

S

B

|

8

3

Sections 16 & 18 add to AS 47.23.150 (Required Notice in Administrative Enforcement of Support Orders) and 47.23.160 (Admir. 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 The section as repealed and re-enacted is identical to the existing section with the addition of two new subsections (subsecs.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-

INTRODUCTION OF BILLS (Senate)(cont'd)

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 grants 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 effec-
tive 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 NC. 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, de-
(adopting) siring by common action to fully utilize and improve their insti-
tutional facilities and provide adequate programs for the con-
finement, treatment and rehabilitation of various types of of-
fenders, 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 offend-
ers 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 coopera-
tion for the confinement, treatment and rehabilitation of offend-
ers 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 considera-
tion, Governor Hammond stated:

Under the authority of art. III, sec. 18 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.

Introduced: 2/16/81
Referred: State Affairs
and Judiciary

1 IN THE SENATE

BY MULCAHY BY REQUEST

2 SENATE BILL NO. 183

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting physicians from financial disclosure
7 requirements of AS 39.50; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 39.50.030 is amended by adding a new subsection to read:

11 (d) A public official, a candidate for state elective office, or
12 a candidate for elective municipal office who is a physician licensed
13 under AS 08.64 is not required to report the name of a person who is
14 his patient or a patient of an entity which is a source of income to
15 him.

16 * Sec. 2. This Act takes effect April 14, 1981.

17

18

19

20

21

22

23

24

25

26

27

28

29

*dentist
of al
Leading sciences*

J. John Franich, Jr.

February 2, 1982

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

Re: APOC disclosure requirements
Our 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 dentistry 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

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1982

SUBJECT: Exemptions from financial disclosure
(CSSB 183 (SA))

TO: Senator Vic Fischer
Chairman, Senate State
Affairs Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

The bill is provided as requested. It exempts from the requirement that a public official or candidate report "the name of a person who is a patient or a patient of an entity which is the source of income to him" in the following groups of individuals: those licensed under

- AS 08.20 chiropractors;
- AS 08.32 dental hygienists;
- AS 08.36 dentists;
- AS 08.64 physicians;
- AS 08.68 nurses;
- AS 08.80 pharmacists;
- AS 08.84 physical therapists; and
- AS 08.86 psychologists and psychological associates.

The bill does not exempt nursing home administrators (AS 08.-70) or dispensing opticians or optometrists (AS 08.71; 08.-72).

Senator Vic Fischer

Page 2

March 18, 1982

You also asked whether a classification exempting the particular professional from disclosure would withstand equal protection scrutiny.

I believe that it would. Note, however, that it is possible that the classification implicit in the bill (members of the healing arts professions) is both overbroad (in its inclusion of "medical" professionals for whom the privilege is unnecessary) and underinclusive (in its omission of members of other professions whose clients might have such claims to privacy: for example lawyers whose practice is limited to divorce or similarly private matters). In that connection, it may be useful to review the language of the case analyzing these questions that reached the Alaska Supreme Court: Falcon v. Alaska Public Offices Com'n, 570 P.2d 469, 479 (Alaska 1977):

"In particular situations, however, as the state admits, disclosure of the mere fact that an individual has visited a certain physician may have the effect of making public certain confidential or sensitive information.

"According to one commentator:

''[s]ensitive information is that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.'

"As an example, the commentator suggests:

''the decision to have an abortion [is one] which many people would be reluctant to discuss even with their closest friends. . . . (footnotes omitted)'

"Where an individual visits a physician who specializes in contraceptive matters or whose primary practice is known to be giving abortions and the fact of a visit or rendering of services becomes public information, private and sensitive information has, in our view, been revealed. Even visits to a general practitioner may cause particular embarrassment or opprobrium where the patient is a married person who seeks treatment without the spouses's knowledge or a minor who does so without parental intelligence. Similar situations would be presented where, because of specialized practice, the disclosure of the patient's

identity also reveals the nature of the treatment, and the particular type of treatment is one which patients would normally seek to keep private. Some examples would include the patients of a psychiatrist, psychologist or of a physician who specialized in treating sexual problems or venereal disease.

