads:

(g) Unless otherwise required by the Uniform Rules of the Alaska State Legislature, a legislator shall declare a conflict of interest before

of legislation that would substantially benefit or harm the financial interest of your employer, then AS 24.60.030(e)(3) prohibits you from taking or withholding official action or exerting official influence in connection with that legislation except for participating in a public discussion or debate or voting as provided in AS 24.60.030(g). Therefore, you would be prohibited from discussing that legislation with your employer privately.⁵

2. Does the Act permit a legislator who has a conflict of interest under AS 24.60.030(e) to meet with a person, including a constituent, a group, or the employer described in question (1), in a legislative office or conference room, regarding the matter in which the legislator has the conflict of interest, if the legislator posts a public notice of the meeting and the meeting is open to the public?

We have advised previously that AS 24.60.030(e)(3) contains an exception allowing participation in public discussion or debate.⁶ Under the facts provided, a legislator with a conflict under (e) would arrange or agree to meet with someone about the matter in which the legislator has the conflict of interest, and would post a public notice of the meeting and allow members of the public to attend. Although this might constitute a public meeting, the legislator's conduct leading up to the meeting may constitute the taking of official action prohibited by (e)(3).

Whether notification of the meeting is made through the office of the Chief Clerk or

voting on a question before a committee of the legislature, and shall request to be excused from voting on a question before a house of the legislature, if the legislator or a member of the legislator's immediate family has a financial interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on the general public of the state. However, notwithstanding (e)(3) of this section and the limitations of this subsection, a legislator may vote on an appropriation bill that meets the requirements of AS 37.07.020(a) or 37.07.100.

⁵ AO 18-05; AO 19-01.

⁶ AO 18-05; AO 19-01.

Senate Secretary, or by some other means, the legislator would be taking official action to organize and promote a public discussion or debate. Organizing and promoting a public discussion or debate goes beyond the participation allowed under the exception in (e)(3). If the legislator does not have a conflict of interest under (e)(3), the prohibition on official action does not prevent the legislator from organizing or promoting the public discussion or debate. In this instance the legislator *does* have a conflict of interest under (e)(3), and therefore organizing and promoting the meeting would be prohibited official action under (e)(3), and create a strong appearance of impropriety under AS 24.60.010. As we advised in AO 07-07:

The legislature set forth the Act's foundational principles in AS 24.60.010, and the first one, AS 24.60.010(1), says:

(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;

Creating the appearance of impropriety while in office is inconsistent with this principle. In previous advisory opinions the committee has indicated that the appearance of impropriety would be a factor the committee would consider in determining whether or not the Legislative Ethics Act has been violated.^[7]

Conclusion

In addition to the foregoing advice, we advise that compliance with the Act is the

⁷ See AO 85-04, AO 94-08, AO 94-10, AO 96-04, AO 96-07, AO 99-01, and AO 05-01.

individual responsibility of each person to whom it applies.⁸ In determining whether future conduct like that described in the hypothetical facts violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider.⁹

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

Joyce Anderson, Chair	yes	no	absent
Representative _____	yes	no	absent
Representative _____	yes	no	absent
Senator John Coghill	yes	no	absent
Senator Tom Begich	yes	no	absent
H. Conner Thomas, public member	yes	no	absent
Lee Holmes, public member	yes	no	absent
Dennis "Skip" Cook, public member	yes	no	absent
Deborah Fancher, public member	yes	no	absent

DCW:mjt

19-078.mjt

⁸ AS 24.60.010(7).

⁹ AO 18-05.

March 8, 2019

DRAFT ADVISORY OPINION 19-05

Question Presented: *Does the Legislative Ethics Act (the Act) permit a legislator, employed as a residential property appraiser and married to a spouse employed as a mortgage loan originator, to take official action or exert official influence, including sponsoring legislation, regarding HB 76 or a similar measure relating to state building codes?*

You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You are a legislator, and you are also employed as a residential property appraiser. Your spouse is employed by a financial institution as a mortgage loan originator. You are the sponsor of HB 76, a bill that if enacted into law, would adopt the 2018 International Residential Code (IRC) as the state residential code. The bill would make the new state residential code the minimum standard for residential construction in the state, however, it would allow the Alaska Housing Finance Corporation (AHFC) to replace the new state residential code by adopting either a later edition of the IRC or another nationally recognized code, in place of the 2018 IRC, as the minimum standard for residential construction in the state. Regardless of whether the new state residential code is based on the 2018 IRC or another code substituted later by the AHFC, HB 76 requires municipal building codes to meet or exceed the prevailing standards under a new state residential code.

Discussion

Conflicts of interest under AS 24.60.030(e)(3).

AS 24.60.030(e)(3) provides in relevant part:

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

...

(3) except as provided in (g) of this section or while participating in a public discussion or debate, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of a person

(A) who is a member of the legislator's immediate family;

(B) by whom the legislator or a member of the legislator's immediate family is employed;

(C) with whom the legislator is negotiating for employment;

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.¹

"Official influence" is not defined by the Act, however, we have previously found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law,

¹ Ch. 61, SLA 2018; SCS CSSH B 44(STA) took effect July 20, 2018. Before then, AS 24.60.030(e)(3) applied only to official action that, taken or withheld, could "substantially benefit or harm the financial interests of a person with whom the legislator is negotiating for employment."

amendment, resolution, report, nomination, or other matter affected by legislative action or inaction."²

Among the terms in AS 24.60.030(e)(3) that *are* defined by the Act, "substantially benefit or harm" is defined by AS 24.60.030(j)(2), to mean "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state;" and, "financial interest" is defined in AS 24.60.990(a)(6), as "ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit."

