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35:7



Senator Vic Fischer

Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

February 23, 1983

TO: THE SENATE SPECIAL COMMITTEE ON LEGISLATIVE REFORM,
FELLOW SENATORS, AND OTHERS

FROM: SENATOR VIC FISCHER

A handwritten signature in black ink, appearing to be "Vic Fischer", written over the printed name.

RE: LEGISLATIVE ETHICS PROPOSAL

Transmitted with this memo is an outline for a legislative ethics bill. I believe it is an important step toward enacting a code of ethical conduct which will assure the public and the legislature that elected officials live up to the highest standards of conduct.

This proposal is the product of several years' work. Two years ago, I introduced a comprehensive ethics bill that was designed to cover all elected and appointed public officials. By the end of last session, it became clear that a more focused approach would be required, with standards and procedures more clearly set out.

A basic change deemed necessary was to establish the legislature as the judge of its members' conduct, just as the state constitution provides with respect to their qualifications.

[REDACTED]

[REDACTED]

Separate legislation is being completed to establish an ethics code for the other state employees and officials. I hope to have a draft ready in March.

Action to establish standards of conduct for all public officials is critical, and it's timely. Over recent years, the legislature has had the painful task of dealing with distrust, accusations, and the criminal process. The public is distrustful, and the attorney general has indicated that he intends to meet his obligation to enforce ethical conduct under the common law unless the legislature acts this session to establish alternate guidelines.

Establishment of the joint committee specifically charged with developing a code of ethics for legislators demonstrates a commitment to action this session. I sincerely hope that this draft outline will assist in establishing a clear set of standards and procedures to deal with the complex ethical questions that we confront.

This outline is not a bill. Rather it a working draft that sets out the policies, processes, criteria, definitions, and other elements needed to draft a bill. I hope this format will facilitate initial review. In developing this proposal, we have been in touch with the Congress and a number of state legislatures, and this draft reflects what we have learned from their legislation and their actual experiences. Instead of making decisions about what should and should not be included in an ethics bill for Alaska's legislature, we have included a number of alternative possibilities.

The major provisions of the proposed legislative ethics bill are:

* The policy section states that legislators are trustees of the public interest, which is best served by a citizen legislature whose members are involved with all elements and aspects of Alaska life.

* The legislative ethics system will apply to all present and former legislators, and to those employees of the legislative branch who work as staff for legislators or committees.

* Three general ethics rules prohibit: (1) the receipt of benefits for improper influence exerted from an official position; (2) outside business or professional opportunities which conflict with the conscientious performance of official duties; and (3) misuse of state property.

* Legislative conflicts of interest are defined to exist when "a personal interest tends to impair the legislator's or staff person's independence of judgement." This situation is presumed to occur in a set of circumstances where the legislator or staff person has a direct interest, distinct from that of the general public, in an enterprise or interest that would be affected by a vote on proposed legislation.

* If a legislator or staff person is in a position that is presumed to be or appears to be a conflict of interest, he or she may participate in action affecting that legislation by signing a statement that describes the circumstances of the apparent conflict and asserts that he or she is able to vote and otherwise participate in the legislative action concerning that interest.

* A standing ethics committee will be established in each house, with five members and staff; formal rules of procedure will be adopted.

* If a legislator or staff person is in doubt about the propriety of any action, either taken or proposed, they may request an advisory opinion from the ethics committee.

* No person covered by this statute may:

- Be a party to a contract with the state or a municipal government that is not let by competitive bid;
- Represent, for compensation, any person or business before any element of the state or a local government;
- Lawyer-Legislators, however, may represent clients before state or federal courts, where the state is not a party to the action;
- Use information that by law, regulation, ordinance, or practice is not available to the general public for personal gain;
- Use state material, equipment, or telephones for personal or campaign purposes;
- Supervise a close relative who is on the state payroll;
- Apply for or accept any discretionary state benefits such as loans or land disposals, for which the decision making process is discretionary. (For example, student and home loans and lottery land disposals are allowed; commercial loans (e.g., tourism loans) that require discretionary decisions are not allowed.)

* The following are specifically allowed:

- Outside employment and business opportunities for legislators are not discouraged, but any relationship with the state or local governments that may be colored by the legislator's position should be disclosed to the committee for an advisory opinion;
- Former members of the legislature may lobby or work for or with state agencies immediately after leaving the legislature, but they may not use confidential information except for the benefit of the state. This does not alter the constitutional ban on legislators accepting positions on which they voted to raise the salary for one year.

* Transferrable promotional benefits and discounts (e.g., Amigo Fares) are the property of the state.

* Punitive or retaliatory action against a person who has assisted or initiated an ethics action is prohibited.

* People covered under this statute must make certain additional disclosures:

--Staff people covered will make the same APOC disclosure as legislators;

--All gifts and fees and honorariums over \$100 must be reported within three days during the session and 30 days in the interim;

--All financial transactions between people covered by this statute with a value over \$1,000 must be reported.

* Sworn complaints may come from the public, any legislator, or the committee.

* The committee will issue advisory opinions concerning the ethical propriety of any matter in which a legislator or staff person is involved. These opinions may be requested by any person covered by the bill or the public at the discretion of the committee.