"In these situations, at least, we find that the extent to which the governmental interest in promoting fair and honest government would be impeded, does not outweigh the individual's privacy interest in protecting sensitive personal information from public disclosure. In emphasizing these examples, we reiterate that situations involving specialized practice of psychiatry or venereal disease present the exception rather than the general rule and that, ordinarily, identification as a patient of a general practitioner who also engages in some of these functions does not infringe a significant privacy interest."

The last sentence of the Court's opinion should also be noted:

In addition, the [Alaska Public Offices] Commission may well wish to promulgate regulations which apply to relationships other than that of physician-patient.

The committee should finally note that the need for the bill is somewhat undercut by the regulations of the commission responsive to the Falcon case. See 2 AAC 50.100, copy enclosed. It provides exemptions in a different framework than that of the bill:

The names of the following persons should not be disclosed:

- (1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;
- (2) a patient of a psychiatrist;
- (3) a patient of a psychologist;

Senator Vic Fischer
Page 4
March 18, 1982

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks medical or legal assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium. [2 AAC 50.100(a)]

The different approaches of the regulations and the bill are therefore clear. The regulations seek to protect the patient from disclosure, only in some cases exempting all of the practice of the physician; the bill does not distinguish between the practice of the psychiatrist or physician who performs abortions frequently from the practice of a foot doctor.

The legislature possesses very broad powers of classification. In my view, the classifications presented in the bill are for the reasons suggested arguably both overbroad and underinclusive. Considering the commission's regulations, the existing requirements for disclosure by physicians are undoubtedly constitutional. SB 183 does not, therefore, respond to the mandate of the Supreme Court in the Falcon case. That is not to say that physicians covered by the commission's regulations (who are still required to disclose) are happy with the result.

I do suggest that the classification used may present some theoretical equal protection problems. They may remain theoretical to the extent that those not excluded by the bill may be excluded by the commission's regulation.

If I may assist further, please advise.

RAB:ljb

Enclosures

information and also requires reporting of all required information actually known. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)

2 AAC 50.040. LOANS AND INDEBTEDNESS. AS 39.50.030(b)(6) includes all loans or indebtedness of \$500 or more made or still outstanding during the preceding calendar year. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(6)

2 AAC 50.050. RETAIL CHARGE ACCOUNTS. For purposes of reporting liabilities under AS 39.50.030(a) and 39.50.030(b)(6), the reporting official is not required to report retail charge accounts, revolving charge accounts or credit card obligations. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)
AS 39.50.030(b)(6)

2 AAC 50.060. WRITE-IN CANDIDATES. A public statement by an individual not appearing on the ballot that he will seek elective office constitutes a declaration of candidacy under AS 39.50.020. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020

2 AAC 50.070. INCOME. In this chapter and in AS 39.50, "income" includes gross income under Section 61 of the Internal Revenue Code (26 USC § 61) in effect on May 16, 1976. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(1)

2 AAC 50.080. CONTROLLING INTEREST IN A CORPORATION. In AS 39.50.200(8), "controlling interest" in a corporation means ownership of more than 50 percent of the outstanding shares of a corporation at any time during the year for which a report is being filed. In this section, the rules of constructive ownership in Section 318 of the Internal Revenue Code (26 USC § 318) in effect on May 16, 1976, will be used to determine

ownership of a corporation's shares. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200

2 AAC 50.090. MUNICIPALITIES AS INSTRUMENTALITIES OF THE STATE. In AS 39.50.200(5), "instrumentality of the state" includes municipalities. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200(5)

2 AAC 50.100. CLAIMING CONSTITUTIONAL OR STATUTORY EXEMPTION FROM THE REPORTING REQUIREMENTS OF AS 39.50.030(b)(1). (a) Disclosure of another person's name in a report is not required and should not be made where that disclosure alone would likely result in disclosing sensitive information which the person would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person. The names of the following persons should not be disclosed:

(1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;

(2) a patient of a psychiatrist;

(3) a patient of a psychologist;

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks legal or medical assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium.