As a preliminary matter we note that the prohibition under AS 24.60.030(e)(3) does not apply in a circumstance when the sole effect of the prohibited conduct would be to substantially benefit or harm the financial interest of a person who is not listed in AS 24.60.030(e)(3)(A) - (D). While AS 24.60.030(e)(3) clearly *implies* that the financial interest of a legislator or another person who is not listed might indirectly benefit or be indirectly harmed by legislation that could directly and substantially harm or benefit the financial interest of a person who is listed in (e)(3)(A) - (D)), the prohibition explicitly covers only benefit or harm to those persons listed in (e)(3)(A) - (D). However, AS 24.60.030(e)(3) does not *explicitly* prohibit a legislator from taking or withholding official action or exerting official influence when the sole effect of doing so could substantially benefit or harm the financial interest of the legislator, and not a person listed in AS 24.60.030(e)(3)(A) - (D).³

² AO 19-01, *citing* AO 11-05 regarding our advice in AO 07-01 that a legislator's introduction of a bill that could substantially benefit the legislator's employer would be of special concern to the committee in connection with AS 24.60.030(e), if the bill were introduced at a time when the legislator is negotiating terms of employment with that employer.

³ Nevertheless, in those circumstances other provisions of the Act still apply, including a requirement under AS 24.60.030(g) that a legislator who has a conflict of interest under AS 24.60.030(g) declare a conflict of interest before voting on a related question before a committee of the legislature, and request to be excused from voting on a related question before a house of the legislature.

Limitations when there is a conflict

In AO 19-01 we advised that even when a legislator with a conflict of interest under AS 24.60.030(e)(3) is permitted by (e)(3) to participate in a public discussion or debate,

[W]e recommend that the legislator declare the conflict of interest — even for the limited purpose of discussing the matter. Depending on the facts, in some instances a failure to declare the conflict when discussing the matter may create an appearance of ethical impropriety that undermines the Act's goal of assuring "the trust, respect, and confidence of the people of this state."⁴

We advised in AO 18-05, and later in our reply to question (4) in AO 19-01, that a legislator with a conflict of interest under AS 24.60.030(e)(3) would, "in an informal or non-public discussion . . . be prohibited from taking any official action or exerting official influence, including advocating for the bill" The same would be true of other types of legislation, in addition to bills. Therefore, a legislator with a conflict under AS 24.60.030(e)(3) that relates to a piece of legislation, may not take or withhold official action or exert official influence on that legislation, including discussing or advocating for the legislation. A legislator's discussion of, or advocacy for or against, proposed legislation in any kind of meeting would probably constitute official action, official influence, or both. In a private meeting even with other legislators, the public discussion or debate exception in AS 24.60.030(e)(3) would not apply.

There may be instances where a legislator with a conflict of interest under AS 24.60.030(e)(3) can meet privately with certain persons and discuss the legislation causing the conflict. Those instances include circumstances where the legislator is

⁴ See AS 24.60.010(1).

clearly not acting in a legislative role, and not taking or withholding official action, or exerting official influence. However, those instances generally do not include discussions with legislative employees, registered lobbyists, or other legislators. In those instances there is a rebuttable presumption that the legislator is acting in a legislative role, and that holding the meeting is official action prohibited by AS 24.60.030(e)(3).

Sponsoring legislation

As we advised in AO 18-05 and AO 19-01, a legislator's introduction or sponsorship of legislation is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and choosing to do so in spite of a conflict of interest would be contrary to goals of the Act as set forth in AS 24.60.010. Moreover, sponsoring or cosponsoring legislation of any kind, including an amendment, requires taking official action or exerting official influence beyond participating in discussion or debate or voting. It may require the legislator to make formal motions, file paperwork, and in most instances, request research, drafting and other assistance by legislative employees. If the legislator has a bill-related conflict under AS 24.60.030(e)(3), the legislator is prohibited from taking or withholding official action on the bill, other than participating in a public discussion or debate, or voting.⁵

Applying AS 24.60.030(e)(3) to the facts provided, it does not appear that you have a conflict of interest under (e)(3). Absent additional facts, your outside employment, your spouse's employment, and the substantive provisions of HB 76 do not suggest that your taking or withholding of official action or exertion of official influence in connection with HB 76, including sponsoring the bill, "could substantially benefit or harm the financial interest of a person

(A) who is a member of (your) immediate family;

(B) by whom (you or a member of your) immediate family is employed;

⁵ As we advised in AO 19-01, voting includes signing committee reports. It may also encompass other official action closely related to voting.

- (C) with whom (you are) negotiating for employment;
- (D) from whom (you or a member of your) immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income."

In addition to the foregoing advice, it is worth noting that, as we advised in AO 07-07:

The legislature set forth the Act's foundational principles in AS 24.60.010, and the first one, AS 24.60.010(1), says:

- (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;

Creating the appearance of impropriety while in office is inconsistent with this principle. In previous advisory opinions the committee has indicated that the appearance of impropriety would be a factor the committee would consider in determining whether or not the Legislative Ethics Act has been violated.⁶

Compliance with the Act is the individual responsibility of each person to whom it applies.⁷ In determining whether future conduct like that described in the hypothetical facts violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider.⁸

Conclusion

⁶ See AO 85-04, AO 94-08, AO 94-10, AO 96-04, AO 96-07, AO 99-01, and AO 05-01.

⁷ AS 24.60.010(7).

⁸ AO 18-05.