* A person who follows the advice of an advisory opinion after disclosing all of the facts is presumed not to be in violation of this statute. The committee will publish ethical guidelines and policies that may be relied on unless changed.

* The committee will investigate complaints. It will have subpoena power and the power to take sworn testimony. People being investigated will be given notice and have the right to counsel. If there is a hearing, persons under investigation

will also have the right to cross examine witnesses and present evidence on their own behalf.

* If the committee finds evidence of an ethical violation, it will make their findings public. The committee may issue a private reprimand or it may recommend to the whole body that a legislator be censured or expelled. Conviction of a felony is grounds for expulsion. Termination of employment may be recommended for staff.

* The ethics committee will make weekly public reports during the session , plus interim and annual reports.

* Confidentiality will be protected throughout this process, with private information made public only if an ethical violation is found. All allowed disclosures and ethics policy decisions will be made public through the Journal.

* This bill will supersede the common law standards referred to in the Attorney General's memo of December 3, 1982.

I would appreciate your comments on the policies and specific elements of this draft, what sections might be omitted, and, perhaps more difficult, your suggestions concerning what has been left out. Please contact me or Lewis Schnaper of my staff at 465-4954.

....WORK DRAFT...WORK DRAFT...WORK DRAFT...WORK DRAFT....

VF/LS 2/24/82 [leth] DRAFT nine

DRAFT OUTLINE FOR LEGISLATIVE ETHICS BILL

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P O L I C Y:

The Alaska Constitution, in Article II, Section 12, grants each house of the legislature the power to judge the qualifications of its members. Perhaps the most important qualification for membership in the legislature is the maintenance of the highest standards of ethical conduct.

It is essential to the proper conduct and operation of the legislature that legislators be independent and impartial, and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law defines standards of ethical conduct, protects against conflict of interest, and establishes procedures for the conduct of elected officials and legislative employees in situations where conflicts may exist.

It is also essential that the legislature attract those citizens best qualified to serve. Thus, the law against conflict of interest must be designed not to unreasonably impede recruiting and retaining in government accomplished citizens of diverse backgrounds. Legislators and legislative staff should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests--except where conflicts with the public responsibility of those officials cannot be avoided.

It is declared to be the policy of the legislature that no member or employee shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity, or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of Alaska in their legislature, there is enacted a code of ethics setting forth standards of conduct required of legislators and staff in the performance of their official duties. It is the intent of the legislature that this code shall serve not only as a guide for the official conduct of public servants, but also as a basis for the discipline of those who violate the provisions of this chapter.

APPLICABILITY:

To apply to all members of both houses of the Alaska legislature. Also applies to members-elect, former members, and the permanent and temporary staff of the legislative branch who work directly for legislators or committees. [ALTERNATIVE: limit applicability to legislators only, or legislators and all legislative branch employees.]

APPLICABILITY OF OTHER LAW:

This chapter will specifically supersede the common law of conflicts of interest in the areas that it covers. Nothing in this chapter is intended to preclude investigation or action under other statutes.

ETHICS RULES:

To provide guidance to those affected by this section, the following rules articulate the standards of conduct expected by the public of legislators and legislative staff:

GENERAL STANDARDS:

(a) Legislators or members of the legislative staff shall not receive any benefit directly or indirectly, from any source, by virtue of influence improperly exerted from their public position.

(b) Legislators or members of the legislative staff shall not engage in any outside business or professional activity or employment which is inconsistent or in

conflict with the conscientious performance of official duties.

(c) Legislators or members of the legislative staff shall not misuse state property or funds entrusted to them.

SPECIFIC RULES:

NOTE: The absence of a rule prohibiting a specific activity will not bar the committee from making a determination of its ethical acceptability under either the standards above or below, or additional standards as they evolve. No penalties may be imposed unless the affected party had, or should have had, sufficient notice of the ethical standard involved.

CONFLICTS OF INTEREST--POLICY: Broadly, a conflict of interest is a situation where the exercise of one's official position or powers may affect one's personal financial interests.

In discussing conflicts of interests, personal financial interests must be defined to include all direct or indirect financial interests of the legislator or staff person which may influence his or her judgement.

Alaska's part-time legislature derives much of its strength from the involvement of its members and staff in all aspects of life in the state, and it is neither possible or desirable to restrict members or staff from dealing with those issues that they know best.

In this context, it is not desirable to bar legislators and staff from any contact with activities which may appear to be conflicts. Instead, the public interest will be protected by requiring legislators and staff to disclose all of their financial interests, and to make

special disclosures during the legislative session of certain types of financial dealings of particular sensitivity because of their potential for abuse.

In situations where actual conflicts of interest occur, to the point where the legislator or staff person's personal interest may tend to impair their independence of judgement, then the public interest requires that the legislator or staff person either state that he or she is able to fairly and objectively deal with the issue or disqualify themselves from exercising their official prerogative to affect that situation.

CONFLICT OF INTEREST--PROCEDURE: For the purposes of this chapter there is neither a conflict of interest, nor a duty to disclose a conflict if the only benefit received by a legislator or staff, or member of their household is the same as that received generally by all Alaskans or all members of a large group or class of citizens.

