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Sections 16 & 18 add to AS 47.23.150 (Required Notice in Administrative Enforcement of Support Orders) and 47.23.160 (Admin. Establishment of Support Obligations; Notice & Finding of Financial Responsibility): "Refusal by the obligor to accept notice . . . is considered service as of the time of refusal."

Sec. 21 adds new section to AS 47.23 relating to the ratification by the court of administrative orders. States that an administrative support order issued under chapter may be forwarded to the Superior Court. Unless a notice of appeal is filed within 30 days, the court may enter an order confirming the support order.

Secs. 22 & 23 make technical amendments to 47.23.190 by deleting from "obligee or his custodian" the words "or his custodian" since obligee was redefined as being the custodian rather than the child.

Sec. 24 repeals and re-enacts AS 47.23.250 (Order to Withhold and Deliver). Section allows agency to issue to "any person, political subdivision, or department of the state an order to withhold and deliver property" if after 30 days from the date of service of notice under 47.23.150, or from the date of service of a notice and finding of financial responsibility, an obligor has failed to make child support payments. The section as repealed and re-enacted is identical to the existing section with the addition of two new subsections (subsecs. (f) & (g) in the bill) which state: "(f) A person, political subdivision, or department of the state which regularly incurs additional indebtedness to the obligor shall continue to withhold and deliver money as it comes due and owing until the liability of the obligor under AS 47.23.150 is satisfied. (g) An order to withhold and deliver issued to the Department of Revenue is effective upon receipt by the Department and remains effective for that calendar year. The order shall be sufficient to subject any tax refund or other disbursements due to be issued to the obligor in that year to the provisions of this section even though the tax refund or disbursement may be issued more than 30 days after the order."

Does not provide for effective date.

Introduced February 16 and referred to Health, Education and Social Services and Judiciary.

Motor Fuel
Tax
(watercraft)
(repeal of)

SENATE BILL NO. 182, by Senators Mulcahy, Eliason, Ziegler, Ray, Hohman and Ferguson. Identical to HB 101, page 179.

Introduced February 16 and referred to Transportation & Finance.

Financial
Disclosure
(exempting
physicians)

SENATE BILL NO. 183, by Senator Mulcahy by request. Exempts physicians from the financial disclosure requirements of AS 39.50 (Conflict of Interest for public officers & candidates for elective office). Adds new subsection to AS 39.50.030 (contents of financial disclosure statement) to read: "A public official, a candidate for state elective office, or a candidate for elective municipal office who is a physician licensed under AS 08.64 is not required to report the name of a person who is his patient or a patient of an entity which is a source of income to him." Pro-

SB 183 (cont'd)

vides Act effective April 14, 1981.

Introduced February 16 and referred to State Affairs and Judiciary.

Appropriations SENATE BILL NO. 184, by Senator Ferguson. Appropriates \$100,000
(special) from the general fund to the Dept. of Health & Social Services
(medical for payment as a grant to the Kotzebue Public Health Service
evacuations) Hospital (\$50,000) and to the Norton Sound Hospital (\$50,000)
for medical evacuations. Appropriations shall be disbursed in
accordance with AS 37.05.315 (State Grants). Provides Act effective immediately.

Introduced February 16 and referred to Health, Education & Social Services and Finance.

Appropriation SENATE BILL NO. 185, by Senator Bennett. Appropriates \$150 million
(supplemental) from the general fund to the Alaska Housing Finance Corporation,
(AHFC Mortgage Dept. of Revenue, for the Special Mortgage Loan Purchase Program
Loans) (AS 18.56.098) for the fiscal year ending June 30, 1981. Provides
Act effective immediately.

Introduced February 16 and referred to Finance.

Note: this bill was reported out of committee this week. See page 274.

Interstate SENATE BILL NO. 186, by the Rules Committee by request of the
Corrections Governor. Adopts the Interstate Corrections Compact. Art. 1,
Compact "Purpose and Policy" of the Act states: "The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide those facilities and programs on a basis of cooperation with one another, thereby serving the best interest of the offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." Provisions of compact are added to AS 33 under new Chapter 27, "Interstate Corrections Compact." Effective immediately.

In his message transmitting the bill to the Senate for consideration, Governor Hammond stated:

Under the authority of art. 1.1, sec. 10 of the Alaska Constitution, I am transmitting a bill which would make Alaska a party to the Interstate Corrections Compact.

Under current law, Alaska is a party to the Western Interstate Corrections Compact, along with eleven other states. This measure is similar to that compact; however, it allows the state a broader choice of correctional facilities nationwide in which prisoners may be incarcerated than is presently available. By joining the Interstate Corrections Compact, Alaska will be able to place offenders in an additional eleven states. It is not necessary to withdraw from the Western Interstate Corrections Compact in order to become a party to this compact.

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J. John Franich, Jr.

February 2, 1982

Arthur S. Hansen, D.D.S.
3487 Airport Way
Fairbanks, Alaska 99701

Re: APOC disclosure requirements
Cur File No. 62-3154

Dear Art:

You have asked for a memorandum on the legal questions posed for you by the provisions of AS39.50.010 et seq. and the regulations issued pursuant thereto.