Does the Legislative Ethics Act (the Act) permit a legislator, employed as a residential property appraiser and married to a spouse employed as a mortgage loan originator, to take official action or exert official influence, including sponsoring legislation, regarding HB 76 or a similar measure relating to building codes?

For the reasons stated above, and based on the facts presented, the committee finds that you do not have a conflict of interest under AS 24.60.030(e)(3), and therefore AS 24.60.030(e)(3) does not prohibit you from taking or withholding official action or exerting official influence, including sponsoring legislation, regarding HB 76 or a similar measure relating to building codes.

However, we look at the specific facts in each instance. You and your spouse are both employed in work, or for employers, that may be affected in some way by legislation affecting the construction and financial industries. If the facts in this instance later indicate that you or your spouse could substantially benefit from or be harmed by the passage of HB 76 or a similar bill, a conflict of interest may arise.

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

Joyce Anderson, Chair	yes	no	absent
Representative DeLena Johnson	yes	no	absent
Representative Louise Stutes	yes	no	absent

Senator John Coghill	yes	no	absent
Senator Tom Begich	yes	no	absent
Dennis "Skip" Cook	yes	no	absent
H. Conner Thomas, public member	yes	no	absent
Lee Holmes, public member	yes	no	absent
Deborah Fancher, public member	yes	no	absent

DCW:kwg

19-064.kwg

Attachment: Exhibit A - copy of HB76

Draft Only - Should not be relied on as binding advice from the Ethics Committee

HOUSE BILL NO. 76

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE RASMUSSEN

Introduced: 2/27/19

Referred: Community and Regional Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a state residential code, the Alaska Housing Finance Corporation,**
2 **and municipal building codes."**

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

4 * **Section 1.** AS 18.56.300(a) is amended to read:

5 (a) The corporation may not make or purchase a housing loan for residential
6 housing the construction of which begins after June 30, 1992, unless the seller of the
7 mortgage loan complies with the provisions of this section and unless

8 (1) the unit is in compliance with the construction codes of the
9 municipality, if the unit is located within a municipality that has adopted and enforces
10 construction codes and each of those codes meets or exceeds the comparable standards
11 for similar housing established by the state residential [BUILDING] code; or

12 (2) the unit is in compliance with the comparable standards for similar
13 housing established by the state residential [BUILDING] code

14 (A) if the unit is located

(i) within a municipality whose construction codes do not meet the standards for similar housing established by the state residential [BUILDING] code;

(ii) within a municipality that does not enforce construction codes; or

(iii) outside a municipality; or

(B) as to each specific code within the construction codes of the municipality that has adopted and enforces construction codes if the specific code does not meet or exceed the comparable standard for similar housing established by the state residential [BUILDING] code.

* Sec. 2. AS 18.56.300(b) is amended to read:

(b) As a condition of a commitment to purchase or approve a loan under this section for residential housing the construction of which begins after June 30, 1992, the corporation shall require inspection of the unit of residential housing that is the subject of the loan. The inspection must be performed by a municipal building inspector, by an individual who is registered under AS 08.18 to perform home inspections for new construction, by an architect registered under AS 08.48, by an engineer registered under AS 08.48, or by another person approved by the corporation. When the unit of residential housing is located in a rural area, the person who makes the inspection may use methods other than a personal physical inspection to make the inspection if the method is approved by the corporation, and variations from the applicable code may be accepted at the corporation's discretion, if the person authorized to inspect the unit under this subsection satisfies the corporation that the variation does not adversely affect the structural integrity of the unit or the health and safety of the residents. The person who makes the inspection shall determine whether the construction conforms to relevant provisions of the construction codes of the municipality or of the state residential [BUILDING] code, as applicable, at each of the following stages of construction:

(1) plan approval;

(2) completion of footings and foundations;

(3) completion of electrical installation, plumbing, and framing;

1 (4) completion of installation of insulation;

2 (5) final approval.

3 * Sec. 3. AS 18.56 is amended by adding a new section to read:

4 **Sec. 18.56.310. State residential code.** (a) Notwithstanding AS 18.60.705 and
5 except as provided in (b) of this section, the 2018 International Residential Code is
6 adopted as the state residential code. The state residential code is the minimum
7 standard for residential construction in the state.

8 (b) The board may adopt by regulation under AS 18.56.088 as the state
9 residential code

10 (1) a later edition of the International Residential Code; or

11 (2) another nationally recognized code.

12 (c) If a municipality adopts a construction code, the construction code must
13 meet or exceed the comparable standards for similar housing established by the state
14 residential code established under (a) of this section, except that, if the board has
15 adopted another code as the state residential code under (b) of this section, the
16 construction code adopted by the municipality must meet or exceed the comparable
17 standards for similar housing established by the state residential code established
18 under (b) of this section.

19 * Sec. 4. AS 18.56.900 is amended by adding a new paragraph to read:

20 (3) "state residential code" means the state residential code adopted
21 under AS 18.56.310.

22 * Sec. 5. AS 18.56.300(e)(3) is repealed.

23 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **TRANSITION: BUILDING CODES OF MUNICIPALITIES.** If, on the effective date
26 of this Act, the building code of a municipality does not meet or exceed the comparable
27 standards for similar housing established by the state residential code, the municipality shall
28 modify its building code within two years after the effective date of this Act to meet or exceed
29 the comparable standards for similar housing established by the state residential code. In this
30 section, "state residential code" means the state residential code established under
31 AS 18.56.310, enacted by sec. 3 of this Act.