If the class of persons who will be affected by the legislative action is small, and the legislator or staff person will directly or indirectly receive a benefit from the official action, then a conflict may exist. The test for an actual conflict of interest is if the personal interest tends to impair [ALTERNATIVE: replace "impair with "influence"] the person's independence of judgement.

When a legislator or staff person acts on a legislative matter as to which they have an economic interest, they will consider whether their judgement will be substantially impaired by the interest. If it is concluded that an actual conflict of interest does exist a legislator will declare that interest on the floor and request to be disqualified and to abstain from voting. [Uniform Rule 34(b), but consideration should be given to changing this rule to require more than a single no vote

to block a member abstaining from a vote on ethics grounds.] If a conflict is concluded to exist a written statement of the conflict must be delivered to the committee within 24-hours and neither a legislator nor a staff person will take further legislative action on the legislation involved.

It is presumed that personal interest tends to impair a legislator or staff person's independence of judgement in any of the following circumstances:

(1) Having or acquiring a direct interest, distinct from that of the general public, in an enterprise which would be affected by a vote on proposed legislation;

(2) Benefiting financially from a close economic association with a person whom the legislator knows, or from the facts is presumed to know, has a direct interest in an enterprise or interest which would be affected by a vote on proposed legislation, differently from other like enterprises or interests;

(3) Benefitting financially from a close economic association with a person who is lobbying or who has employed a lobbyist to propose legislation or to influence legislator's votes.

"Close economic association" includes and refers to the legislator or staff person's employer (other than the state), employees, and partners in business and professional enterprises; corporations in which the legislator owns capital stock beyond the value of \$1,000; and corporations in which the legislator is an officer, director, or agent; or

(4) Soliciting, accepting, or agreeing to accept any gift, loan, or payment of in an aggregate amount of \$100 or more from a person who would be affected by or has an interest in an enterprise

which would be affected by a vote on proposed legislation.

The disqualification arising under this section is suspended if a legislator with an apparent conflict of interest or an apparent impairment of judgement files with the committee a sworn statement which describes the circumstances of the apparent conflict and the specific legislation to which it relates and asserts that he or she is able to vote and otherwise participate in legislative action relating thereto fairly, objectively, and in the public interest. Whenever a legislator files a statement for the suspension of the disqualification, the committee on its own motion may issue a statement concerning the propriety of the legislator's participation in the particular legislative action, with reference to the applicable ethical standards of this matter

If the legislator or staff person is in doubt as to the propriety of any action taken or proposed to be taken by them, or is in a situation which is presumed to impair independence of judgement and does not accept the presumption, they should request an advisory opinion from the ethics committee.

Fulfilling requirements to make a disclosure to the Alaska Public Offices Commission does not excuse the requirement to disclose the same information concerning potential conflicts to the committee.

For reference, the current criminal statute on conflicts of interests, AS 39.50.090, provides:

No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father or business with which he is associated or owns stock.

PROHIBITED ACTS:

CONTRACTS: Legislators and staff may not be a party to or have any interest in a contract with, or in the investment of money with or for, the state or any municipal government which is not awarded through the public competitive bid process. Permission to engage in non-bid contracts may be granted at the discretion of the committee following a finding that no influence was improperly exerted to secure the contract and that the performance of the contract does not conflict with the conscientious performance of official duties. All contracts with the state or local governments must be disclosed to the ethics committee. Permanent employees may not be a party to a contract with the state or a local government under any circumstances. [ALTERNATE: bar all contracts with the state or local government, or limit legislators and temporary staff to contracts where a judgement of the quality of performance is not likely to occur.]

REPRESENTATION: With the exception for lawyer-legislators noted below, no legislator or staff may, for compensation, represent any person or entity to or before any state entity or any entity of local government.

LAWYER-LEGISLATORS: Legislators or staff who are members of the Alaska Bar may represent their clients in actions before state or federal courts. [ALTERNATIVE add: and quasi-judicial commissions, e.g., Workers Compensation or Limited Entry Commissions.] but they may not represent any person on business, for compensation, before any state entity or any portion of any local government.

CONFIDENTIAL INFORMATION: Information that by law, regulation, ordinance, or practice is not available to the general public may not be used for personal gain if it was obtained in the course of official duties. [See AS 11.56.860]

STATE PROPERTY AND FUNDS: Legislators or legislative staff may not use state material, equipment, long-distance telephones, or postage for personal or campaign purposes. The state will be promptly reimbursed for any material used and non-business long-distance calls.

STATE LOANS AND LAND DISPOSALS: Legislators and staff may not apply for or accept any discretionary state benefits not available generally to the public, including loans and land disposals, unless the decision making process leading to the approval of these benefits is on the record as being sufficiently clear and "automatic" as to preclude the appearance that improper influence may have been used to secure these benefits. Examples of acceptable activities include land disposals by lottery, student loans or state housing loans where the requirements are on record and minimal discretionary action by the granting agency is required.