Statement of Facts

Arthur S. Hansen, D.D.S., is a duly licensed dentist practicing denistry as an employee of Arthur S. Hansen, D.D.S., a Professional Corporation. In 1981 he declared himself a candidate for membership on the Fairbanks North Star Borough School Board and in conjunction with the filing of his declaration of candidacy, filed a conflict of interest disclosure from and request for exemption with the Alaska Public Officers Commission pursuant to AS 39.50.020-030 and 2 AAC 50.100. Arthur S. Hansen was not elected to the School Board in the election held in October, 1981. After the election the APOC ruled against Hansen's claim of privilege and demanded submission of the names of all patients of Arthur S. Hansen, DDS, a Professional Corporation, receiving services for which they paid in excess of \$100.00. Hansen has refused to submit the information and the APOC has declared its intention of submitting the matter to the Attorney General for further action.

Applicable Law

1. AS 39.50.010 et seq. This Chapter requires financial disclosure of public officials and candidates, including disclosure of the financial interests of members of this family.
2. 2 AAC 50.090-320. These regulations set forth in modest detail the information required and the methods by which the APOC will enforce the statutory requirements.

3. AS 10.45.090-250. This Chapter is the Alaska Professional Corporations Act which permits a person or persons licensed to perform professional services to incorporate their business. This statute permits the provision of professional services through a corporate business entity subject to restrictions on the shareholders, the disposition of shares, and qualifications of directors. Additionally the statute preserves the traditional relationship between the person providing the service and the recipient insofar as the rights, duties and liabilities between them are concerned. The statute also made the corporation jointly and severally liable with the professional employee to the service recipient. In all other respects, a professional corporation must operate pursuant to the Alaska Business Corporation Act, AS 10.05.010.594.

4. Article I, Sec. 22, Alaska Constitution. This section guarantees a right of the people to privacy and is applicable under the present circumstances to Arthur S. Hansen, D.D.S., the professional corporation and to the recipients of services of the corporation.

Memorandum

In Falcon v. APOC, 570 P.2d 469 (Alaska 1977) the Court was confronted with the question of whether or not a physician should be required to disclose the names of his patients paying more than \$100.00 for services in order to comply with AS 39.50.200. Dr. Falcon was an employee of a professional corporation known as Kodiak Island Medical Center. AS 39.50.200(a)(8) defines source of income as a client or patient of a professional corporation.

In Falcon the court held that the provisions of AS 39.50.200 were not an impermissible infringement of the patient's constitutional right of privacy. In his argument Falcon apparently pointed out that the Alaska State Medical Association Council had declared that publication of the names of patients of Alaska Medical Board members to be a violation of professional ethics, but the Court held that such a declaration could not be construed as amending or modifying the provisions of AS 39.50.200 and further buttressed that by citing cases that had held that disclosure only of the name of a patient was not an invasion of the evidentiary doctor-patient privilege.

However, the Court did find that in certain instances, some of which it described, mere disclosure of a patient's name would constitute an impermissible invasion of a patient's right of privacy. The APOC merely lifted from Falcon the instances in which the Court thought an impermissible invasion might occur insofar as a physician's patient's right

of privacy is concerned and did not address similar questions which might arise in the delivery of other professional services.

One aspect of the statute which has received only cursory consideration is whether or not the requirement of disclosure constitutes such a burden on the office holder or candidate as to have a chilling effect upon all professions delivering services to individuals so as to prevent their members from seeking and holding public office.

2 AAC 5.050 excludes retail charge accounts, revolving charge accounts and credit card sales. Likewise, all cash customers are excluded. These exclusions would seem not to fall within any zone of privacy of a customer or a retail business, but to be the result of a practical determination that compliance would be unduly burdensome. It probably also stems from a belief that retail business transactions do not give rise to a relationship from which influence would flow. Nothing in the statute forms a basis for such a belief and it can only be assumed that the excluded retail transactions would constitute too great a burden.

The Falcon case did not address the benefit-burden problem, only the scope of the physician - client privilege. Thus, we have neither a statutory nor a judicial determination of the extent of influence a retail customer might be able to exert.

Another practical aspect of the regulations and the statute which has escaped legislators and the APOC is that the area of greatest conflict in which a professional might be found is in professional considerations or matters of particular concern to the profession, i.e., medical malpractice.

To return to the chilling effect, a professional desiring to offer himself for public office would have to plan approximately 18 months ahead of the last filing date so as to be prepared with the names of his patients or clients.

Neither the statute nor the regulations imposes a duty upon the APOC to act in a timely fashion upon the application for exemption filed by a declared candidate. Thus, as in this case, the Commission may fail or refuse to act on an application for an exemption until either the election has been held or it is too late to withdraw a candidacy. In such event, the purpose of the statute are defeated and candidates who believe themselves entitled to claim a privilege in behalf of others are subjected to the possible imposition of penalties they are entitled by law to avoid.

In summary and to return to the state of the law applicable, all professions whether sole proprietors, partners or employees of professional corporations must disclose the names of all persons receiving services for which those persons paid \$100.00 or more in the preceding year, unless those recipients fall within the classes of persons who are protected by 2 AAC 50.100.

Penalties

AS 39.50.060(a) provides that a person who refuses or knowingly fails to disclose information is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100.00 and not more than \$1,000.00 or by imprisonment for not more than 6 months or both.

Additionally, one who is elected or appointed shall forfeit his office. See APOC v. Marshall, Op. No. 2406 (1981).

AS 39.50.135 permits the imposition of a civil penalty of not more than \$10.00 per day. 2 AAC 50.110 sets the schedule of civil penalties but the regulation is applicable only to public officials. The definition of public official contained in AS 39.50.200 does not include candidates. 2 AAC 50.135 sets a similar schedule for municipal officers.

Sincerely yours,

LAW OFFICES OF MARY A. NORDALE

Mary A. Nordale

MAN/jm