SENATE BILL NO. 89

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Introduced: 3/13/19

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Legislative Ethics Act; and providing for an effective date."**

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

3 * **Section 1.** AS 24.60.030(e) is amended to read:

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

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

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

15 (3) **unless required by the Uniform Rules of the Alaska State**

1 **Legislature** [EXCEPT AS PROVIDED IN (g) OF THIS SECTION OR WHILE
 2 PARTICIPATING IN A PUBLIC DISCUSSION OR DEBATE], take or withhold
 3 official action or exert official influence that could substantially benefit or harm the
 4 financial interest of **another** [A] person

5 [(A) WHO IS A MEMBER OF THE LEGISLATOR'S
 6 IMMEDIATE FAMILY;

7 (B) BY WHOM THE LEGISLATOR OR A MEMBER OF
 8 THE LEGISLATOR'S IMMEDIATE FAMILY IS EMPLOYED;

9 (C)] with whom the legislator is negotiating for employment [;

10 (D) FROM WHOM THE LEGISLATOR OR A MEMBER OF
 11 THE LEGISLATOR'S IMMEDIATE FAMILY HAS, IN THE
 12 IMMEDIATELY PRECEDING 12-MONTH PERIOD, RECEIVED MORE
 13 THAN \$10,000 OF INCOME].

14 * **Sec. 2.** AS 24.60.030(g) is amended to read:

15 (g) Unless [OTHERWISE] required by the Uniform Rules of the Alaska State
 16 Legislature, a legislator **may not vote** [SHALL DECLARE A CONFLICT OF
 17 INTEREST BEFORE VOTING] on a question [BEFORE A COMMITTEE OF THE
 18 LEGISLATURE, AND SHALL REQUEST TO BE EXCUSED FROM VOTING ON
 19 A QUESTION BEFORE A HOUSE OF THE LEGISLATURE,] if the legislator [OR
 20 A MEMBER OF THE LEGISLATOR'S IMMEDIATE FAMILY] has **an equity or**
 21 **ownership** [A FINANCIAL] interest in a business, investment, real property, lease, or
 22 other enterprise if the interest is substantial and the effect on that interest of the action
 23 to be voted on is greater than the effect on **a substantial class of persons to which**
 24 **the legislator belongs as a member of a profession, occupation, industry, or**
 25 **region** [THE GENERAL PUBLIC OF THE STATE. HOWEVER,
 26 NOTWITHSTANDING (e)(3) OF THIS SECTION AND THE LIMITATIONS OF
 27 THIS SUBSECTION, A LEGISLATOR MAY VOTE ON AN APPROPRIATION
 28 BILL THAT MEETS THE REQUIREMENTS OF AS 37.07.020(a) OR 37.07.100].

29 * **Sec. 3.** AS 24.60.030(j)(2) and 24.60.990(a)(6) are repealed.

30 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

31st Alaska State Legislature



Senate Rules Committee

SPONSOR STATEMENT

Senate Bill 89 (SB 89) - "An Act relating to the Legislative Ethics Act; and providing for an effective date."

SB 89 clarifies uncertainties that have emerged after the 2018 passage of SCS CSSSHB 44(STA) (known as "House Bill 44" or "HB 44"). Specifically, certain portions of HB 44 eroded Alaskans' ability to have full, constitutionally required representation by a citizen legislature. In some cases, conflict provisions are currently so restrictive that a legislator can't live in "the real world," with a family, and do the duties that they were elected to do.

For example, successful miners can't carry a mining bill. Successful commercial fishermen can't carry a fishing bill. The alleged "conflicted" subject matter can only be discussed in a public forum, including a committee and the floor, and only upon declaring a conflict to the legislature.

In addition: A legislator's spouse or immediate family cannot be connected to the alleged "conflicted" subject matter either. In essence, legislators that have a certain expertise in a field, or that are most knowledgeable, or because of broad family connections, can't talk about multiple subject areas that are important to the state of Alaska, except under, essentially, unreasonably tight conditions.

Those elements combined damage the legislative process. Currently there can be no private meetings on any "conflicted" subject matter. There are severe restrictions on "official action," in multiple forms (including drafting of legislation and mere discussion). A vast "net" of alleged "conflict" now exists because of the bill's language extending "conflict" to immediate family members. "Conflicts" have been expanded to "financial interests" and measured against "the general public."

What are the proposed changes?

1. Definitions are being changed back to the way they existed, prior to HB 44 (2018).
2. The "committee process" language is being removed.
3. "Financial interest" is being changed to back to "equity or ownership interest."
4. "General public" is being returned to "substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region."
5. There is an immediate effective date.

Please join the Senate Rules Chair in supporting this necessary legislation.

Senate Bill 89 -
(SB 89)
“An Act relating
to the Legislative
Ethics Act; and
providing for an
effective date.”

PREPARED BY CHAD
HUTCHISON

SENATE MAJORITY OFFICE



To be clear: This bill does not repeal the majority of the ethics legislation (House Bill 44) (2018) passed last year.

The following remains intact:

- ▶ Prohibitions on expenditures and contributions by foreign-influenced corporations and foreign nationals in state elections.
- ▶ Limitations on member travel.
- ▶ Per diem restrictions
- ▶ The Legislative Council's ability to adopt policy on per diem and moving expenses.
- ▶ Lobbyist restrictions on buying food and beverages for members or staff.
- ▶ Gift restrictions to members

What this bill does:

Simply resets the conflict provisions to the way they were prior to House Bill 44 (HB44) (2018).

Noteworthy: How many Constitutional Issues Have Emerged Because of the Conflict Provisions of HB44 (2018)?