(b) A physician, pursuant to (g) of this section, may request an exemption on behalf of any other patient similarly situated where the disclosure of that patient's name would likely result in disclosing information which he would want to keep private and which, if made public,

would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(c) A patient not exempted in (a) of this section may request, pursuant to (g) of this section, that his physician apply for an exemption on his behalf when disclosure of his name would likely result in disclosing information which he would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(d) It is recommended that an individual who is self-employed as described in AS 39.50.200(8), and who acts in such a way as to become subject to the requirements of AS 39.50, and whose business or profession is such that disclosure of the names of his clients or customers may significantly infringe on their constitutional guarantees to right of privacy, apprise those clients or customers not exempted by (a) of this section of his reporting requirements under law and the options available to the parties involved, as set forth in (b), (c), and (g) of this section.

(e) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who claims an exemption for some or all of his clients or customers under (a) of this section, must request APOC Form 39-0, entitled "Claimed Exemption Report," from the commission. The form, which must be filed with and attached to the individual's conflict-of-interest statement, and signed under oath and on penalty of perjury, requires that the following information be disclosed:

(1) if the individual is claiming total exemption from the requirement, as in (a)(1), (2), (3), or (4) of this section, then he must

(A) state that the primary focus of his practice is the treatment of patients seeking psychiatric or psychological therapy, or seeking treatment related to sexual problems, venereal disease, contraception, or abortion, and that he is generally known in the area in

which he practices as specializing in that practice;

(B) state that all income resulting from patients that was not derived as described in (1)(A) of this subsection was received in the practice of his profession and that all nonprofession related income is reported separately in Part 3 of the report, and followed by the letters "NE" (not exempt) to so identify;

(2) if the individual is claiming an exemption for some, but not all, of his clients or customers, as in (a)(5) or (6) of this section, then he must state the number of exemptions he is claiming in each of the applicable exempted categories listed on the form.

(f) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who has been granted an exemption pursuant to (b), (c), or (g) of this section, will be furnished a completed copy of APOC Form 39-0, entitled "Claimed Exemption Report," from the commission within 10 days of the favorable decision granting the exemption. The original of the form will be placed in the individual's file.

(g) Any person not exempted by (a) of this section may claim an exemption either under the Alaska Constitution, art. 1, sec. 22 (right of privacy) or under AS 39.50.035 (legally privileged professional relationship may preclude complete compliance) by proceeding as follows:

(1) As soon as practicable, but in any event no later than the time for filing the initial disclosure report, or, in the case of the annual filing, by April 15 of each following year, advise the commission of the claimed exemption and the reason for it, and request a staff ruling on the matter; if, in doing so, the person claiming the exemption finds that it may be necessary to reveal to the staff information which he believes is confidential, he shall so indicate, and that information must be kept confidential until an unappealed staff or commission ruling is made or the release is authorized by a court of competent jurisdiction.

(2) The staff will rule on a request within 30 days after its receipt. If the ruling of the staff is

favorable to the person claiming the exemption, he need not disclose, and that ruling is final and closed with respect to the report for that year. If a request for an exemption is made in a future year on the same grounds, it is granted unless a relevant change of facts or law (or the general understanding of either or both) has intervened.

(3) If the ruling of the commission's staff is adverse to the person making the request, he may appeal to the commission by filing a written notice of appeal and stating his reasons for it with the commission's staff no later than 30 days after receiving notice of the staff's ruling. Unless the staff's ruling is appealed within the time required, it is final. The commission will not hear an appeal if the notice and statement of reasons for it are not filed within the time required.

(4) An appeal timely made to the commission will be heard at the next regular meeting of the commission held more than 30 days after the filing, unless the appellant and the commission agree upon another time for the hearing.

(5) The hearing will be recorded. At the hearing, appellant may be represented by counsel and may request that the hearing be held in private in order to protect a person's character or otherwise avoid disclosing the information claimed as protected. Appellant presents his case first. The commission staff then presents its case. Strict rules of evidence do not apply, but the commission gives slight weight to the kind of information that would not be relied upon by prudent persons in the conduct of important affairs. Witnesses are sworn and testify upon oath. Legal arguments may be supported by a written memorandum. Either the appellant or the commission staff may, upon request to the commission — and shall upon the request of the commission — made no later than at the close of the hearing, file a post-hearing memorandum in support of its position within 15 days of the close of the hearing.

(6) Within 30 days after the close of the hearing the commission will make its decision and immediately thereafter notify the appellant of the result.