NEPOTISM: Employment by the legislature of persons related within the second degree to other employees is not allowed if the relative is under the direct supervision of the legislator or staff member to whom they are related. An exception is made if the relative is not working for state-paid compensation. [c.f., HB 49]

PROMOTIONAL BENEFITS: Transferrable promotional benefits that result from activities undertaken on official business and paid for by the state, e.g.,

airline discount tickets and reduced fare programs, hotel discounts, etc, become the property of the state. These discounts should to be used to reduce state costs, but if state use of these discounts is not possible, they may be sold or otherwise used by the state.

PROBLEMS WITH DIVESTING: In situations where it becomes necessary for a legislator or staff person to divest of a property or contract to meet the requirements of this or any other statute, and circumstances prevent the divestiture, this problem must be disclosed and an advisory opinion requested and followed in good faith.

PROTECTIONS FOR REPORTING A VIOLATION: It will be a violation of legislative ethics for any person subject to this chapter to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an alleged ethics violation. Violation of this section is punishable by any of the remedies specified above.

ACTS ALLOWED:

OUTSIDE EMPLOYMENT AND BUSINESS OPPORTUNITIES: Are not discouraged, but any relationship with the state or local governments in the course of these business transactions which may be colored by the legislator's position should either be precluded or placed under the purview of the ethics committee by requesting and following an advisory opinion.

FORMER MEMBERS OF THE LEGISLATURE: It is acceptable for former legislators or staff members to lobby or work for or with state agencies immediately after leaving employment with the legislature, subject to the

constitutional ban against an ex-legislator taking a job where the legislature has raised the salary. Former legislators and staff should not use confidential information obtained in the course of their official legislative activity for the benefit of any party except the State of Alaska.

ADDITIONAL REPORTING REQUIREMENTS:

STAFF REPORTING AND PUBLICATION: Legislative staff subject to this chapter will make the same disclosures required of legislators in AS 39.50.030. The latest APOC disclosure forms of both legislators and staff will be published as a special edition of the Journal during the first week of each session.

GIFTS: no gifts or special privileges (anything of value not available to the general public), with an aggregate value of more than \$100, may be accepted by legislators or staff without disclosure to the committee within three days after receipt during the session and 30 days after receipt in the interim. An exception is made for meals, drinks and entertainment not associated with overnight accommodation. If legislators or staff accept transportation on non-public aircraft or vessels, and the travel is done in the course of official business, it must be reported to the ethics committee for publication in the Journal within three days of the start of travel during the session and 30 days in the interim.

FEES AND HONORARIUMS: Legislators will report to the Ethics Committee, within 3 days of receipt during the session and 30 days after receipt in the interim, any compensation or reimbursement for travel or expenses in excess of \$100 received for attending a meeting,

presenting a paper, or giving a talk or demonstration. The report must include the amount of the compensation or reimbursement, together with a brief statement describing the circumstances under which the payment was received.

FINANCIAL TRANSACTION WITH LEGISLATORS OR STAFF:

Financial transactions over the actual value of \$1,000 between parties subject to this chapter are banned, unless the transaction is disclosed. Campaign contributions disclosed to the Public Offices Commission are exempted from this provision.

PROCEDURES:

COMMITTEE:

The purpose of establishing the ethics committee[s] is to institutionalize a body which will provide consistent guidance on ethical matters through advisory opinions and statements of policy and investigate complaints of violations of this chapter. If a violation is found to have occurred, the committee may issue a private reprimand or recommend any of the other remedies provided below for action by the body as a whole. If disciplinary action is recommended, the matter may be referred to the committee for hearing.

Uniform Rule 20 will be amended to establish a standing ethics committee in each house with five members appointed per Uniform Rule 1(e). [ALTERNATIVE: establish a joint standing ethics committee with seven members: three members of each house and one former member of either house selected by agreement of 2/3 of the

committee members from each house.] Provide for staff and legal support, either by staff counsel, contract, or through the Division or Legal Services, and the appointment of a special investigator if required. The committee will establish formal rules of procedure [an good example of which is the U.S. Senate's rules for its Select Committee on Ethics] that will be put before both bodies for their approval.

A quorum of the committee will be a simple majority. The committee will meet weekly during the session and at least monthly during the interim unless there is no business before it. Special meetings may called by the chairman or at the request of three members.

Meetings of the ethics committee are covered by the provisions of the open meeting law but any meeting at which "subjects that tend to prejudice the reputation and character of any person..." [AS 44.62.310(c)(2)] may be closed.

COMPLAINTS:

Must be sworn, and may come from the public, from a member of either house, staff member, or the committee may initiate an investigation on its own volition.

ADVISORY OPINIONS:

Upon a written request from any member, the Committee will issue written advice concerning the propriety of any matter to which the legislator or staff person is or may become a party. An advisory opinion concerning the application of this chapter may be issued upon the written request of any other person as deemed appropriate by the Committee. Advisory opinions will be issued within 15 days of receipt of a request while the legislature is

in session; 45 days if not in session. If the requested opinion is not issued within this time period, or a written extension of time not filed by the Committee (by delivery to the person requesting the opinion and publication in the Journal), the person requesting the opinion will consider the facts and circumstances stated as being in violation of this chapter.