- ▶ Alaska Constitution - Article II – Legislature - Diminishment of Core Legislative Functions and Representation
 - ▶ Example: Successful miners can't talk or meet ("official action") about mining legislation in private. In addition, the miner can't carry legislation. Successful commercial fishermen/women can't talk about commercial fishing in private. The fishermen/women can't carry legislation.
- ▶ Federal Constitution - First Amendment – Fundamental Right
 - ▶ Freedom of Speech for legislator and constituents
 - ▶ Right to assemble
 - ▶ Right to petition the government for redress
- ▶ Alaska Constitution – Article I, Sections 1, 5, & 6
 - ▶ Article 1, Section 1 – "Equal Rights"
 - ▶ Article 1, Section 5 – "Freedom of Speech"
 - ▶ Article 1, Section 6 – "Freedom to Assemble and Petition"



Section 1 amends AS 24.60.030(e).

- ▶ How does it exist under HB 44 (2018)?
 - ▶ Currently, a legislator can only take official action on an alleged “conflicted bill” in public discussion or debate (including in committee and on the floor).
 - ▶ In addition, the legislator is “conflicted” if the subject matter is connected to the legislator (or the legislator’s immediate family) if the legislator (or the immediate family) made over \$10,000 in the immediate 12-month period.
 - ▶ The practical result?
 - ▶ No private meetings about the “conflicted” subject matter.
 - ▶ A severe restriction on official action, in multiple forms (drafting of legislation, discussion, etc.)
 - ▶ A vast “net” of “conflict” because of the extension to the immediate family.
- ▶ See Advisory Opinion 18 05 for more information.

What are the proposed changes?

7

- ▶ The language is returned to the language used before 2018, prior to the passage of HB 44.
 - ▶ This includes the following:
 - ▶ The language is returned to “unless required by the Uniform Rules of the Alaska State Legislature.”
 - ▶ Passages that restrict legislator advocacy to only narrow avenues of public discussion or debate are eliminated.
 - ▶ The language re: “immediate family” is eliminated.
 - ▶ The income threshold of “\$10,000” for the “preceding 12-month period” is removed.

Section 2 - Amends AS 24.60.030(g)

- ▶ How does it exist under HB 44 (2018)?
 - ▶ Currently, conflicts (which are expanded) have to be declared in the committee process and the floor.
 - ▶ Conflicts are expanded to “financial interests” of a business, investment, real property, lease, or other enterprise. There is an expansion to measuring the “interest” against “the general public.”
- ▶ The practical result?
 - ▶ Discussion on relevant issues is severely restricted.
 - ▶ Conflicts will have to be declared in the committee process. If there is an alleged “conflict,” there are legitimate concerns about passing otherwise viable legislation from the committee because members would be barred from private discussion on certain topics.
 - ▶ A broadening of the “scope of conflict” cast a “wide net.”

What are the proposed changes?

- ▶ The “committee process” language is being removed.
- ▶ “Financial interest” is being changed to back to “equity or ownership interest.”
- ▶ “General public” is being returned to “substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region.”

Section 3 simply repeals AS 24.60.030(j)(2) and 24.60.990(a)(6).

10

SB 89 Presentation - Prepared by Chad Hutchison,
Senate Majority Office

AS 24.60.030(j)(2) says:

“substantially benefit or harm” means the effect on the person’s financial interest is greater than the effect on the financial interest of the general public of the state.

- ▶ This language is being removed.
 - ▶ Reasoning:
 - ▶ Clarifies uncertainty.
 - ▶ Fairly easily, a legislator can have an alleged “substantial” “financial interest” in a specific area that’s greater than most of the general public of the state. The spectrum is wide as it can pertain to businesses, investments, real property, leases, or, broadly, other enterprises.
 - ▶ Since the language of “general public” in AS 24.60.030(g) is being changed back to “substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region,” this passage is appropriate for removal.

Section 3 - Continued

- ▶ AS 24.60.990(a)(6) says:

“financial interest” means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

- ▶ This language is being removed.

- ▶ Reasoning:

- ▶ Since the language of “financial interest” is being changed in AS 24.60.030(g) back to “equity or ownership interest,” this provision is being removed.

Section 4

12

- ▶ Section 4 makes the act effective immediately.

This clarification attempts to find the right balance.

- ▶ High moral and ethical standards among public servants in the legislative branch are essential to government trust, respect, and confidence of the people of this state. See Advisory Opinion 19-01. See also AS 24.60.010(1).
- ▶ Right of members to represent their constituencies is of such major importance that members should be barred from their constitutionally required representative duties only in clear cases of personal enrichment.
 - ▶ Members are encouraged to review Uniform Rule 34(b), *Mason's Manual of Legislative Procedure* at sections 241, 522, 560, Advisory Opinion 2004-02, Advisory Opinion 2008-01, Advisory Opinion 2011-05, and Advisory Opinion 2013-01 for interpretations of conflict prior to 2018.



QUESTIONS?

Alaska State Legislature

Select Committee on Legislative Ethics

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January 31, 2019

ADVISORY OPINION 19-01

You are two senators and you have asked nine questions,¹ based on hypothetical facts provided with each, as follows:²

Questions Presented

1. Should a legislator (with a conflict) declare a conflict on the record when the bill is brought up for discussion in the committee hearing?

2. During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill?

3. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members?

4. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other legislators (that are not on the committee), including legislators in the other body?

5. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens?

6. Can a legislator (with a conflict), during the public committee meeting:

¹ You have waived confidentiality under AS 24.60.160.

² For purposes of this opinion we have not altered the wording of the questions and facts you have presented.