(7) If the decision of the commission is

favorable to the appellant, he need not disclose, and that decision is final and closed with respect to the report for that year. If a request for an exemption based on the same grounds is made in a future year, it will be granted unless a relevant change of facts or law (or general understanding or either or both) has intervened.

(8) If the decision is adverse, the appellant has 30 days in which to appeal on the record to the superior court under Rule 45 of the Appellate Rules of the Alaska Court System. If a timely appeal is not made and the appellant continues not to disclose, the matter will be referred to the attorney general for appropriate action.

(9) Tapes of the hearing must be made available upon request to the appellant or his attorney or agent for listening within the offices of the commission. Transcripts of the hearing must be prepared by the commission staff upon request, with costs to be borne by the appellant.

(h) In considering the request for a ruling on the claimed exemption, the commission staff may seek an opinion from the attorney general as to whether it may reasonably be said that the state courts have determined that the constitutional right of privacy or legally privileged professional relationships preclude complete compliance with respect to the exemption claimed. If the attorney general finds that state courts have so determined, the staff ruling must be in favor of the person claiming the exemption, unless the facts he adduces fail to show that he falls within the scope of the exemption. If, in the attorney general's opinion, the courts have not determined that there is a bar to complete compliance with respect to the exemption claimed, the staff shall rule adversely.

(i) Until the matter has been finally decided administratively or judicially against him, a person claiming an exemption from disclosure requirements is not considered to be in wilful violation of the law for failure to disclose or file a report with respect to the subject of his claimed exemption, unless he thereafter continues to refuse or fails to disclose or it is judicially determined that his claim of exemption was not made in good faith but rather was made without any reasonable prospect for succeeding.

(j) Nothing in this section precludes the commission or its staff from determining on its own initiative that information disclosed to it is either protected by the constitutional right of privacy or legally privileged, even if neither is claimed. Upon that determination, the information must be placed in a secure, confidential place, and, if it is also determined that there cannot reasonably be a good reason for retaining the information, it must be destroyed. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.035
AS 39.50.050(b)

2 AAC 50.105. FILING BY A STATE PUBLIC OFFICIAL OR A CANDIDATE FOR STATE ELECTIVE OFFICE. (2) All reports required to be filed under the provisions of AS 39.50 and this chapter must be received by the commission on or before the due date. "Received" means either

(1) hand-carried to the commission's central office or its branch office in the state capital; or

(2) postmarked. The date shown by the postmark is presumed to be the date it was deposited in the United States mail.

(b) A person hired or appointed as an ombudsman, or hired or appointed within the executive branch as a department head, deputy department head, or division head, or as an assistant to the governor, must file a conflict-of-interest statement

(1) within 30 days of the first day of work for which compensation is received by the official; and

(2) no later than April 15 in each following year.

(c) A person hired or appointed as a commission chairman, or member of a state commission or board specified in AS 39.50.200(9) must file a conflict-of-interest statement

(1) within 30 days of the date the board member signs his oath of office; and

(2) no later than April 15 in each following year.

(d) A judicial officer must file a conflict-of-interest statement

(1) within 30 days of the date the judicial officer is sworn into office; and

(2) no later than April 15 in each following year.

(e) A legislator, the governor, and the lieutenant governor must file a conflict-of-interest statement no later than April 15 of each year.

(f) An incumbent state public official who campaigns for state public office need not file a conflict-of-interest statement at the time of filing a declaration of candidacy, or within 30 days of filing a petition or within 30 days of becoming a candidate by any other means, so long as a statement covering the year preceding the year in which he declares for office with the lieutenant governor is currently on file with the commission. Incumbent state public officials filing for elective municipal office must file a separate statement with the clerk of the municipality in which they seek public office. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020
AS 39.50.050(b)
AS 39.50.200(1),(2), and (10)

2 AAC 50.110. CIVIL PENALTY ASSESSMENTS FOR LATE FILING OF A REPORT BY A STATE PUBLIC OFFICIAL. (a) The conflict-of-interest statement of a state public official is delinquent if not received by the commission on or before the due date.

(b) The statement continues to be delinquent and subject to a civil penalty until received by the commission, or until the state public official resigns or is removed from office for refusal or failure to file. Resignation or removal from office, however, does not relieve the official from the requirement that he file the conflict-of-interest statement.

(c) Commission staff will send notice to the state public official that he is delinquent, and

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.