Following the adjournment of each Legislature, all of the advisory opinions issued during that Legislature will be made public after deleting, to the fullest extent possible, all references to particular individuals and identifying situations. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion. The privacy of anyone mentioned in the opinion who has not agreed to its publication will be protected. This will facilitate the establishment of guidelines for conduct. [ALTERNATIVE: All advisory opinions are confidential without the permission of all parties to make the opinion public.]

Any member or employee of the Ethics Committee making public the identity of the person requesting an advisory opinion or of persons mentioned in the opinion, or any other information held in confidence by the committee, beyond such public disclosure as is provided by the committee, is guilty of a misdemeanor, is subject to the penalties provided in this chapter, and a civil action for damages may be brought by any person who is damaged by this disclosure.

RELIANCE ON ADVISORY OPINIONS:

It is prima facie evidence of an intent to comply with this Chapter when a person refers a particular matter to the Ethics Committee, discloses all of the

material facts, and abides in objective good faith by the Committee's advisory opinion.

An advisory opinion may be relied upon, unless cancelled or superseded with notice by the committee, by any person involved in the specific transaction or activity considered by the advisory opinion if the request for the advisory opinion included a complete and accurate statement of the specific factual situation.

PRECEDENT AND POLICY:

Except as provided in Reliance on Advisory Opinions, above, no decision of the committee will be held to be binding on or as precedent for the committee in future decisions.

In the interest of providing notice and guidance to persons bound by this chapter, the committee will publish and identify those opinions or statements of policy which it intends to follow, and these may be relied upon by any person unless revoked with notice.

INVESTIGATIONS:

Upon receipt of a complaint, the committee may initiate an investigation after finding that there is sufficient evidence for the committee to conclude that a violation within its jurisdiction has occurred. [ALTERNATIVE: omit or change threshold standard.] The decision whether or not to undertake an investigation will be made by a recorded vote of a majority of the committee. The investigation will be completed in the shortest possible time commensurate with protecting the interests of the public and the rights of all parties to the investigation, [ALTERNATIVE: add a set time limit for investigations] and the scope of the investigation will be

sufficiently broad to protect the public interest. The committee will have power to subpoena witnesses and documents per AS 24.25.010 [ALTERNATIVE: modify this statute to remove the necessity that the committee get the concurrence of the speaker or president before each subpoena is issued], and to take testimony under oath with penalties provided for perjury [per AS 24.25.060.] The Committee must preserve evidence and testimony under the same rules as the state courts. [See: Administrative Rules 35-37.5]

The committee will give written notice to any person who becomes the subject of an investigation of the fact of the investigation and the charges. The notice will be sent no later than three working days after the committee has voted to conduct an investigation, or has identified a person as an additional subject of investigation. All persons who are subjects of a committee investigation have the right to be represented by counsel. The test for the sufficiency of evidence for recommending any sanction under this chapter will be the preponderance of the evidence.

FOLLOWING AN INVESTIGATION:

In as short a time as reasonably possible, the committee will produce comprehensive findings of facts and conclusions of law. In cases where the alleged violation is found to have occurred, this document and all evidence will be made public. If it is concluded that the allegation does not constitute a violation of this chapter or any other Alaska statute a report of this conclusion will be made as provided below, but the identity of parties and the facts of the situation will be held in confidence, and the evidence may be sealed at the discretion of the committee unless the accused party

requests that the committee's conclusions and/or the evidence be made public.

REMEDIES FOR VIOLATIONS:

If a finding is made by the committee that an ethical violation has occurred, the remedies available will be:

Private Reprimand: The committee may issue a private written reprimand to a legislator or staff member by a majority vote.

Or, the committee may recommend any of the following actions to the body:

Censure: by 2/3 [Alternative: majority] vote of house involved; penalty action may include but is not limited to stripping of committee assignments.

Expulsion: a member may be expelled by a 2/3 vote of the house involved. [Uniform Rule 49(a)(2)] A legislator may not be suspended. Conviction in any state or federal court of a crime that would be a felony under the laws of Alaska is grounds for expulsion. For the purposes of this chapter, conviction occurs upon sentencing by a court equivalent to the Alaska Superior Court.

Termination of Employment Upon a finding by the committee that an employee of the legislature has committed an ethical violation, or upon conviction of a felony, as defined above, the employment of that employee may be terminated. Any employee recommended for termination under this chapter will be entitled to a hearing before the Rules Committee with the rights specified below.

[ALTERNATIVE: provide a remedy for the expelled member or terminated employee if the conviction is later overturned on appeal. One possibility is back pay for an expelled legislator or back pay and reinstatement for a terminated employee.]

Recovery: Upon a determination of the Ethics Committee that an ethical violation has occurred, the Attorney General may bring civil action to recover the compensation, gift, or profit received by a member or staff person as a result of a violation of this chapter.

Contracts Voidable: In addition to any other remedy, any contract entered into by the state in violation of this Chapter is voidable. In deciding whether to bring an action to void a contract under this section, the Attorney General will consider the interests of innocent parties who may be damaged by the action. Any action to void a contract under this section must be brought within 60 days of the finding of a violation by the committee.