- a. Offer amendments to the bill?*
- b. Vote on amendments offered by others?*
- c. Vote on the motion to move the bill from committee?*
- d. Sign the committee report with a recommendation ("do pass," "do not pass," "amend")?*
- e. Sign the committee report "no recommendation"?*

7. According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committee. When a member has a conflict, would the member have to abstain from signing the report or sign the report "no recommendation" in order to comply with the law?

8. Would a legislator with a "large-enough" immediate family, who received more than \$10,000 in the aggregate from the Permanent Fund Dividend Corporation in October 2018, be prohibited from:

- a. Taking official action on a bill related to the Permanent Fund Dividend (PFD) or supplemental dividend payment?*
- b. Discussing or advocating for a PFD bill during private meetings with other committee members?*
- c. Discussing or advocating for a PFD bill during private meetings with other legislators, including members of the other body?*
- d. Discussing or advocating for a PFD bill during private meetings with constituents, or, generally, other citizens?*
- e. Discussing or advocating for the management or asset allocation of the Permanent Fund investments?*

9. If a bill authorizes a supplemental payment of a Permanent Fund Dividend in an amount that is a large percentage of the income of an immediate family member of a legislator, would that constitute a "substantial benefit" to that family member?

- a. If yes, would a legislator be prohibited from taking official action on that bill?*
- b. What qualifies as a "substantial benefit?"*

Statement of Facts

For purposes of this opinion, we rely solely on the hypothetical facts accompanying the foregoing questions.

Discussion

During the 30th Alaska State Legislature, the legislature passed, and the governor signed into law, SCS CSSH 44(STA) (HB 44), a bill changing certain provisions of the Legislative Ethics Act (Act), including declaration of conflicts of interest, the taking or

withholding official action, and exerting official influence on matters.³ For purposes of this discussion we include the following excerpts from HB 44:

* **Sec. 7.** AS 24.60.030(e) is amended to read:

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

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

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

(3) **except as provided in (g) of this section or while participating in a public discussion or debate** [UNLESS REQUIRED BY THE UNIFORM RULES OF THE ALASKA STATE LEGISLATURE], take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of **a** [ANOTHER] person

(A) who is a member of the legislator's immediate family;

(B) by [WITH] whom the legislator or a member of the legislator's immediate family is employed;

(C) with whom the legislator is negotiating for employment;

(D) from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income.

* **Sec. 8.** AS 24.60.030(g) is amended to read:

(g) Unless **otherwise** required by the Uniform Rules of the Alaska State Legislature, a legislator **shall declare a conflict of interest before voting** [MAY NOT VOTE] on a question **before a committee of the legislature, and shall request to be excused from voting on a question before a house of the legislature,** if the legislator **or a member of the legislator's immediate family** has **a financial** [AN EQUITY OR OWNERSHIP] interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on **the general public of the state. However, notwithstanding (e)(3) of this section and**

³ Ch. 61, SLA 2018; SCS CSSH 44(STA) took effect July 20, 2018. For purposes of this opinion, we will cite the measure as HB 44.

the limitations of this subsection, a legislator may vote on an appropriation bill that meets the requirements of AS 37.07.020(a) or 37.07.100 [A SUBSTANTIAL CLASS OF PERSONS TO WHICH THE LEGISLATOR BELONGS AS A MEMBER OF A PROFESSION, OCCUPATION, INDUSTRY, OR REGION].

* Sec. 9. AS 24.60.030(j) is amended to read:

(j) In this section,

(1) "administrative hearing" means a quasi-judicial hearing before an agency; "administrative hearing" does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other nonadjudicative public hearing;

(2) "substantially benefit or harm" means the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state.

* * *

* Sec. 11. AS 24.60.990(a) is amended by adding a new paragraph to read:

(17) "financial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

The foregoing excerpts are the sections of HB 44 relevant to our discussion of the questions posed, which we address in order as follows:

1. Should a legislator (with a conflict) declare a conflict on the record when the bill is brought up for discussion in the committee hearing?

Although AS 24.60.030(g) requires a legislator with a conflict of interest to declare the conflict "before voting on a question before a committee of the legislature," it does not require the legislator to declare the conflict at any other time during a committee hearing. Since a committee meeting is public, AS 24.60.030(e)(3) allows the legislator to discuss or debate a matter at the meeting regardless of whether the legislator has a conflict of interest under (e)(3). If the conflict of interest is one described in AS 24.60.030(e)(3), the legislator may not otherwise take or withhold official action or exert official influence.

"Official action" is not defined in the Act, but previously we found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction."⁴

⁴ AO 11-05, citing AO 07-01, advising that a legislator's introduction of a bill that could substantially benefit the legislator's employer would be of special concern to the

Depending on the specific facts presented, discussion of a matter in a legislative hearing may be considered "conduct relating to . . . support or opposition to or of a . . . matter affected by legislative action or inaction." If so, AS 24.60.030(e)(3) would prohibit the legislator from participating in that discussion, unless the hearing is public.

Nevertheless, we recommend that the legislator declare the conflict of interest — even for the limited purpose of discussing the matter. Depending on the facts, in some instances a failure to declare the conflict when discussing the matter may create an appearance of ethical impropriety that undermines the Act's goal of assuring "the trust, respect, and confidence of the people of this state."⁵

2. During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill?

Yes, as explained in our response to question 1 above, AS 24.60.030(e)(3) allows a legislator to discuss, debate, advocate, or testify on a matter where the legislator has a conflict if part of "a public discussion or debate." We also addressed this issue in our response to questions (1)(A) and (3)(A) of AO 18-05.

