



AMENDMENT #2

OFFERED IN THE HOUSE  
TO: CSHB 109(JUD)

BY REPRESENTATIVE GARA  
*Gardner*  
*Kettner*  
*Doll*

1 Page 35, line 20, following "\$5,000":

2 Insert "; however, a personal or financial interest in a matter is not presumed  
3 insignificant if the public officer

4 (1) is a member of the board of directors or another governing body of  
5 the business;

6 (2) is an elected officer of the business;

7 (3) provides or has an option to provide personal or professional  
8 services, for compensation, to the business;

9 (4) has a contract with the business; or

10 (5) is an employee of the business"



**ROBERT C. BUNDY**  
(907) 257-7853  
FAX (907) 276-4162  
bundy.robert@dorsey.com

February 17, 2005

The Honorable Frank Murkowski  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re. Proposed Revisions to the Code of Ethics

Dear Governor Murkowski:

Thank you for asking us to propose improvements to the Code of Ethics to better provide guidance on those issues raised by our investigation. Building upon our research and investigation in the Renkes matter, we have reviewed the statutory schemes from a variety of states. Although no language from any one state's statutory scheme addresses completely the issues we see, we started with language and ideas from several different statutes as the basis for our proposed revisions.

First, we would add language to AS 39.52.110 to clarify when a public officer's interest in a specific matter is insignificant. As was the case in the Renkes matter, a public officer's interest in a specific matter may derive from that officer's interest in a corporation or other organization. We believe the following language would provide additional guidance and direction for evaluating the significance of such interests.

(c) For purposes of section (b)(1), a public officer's personal or financial interest in a matter is not insignificant if a business entity may realize a reasonably foreseeable material benefit or detriment as a result of the action of the official, and the public officer--

(1) has a controlling interest in the business entity;

(2) owns more than one percent (1%) of the voting and/or equity interest in the business entity;

(3) owns more than \$10,000 of the fair market value of the business entity;

(4) is a member of the board of directors or other governing board of the business entity;

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- (5) serves as an elected officer of the business entity; or
- (6) is an employee of the business entity.

Thus, if an officer has an interest in, or relationship with, a business entity, he or she must determine whether that business entity has a material interest in the matter. We do not recommend attempting to define "material." Materiality is a well-recognized legal concept that allows for the myriad of situations encountered in the real world.

This language would best fit in subsection (c) to AS 39.52.110. The current subsection (c) would then become subsection (d). We have attached a red-lined version of this statute showing our suggested changes.

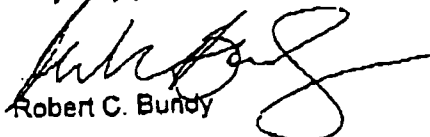
Second, we recommend further clarifying the exception for "large class of persons to which the public officer belongs" in subsection (b)(1). Mirroring the language used in the Legislative Ethics Act, AS 24.60.990(b)(1), we would add "as a member of a profession, occupation, industry, or region" to the end of this subsection such that it would read:

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

- (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs as a member of a profession, occupation, industry, or region;

Thank you for the opportunity to provide our proposed revisions to you. Please do not hesitate to call if you have any questions or concerns. Of course, at your direction, we will make our research on these issues available to any state agency working on this matter.

Very truly yours,

  
Robert C. Burdy