Recommendation for Prosecution: following a finding that an ethical violation has occurred, or if the committee finds evidence of other statutory violations, the committee may recommend that the Attorney General consider prosecution under any applicable criminal statute.

H E A R I N G :

The Committee may hold public hearings following referral of a recommended sanction to the committee or, on other topics with the concurrence of a majority of the body.

If a hearing results from the action of the committee, any person accused of a violation of this chapter will have the right to adequate notice, the right to

counsel, and the right to confront and cross-examine witnesses, and the right to present evidence.

All testimony and evidence will be recorded and preserved, the rules of evidence will be those used in APA hearings (AS 44.62.460) and the burden of proof will be met by a preponderance of the evidence.

REPORTS TO THE LEGISLATURE:

During session, the Ethics Committee will make a weekly report for inclusion in the Journal containing, at minimum, summaries of all information then available to the public, and summaries of all other committee activity, with privacy protected. Examples of the information presented are: disclosures of conflicts, gifts, contracts, etc; reports (with names deleted) of complaints filed and the progress or conclusions of investigations. Monthly reports will be made in the interim and each Committee will make an annual report to the Legislature and the public by February 1 of each year.

DEFINITIONS:

All definitions used in this chapter must be carefully drafted to be as specific and clear as possible. Examples will be given where useful. Please add definitions, examples and categories which you feel need to be included.

Some of the definitions which will need close attention are:

HOUSEHOLD: This term should be very tightly defined to include the family of a legislator, their immediate relatives, live-in lovers, etc.

BUSINESS ASSOCIATES: This also needs a careful definition to cover businesses in which the legislator or his "household" has any direct, indirect or contingent interest;

COMPENSATION: Again, a careful definition needed. Should include offers of jobs or benefits in the future, grants of confidential information, opportunities or permits; also, of course, any present payments or benefits, in whatever form.

PLEASE NOTE THAT THIS IS A WORK DRAFT FOR DISCUSSION ONLY.

PLEASE CONTACT VIC FISCHER OR LEWIS SCHNAPER AT 4954 WITH YOUR COMMENTS OR SUGGESTIONS.

REPRESENTATIVE RANDY
Phillips
HOUSE DISTRICT 8 15

TO: NCSL STAFF

FROM: REP. RANDY PHILLIPS
CO-CHAIRMAN
JOINT SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

RE: REFORM

DATE: FEB. 28, 1983

Attached is a copy of my seventh annual legislative questionnaire and a copy of the comments section for the questions concerning the Twelfth Legislature and Code of Ethics. I thought you might like to know what the voters of my district feel on these matters.

REPRESENTATIVE
JOE FLOOD
3423 WEST 79TH
ANCHORAGE, ALASKA 99502
(907) 243-7511

MEMBER
FINANCE COMMITTEE

DISTRICT 8
SOUTHWEST ANCHORAGE

Alaska State Legislature



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4937
STAFF COUNSEL
MARK R. JOHNSON

House of Representatives

February 25, 1983

The Honorable Jan Faiks, Chairman
Special Committee for Legislative Reform
C-101

Dear Senator Faiks:

"The effectiveness of a Legislature depends largely on the effectiveness of its standing (and a few special) committees. Consequently, one thrust of legislative reformers has been the improvement of the standing committee systems throughout the United States", that's according to Alan Rosenthal of the Eagleton Institute of Politics at Rutgers University, along with staff from the American Institute of Applied Politics in Salt Lake City, Utah.

The orthodoxy of committee reform is customarily as follows: reduce the number of standing committees; reduce the number of committee assignments for legislators; increase professional staff support for committees; make committee procedures more democratic and more efficient; and provide adequate facilities for committee members, committee meetings and hearings.

A contemporary textbook on the legislative process correctly observes: "The factors which affect the capacity of committees to maintain themselves and to achieve influence in the legislative system are not fully known." (William J. Keefe, The American Legislative Process)

So it seems to me, that one of the objectives of the Special Committee on Legislative Reform, is to identify factors that affect legislative committees, determine their influence, and shape their performance. The committee should examine what standing committees are expected to do for their legislatures, what they in fact do for their legislatures, and what helps and hinders them in accomplishing the tasks they set for themselves and the job expected of them. All this will require careful inquiry into our standing committee systems and our legislative performance.

The committee system is the best method that legislators have been able to devise to provide careful and discriminating scrutiny of proposed legislation and legislative oversight of executive agencies. Yet, few state legislatures have really heeded it. Hardly any of us have developed our committee systems to a considerable degree; hardly any of us have standing committees at all comparable to those of the U.S. Congress. But maybe that's the direction we should head.

Sincerely,



Joe Flood
State Representative

JF/tl

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



Senate

White in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

MEMORANDUM

February 25, 1983

TO: Special Committee on Legislative Reform
Senator Jan Faiks, Co-Chair
Representative Randy Phillips, Co-Chair

Senator Tim Kelly Representative Barbara Lacher
Senator Bill Ray Representative M.M. Miller

FROM: Senator Arliss Sturgulewski
Senate District F, Seat A *AS*

RE: Legislative Reform

You have asked for suggestions regarding areas of possible legislative reform. I am responding to that request by outlining areas of needed reform that I see as being of the utmost critical nature.