In our response to question (1)(A) of AO 18-05 we advised that AS 24.60.030(e)(3) would prohibit a legislator with a conflict in a matter from taking or withholding official action or exerting official influence except when declaring a conflict of interest before voting in accordance with AS 24.60.030(g), which requires a legislator to declare a conflict before voting on a matter in committee or while participating in a public discussion or debate.

We also advised, in response to questions (1)(A) and (3)(A) of AO 18-05, that a legislator's introduction or sponsorship of a bill is always discretionary because the Uniform Rules of the Alaska State Legislature (Uniform Rules) never require a legislator to introduce or sponsor a bill, and, when a legislator has an ethical conflict of interest in a matter, the legislator's introduction of or sponsoring legislation on the matter is contrary to goals of the Act set forth in AS 24.60.010.

3. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members?

We addressed this question previously, in a recent advisory opinion. In our response to question (1)(B) of AO 18-05, we advised as follows:

If the meeting is open to the public in accordance with AS 24.60.037, the exception in AS 24.60.030(e)(3) applies, and the legislator may discuss and advocate for the bill. The Act's open meetings guidelines provide

committee in connection with AS 24.60.030(e), if the bill were introduced at a time when the legislator is negotiating terms of employment with that employer.

⁵ See AS 24.60.010(1).

that "[a] meeting of a legislative body is open to the public in accordance with the open meetings guidelines established in this section," and "[a] legislator may not participate in a meeting held in violation of these open meetings guidelines."⁶

Although a caucus⁷ is not the same as a "legislative body,"⁸ (and therefore not bound by the open meeting requirement under AS 24.60.037(a)), depending on who is in attendance at a caucus meeting, (e.g., if those in attendance also constitute the majority of a legislative committee or other legislative body), that meeting may also constitute a meeting of a legislative body for purposes of applying the open meetings guidelines.

Caucus meetings, however, are exempt from the open meeting requirement, if limited to discussion and deliberation of "political strategy," described under AS 24.60.037(c) as follows:

⁶ AS 24.60.037(a).

⁷ "Caucus" is defined under AS 24.60.037(g) as "a group of legislators who share a political philosophy, or have a common goal, and who organize as a group."

⁸ "Legislative body" is defined under AS 24.60.037(g)(2), as follows:

- (2) "legislative body"
 - (A) includes
 - (i) the senate;
 - (ii) the house of representatives;
 - (iii) the senate and the house of representatives meeting in joint session;
 - (iv) a committee of the legislature, other than the Committee on Committees, but including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, and permanent interim committee;
 - (v) a legislative commission, task force, or other group established by statute or resolution; or
 - (vi) a caucus of members of one or more of the bodies set out in (i) - (v) of this subparagraph;
 - (B) does not include
 - (i) any committee or group of legislators considering only matters involving the organization of a committee or a house of the legislature, including selection of legislative officers;
 - (ii) any committee or group of legislators and the governor or staff of the Office of the Governor;
 - (iii) legislative leadership meetings;
 - (iv) officers of a caucus;

"political strategy" includes organization of the houses, assignment of committee membership, scheduling of bills, vehicles for adoptions, house-senate relations, other procedural matters, caucus operations, meetings between majority and minority caucus leaders, meetings between majority and minority caucus leaders of both houses, meetings with the governor, deliberations with regard to political strategy, and discussions of issues in the context of political strategy.

Accordingly, if the caucus meeting is a "closed caucus" or "private, informal meeting to discuss and deliberate on political strategy," as described under AS 24.60.037(c), for the reasons discussed under the analysis under (1)(A), the legislator will be prohibited from exerting "official influence" or advocating for the bill in the caucus meeting.

Like a caucus meeting, a private meeting between two or more members of a legislative committee is not public. Therefore, although the answer to your question may depend on the applicable facts in each instance, generally the answer is no; a legislator with a conflict under AS 24.60.030(e)(3) relating to a bill may not discuss or advocate for the bill during private meetings with other committee members.⁹

4. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other legislators (that are not on the committee), including legislators in the other body?

No. The exceptions in AS 24.60.030(e) do not apply, as discussed above. In our response to question (3)(C) of AO 18-05, we advised that a legislator with a conflict of interest under AS 24.60.030(e)(3)(D) may not, except while participating in a public discussion or debate or voting in accordance with AS 24.60.030(g), take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of a person "from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income."¹⁰ Accordingly, we advised that a legislator with a conflict of interest under AS 24.60.030(e)(3)(D) would, "in an informal or non-public discussion . . . be prohibited from taking any official action or exerting official influence, including advocating for the bill" Therefore, based on AO 18-05 and the facts you have provided, a legislator with a conflict under AS 24.60.030(e)(3) relating to a bill may not discuss or advocate for the bill during a private meeting with one or more legislators that are not on the committee, even if they are in the other house of the legislature.

⁹ Discussion or advocacy could be considered "exert[ing] official influence" in violation of AS 24.60.030(e)(3).

¹⁰ AS 24.60.030(e)(3)(D). It does not matter if the legislator owns a "minority interest" in the business if in the immediately preceding 12-month period, the legislator received more than \$10,000 of income from that business.

5. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens?

Although the answer to this question may depend on the applicable facts in each instance, generally the answer is no — for reasons explained in our responses to questions 3 and 4, above. A legislator's discussion of, or advocacy for or against, proposed legislation in any kind of meeting would probably constitute official action, official influence, or both, and because the meeting you have described is private, not public, the public discussion or debate exception in AS 24.60.030(e)(3) would not apply.

6. Can a legislator (with a conflict), during the public committee meeting:

a. offer amendments to the bill?