1. Letter of intent. A joint rule is needed to clarify the apparent problem as to the appropriate time to adopt a letter of intent. Both the attorney general and legislative legal council have issued advisory opinions on this subject.
2. Conflict of interest. On December 3, 1982, Wilson Condon, then Attorney General, issued an opinion on conflict of interest. The potential impacts of that opinion are sweeping. Mr. Condon made a point of saying that even where Alaska Statutes are not explicit, common law traditions can and should be enforced when conflicts of interest appear to exist. This sweeping opinion has serious potential impact on many public officials. Clarification of standards as to common law application seems imperative.
3. Clarification of the term "minority". The present situation that exists in the State Senate is, apart from being patently in violation of the Rules, ludicrous. When eight members of a twenty member body state themselves to be a minority, elect leadership to represent the minority and further hold frequent caucus meetings as a minority, it is amazing that recognition is not made of that minority. Lack of proportional, and in one glaring case, lack of any, representation on a major committee does a disservice to the people of Alaska who have a right to representation of all voices

on committees dealing with items of vital public concern. Access to unbiased research and information as well as adequate staffing and other basic accommodations are basic requirements.

4. Establishment of the Senate Advisory Council by a concurrent resolution. I find it incredible that major amounts of public funds are being expended for a Senate Advisory Council which has not been established under any official action except the appropriation process. No minority representation is reflected on the Senate Advisory Council's governing board of Senators. There is no clear set of rules outlining procedures and processes to be utilized by the Council. There is no evidence that all members of the body have equal access to the resources of the Council. Although I strongly support a joint legislative research agency, I feel as a minimum that the current Senate Advisory Council must be established by resolution.
5. Legislative office space. Attached for your review is a memorandum I wrote to Representative Hugh Malone during his chairmanship of the Legislative Council, indicating the need for clarification of authority between the Legislative Council and the Rules Committee as to allocation of space. I feel the issues raised in the memo merit attention.
6. Legislative Council control of expenditures. The current practice of handling "leadership funds" outside of the control and action of the Legislative Council seems clearly illegal and is to the total detriment of an open process. I see nothing in AS 24.05.200 Administrative Services and AS 24.05.210 Legislative Operating Expenses, or AS 25.20.130 dealing with Legislative Council Budgets and AS 24.21.40 dealing with Legislative Council Appropriations which in any way point to the ability to delegate to the "leadership" the handling of funds assigned to the Legislative Council. Clarification of this issue is needed.
7. Unified salary schedules. There should be clearly defined personnel standards for all employees of the various divisions of the legislature as well as legislative staff employees. At the present time, this is not the case.

In the event you plan to deal with budget reform, I would appreciate the opportunity to share with you a number of positive ideas for change.

Thank you for the opportunity to give suggestions to your committee. I would hope that my comments are of some value in your consideration.

Enclosure

STATE OF ALASKA

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

ROOM 503
CAPITOL BUILDING
POUCH V
JUNEAU, ALASKA 99811

907-465-3818
907-465-3810

MEMORANDUM

August 12, 1982

TO: Representative Hugh Malone, Chairman
Legislative Council

FROM: Senator Arliss Sturgulewski, Chairman *as*
Legislative Budget and Audit Committee

RE: Legislative Space

A July 16 letter by Mr. Charney, Director of the Legislative Affairs Agency, to Mr. Jay Hogan, Director of the Legislative Finance Division, clearly lays out the responsibilities for assignment of legislative office space. Written at the direction of the Legislative Council, the letter references the respective authorities of the Council during the interim and the two Rules Committees during the session. The relationship between the Council and the Rules Committees, however, lacks definition, which has led to problems in the space allocation process, both now and in the past.

I urge the Council to take this opportunity to clarify the authority of, and relationship between, the Council and Rules Committees. Among the issues that need resolution are the following:

° The "continuity" of the allocation decisions made by each body. That is, are space assignments made by the Rules Committee only in effect during the session, or is the Council bound by Rules Committee decisions year-round? Is the Council's authority over space limited only to the interim?

° What is the scope of authority of each? Rule 12 states that the Rules Committees control the assignment of "legislative offices" during the session. Does this include offices of legislative agencies, such as the Ombudsman and Code Revision Commission in addition to the Legislative Affairs Agency and the Divisions of the Legislative Budget and Audit Committee? Or is that authority limited to offices related to each respective house of the legislature, with legislative agencies remaining under Council jurisdiction?

° Which agency has the authority to contact the executive and judicial branches of government regarding negotiations for legislative space needs? Is there any mechanism for the "joint" exercise of Rules

Committee authority or can a single committee enter into negotiations affecting both houses with another branch of government?

° How are those agencies with ongoing space requirements to be assured of consistent treatment? The Legislative Affairs Agency (including Legal Services, Information Services, Print Shop, Maintenance, Supply and other divisions), Ombudsman's Office, Code Revision Commission, the research agencies, Legislative Audit Division, Finance Division and the Budget and Audit Committee all have responsibilities which require year-round office space. Is there any means of assigning these agencies office space on an annual basis, with the apparent separation of Council and Rules Committee jurisdictions?