No. While the offer might occur during public discussion and debate, it is nevertheless official action or official influence prohibited by AS 24.60.030(e)(3). As noted above in our response to question 2, and in AS 18-05, a legislator's introduction or sponsorship of legislation is always discretionary because the Uniform Rules never require a legislator to introduce or sponsor legislation, and choosing to do so in spite of a conflict of interest would be contrary to goals of the Act set forth in AS 24.60.010. Moreover, sponsoring an amendment or other legislation requires taking official action or exerting official influence beyond participating in discussion or debate or voting. It requires the legislator to make at least one formal motion, and in most instances it requires the legislator to request assistance from staff to prepare the legislation.¹¹

b. vote on amendments offered by others?

Yes. The prohibitions in AS 24.60.030(e)(3), against taking or withholding official action or official influence in certain instances, are limited by the provision "except as provided in (g) of this section," which requires legislators who have a conflict of interest to declare it "before voting on a question before a committee of the legislature. . . ." We find that the provision "except as provided in (g) of this section" is an exception to the prohibitions in AS 24.60.030(e)(3) that allows a legislator to vote on a question before a committee of the legislature even though the legislator has a related conflict of interest under AS 24.60.030(e)(3), so long as the legislator declares a conflict before voting.

c. vote on the motion to move the bill from committee?

Yes, for reasons explained in (b) of this question. A vote on a motion to move a bill from committee is a vote "on a question before a committee of the legislature."

d. sign the committee report with a recommendation ("do pass," "do not pass," "amend")?

Yes, for reasons explained in (b) of this question. Signing the committee report is part of voting "on a question before a committee of legislature."

e. sign the committee report "no recommendation"?

Yes. See answer to question (6)(d).

¹¹ See, footnote 3.

7. According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committee. When a member has a conflict, would the member have to abstain from signing the report or sign the report "no recommendation" in order to comply with the law?

No. For reasons explained in (b) of question 6, signing a committee report with or without a recommendation, is part of voting on a question before a committee of the legislature and therefore a member does not have to abstain from signing the report in order to comply with AS 24.60.030(e)(3).

8. Would a legislator with a "large-enough" immediate family, who received more than \$10,000 in the aggregate from the Permanent Fund Dividend Corporation in October 2018, be prohibited from:

- a. Taking official action on a bill related to the Permanent Fund Dividend (PFD) or supplemental dividend payment?**
- b. Discussing or advocating for a PFD bill during private meetings with other committee members?**
- c. Discussing or advocating for a PFD bill during private meetings with other legislators, including members of the other body?**
- d. Discussing or advocating for a PFD bill during private meetings with constituents, or, generally, other citizens?**
- e. Discussing or advocating for the management or asset allocation of the Permanent Fund investments?**

Regardless of whether a member of the legislator's immediate family, or the entire family, receive permanent fund dividends with a cumulative value greater than \$10,000, the answer to each of the foregoing questions, (8)(a) - (e), is no, under AS 24.60.030(e)(3). In order for a prohibition under AS 24.60.030(e)(3) to apply, the action or influence targeted by that provision must "substantially benefit or harm" the "financial interest" of a person under subparagraphs (A) - (D) of that paragraph, including "a member" of the legislators immediate family. For purposes of AS 24.60.030, "substantially benefit or harm" means "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state."¹² A member of the general public of the state, including a legislator, may have an immediate family large enough to be eligible for and receive permanent fund dividends for one benefit year with a value, when added together, that exceeds \$10,000, regardless of legislative status. Therefore, the benefit to the legislator is no greater than the effect on the financial interest of the general public of the state.

Furthermore, for purposes of the Act "financial interest is defined under AS 24.60.990(a)(6), as follows:

(6) "financial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a

¹² AS 24.60.030(j)(2).

professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

Based on the facts you have provided, the legislator's interest in the Permanent Fund, the Permanent Fund Dividend program, or a permanent fund dividend received by the legislator or a member of the legislator's immediate family, is not a financial interest as defined in the Act.

9. If a bill authorizes a supplemental payment of a Permanent Fund Dividend in an amount that is a large percentage of the income of an immediate family member of a legislator, would that constitute a "substantial benefit" to that family member?

No, see answer to question 8, above.

a. If yes, would a legislator be prohibited from taking official action on that bill?

Because the answer to question 9 is "no", the response to question (9)(a) is necessary.

b. What qualifies as a "substantial benefit?"

The term "substantial benefit" does not appear in the Act. For a discussion of the meaning of "substantially benefit or harm," see our response to question 8, above.

Conclusion

In addition to the foregoing advice, it is worth noting that, as we advised in AO 07-07:

The legislature set forth the Act's foundational principles in AS 24.60.010, and the first one, AS 24.60.010(1), says:

(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;

Creating the appearance of impropriety while in office is inconsistent with this principle. In previous advisory opinions the committee has indicated that the appearance of impropriety would be a factor the committee would consider in determining whether or not the Legislative Ethics Act has been violated.¹³

Compliance with the Act is the individual responsibility of each person to whom it

¹³ See AO 85-04, AO 94-08, AO 94-10, AO 96-04, AO 96-07, AO 99-01, and AO 05-01.

applies.¹⁴ In determining whether future conduct like that described in the hypothetical facts violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider.¹⁵

Adopted by the Select Committee on Legislative Ethics on January 31, 2019.

Members present and concurring in this opinion were:

Dennis "Skip" Cook, Chair
Senator John Coghill
Senator Tom Begich
H. Conner Thomas, public member
Joyce Anderson, public member
Deborah Fancher, public member
Lee Holmes, public member

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¹⁴ AS 24.60.010(7).

¹⁵ AO 18-05.