Based on past events, the pressure for additional office space will increase, exacerbating the "space wars" which the legislature is subjected to each year. In order to encourage a more orderly assignment of office space, I strongly support the Council's control of space assignments and I would encourage the Council to take a more direct role in the allocation of legislative space. One priority could be the development of an overall policy toward the space in various buildings occupied by the legislature. The ideal situation, of course, would be the permanent assignment of office space for the several committees, hearing rooms and staff functions. This would help eliminate the disruptive scramble for office space that occurs at the start of each session.

Given the fragmented authority for space assignment, neither Council nor the Rules Committees are able to consider the long-range needs for legislative office space. As a second priority for Council action, I urge the Council to project legislative space requirements for the next three to five years, and develop a plan for meeting the legislature's growing space needs. (The various capital relocation cost studies provide projections of legislative space needs and could be used as a starting point.) There could be a very critical need for office space in Juneau in the near future, and alternative means of meeting those requirements need to be present for Council action. The relocation of executive and/or court facilities could be involved, which will require sufficient advance notice to those agencies so that they can also find alternative space.

In short, I think that the whole question of how the legislature allocates space needs to be addressed, and I would support changes to the current situation which result in a more equitable, consistent and predictable system of managing legislative space.

cc: All Council Members



Alaska State Legislature

JUNEAU, ALASKA

February 24, 1983

Norman C. Gorsuch
Attorney General
State of Alaska
Pouch K
Juneau, AK 99811

Dear Mr. Gorsuch:

The House and the Senate have established a Joint Committee on Legislative Reform. The first priority of the Committee is to address the conflict of interest issue and to recommend changes in the statutes to the full Legislature.

The Committee would like to work closely with your office on this matter and would appreciate any recommendations you might have for changes in the law that would clarify standards of conduct for all state officers and employees.

Time constraints mandate that we proceed with this issue as rapidly as possible. May we have your recommendations by March 3, 1983?

Sincerely,

JS
Senator Jan Faiks
Co-Chairman

KI
Representative Randy Phillips
Co-Chairman



Alaska State Legislature Senate

OFFICIAL BUSINESS

RULES COMMITTEE

February 21, 1983

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

To: Representative Randy Phillips

From: Senator Jan Faiks

Proxy for Faiks

Re: Conflict of Interest Legislation

Attached are documents related to the study done by the GFWC Anchorage Women's Club FREE Committee:

1. FREE cover letter
2. Draft of suggestions
3. Memo from Richard Bradley, Legislative Counsel, relating to the proposed legislation.
4. Senate CS for CS for House Bill No.154, An Act relating to financial disclosure; and providing for an effective date, offered 4/13/82.

FREE

Federation's Role in our Enterprise Economy

January 18, 1983

Senator Jan Faiks
Alaska State Senate
Pouch V
Juneau, Alaska 99811

*Tom Jabrke
AG's office
3600
conflict of interest am*

Dear Senator Faiks:

The FREE Committee has recently completed a careful review of the ethics and conflict of interest laws in all 50 states and based upon that review has identified several areas that should be addressed in any ethics legislation considered by the Legislature. Enclosed is a copy of suggested changes to the existing Alaska law. These suggestions reflect our concern about public officials obtaining state loans and state contracts, using information not readily available to the public, using public office to raise funds, and other activities.

In developing its recommendations, the FREE Committee was also concerned that amendments to the present law not become so restrictive that good legislators with other sources of income be prohibited from serving the public. Therefore, we suggest that public officials not be prohibited from obtaining loans or contracts from the state, so long as suggested safeguards are incorporated.

We also believed that public officials have the right to expect that criminal violations be clearly defined so that ethical problems can be avoided. With these things in mind, the Committee drafted language which if adopted would more clearly identify problem areas and which would provide for binding Attorney General opinions where the law is not clear. This procedure has been used in several jurisdictions, including Oregon.

One approach the Committee rejected deserves mention because some legislators have considered it attractive. Several states created a new commission whose sole purpose is to evaluate and investigate legislator activities for conflicts and to recommend action. The Committee rejected this idea for three reasons. First, since conflicts are treated as criminal violations, this duplicates the grand jury system, unduly lengthens the process, and may violate someone's constitutional rights. Second, we are opposed to creating new governmental bodies if other less expensive and complicated approaches would provide the same or better results. Third, this could result in politically motivated investigations.

P.O. Box 4-2955 • Anchorage, Alaska 99509

A committee of the GFWC Anchorage Woman's Club

While the remaining suggested amendments are clear, three other areas should be briefly mentioned. The bribery statute should be amended to clearly cover actions taken in exchange for promises of future employment. The Committee also suggests that anyone convicted of a felony should be prohibited from holding office and if the individual is already a legislator, he or she should be automatically expelled. Finally, there is one more modern concern which the present conflict of interest statute does not address. Many unmarried people are now living together, for tax or other reasons. Conflicts of interest involving these persons are also covered by the proposed amendments.

The Committee carefully weighed its options for promoting these changes. With the Legislature already in session and several legislators already proposing changes to the existing law, timing becomes crucial. Since your committee is involved with legislative reform and we are aware that you are actively considering alternatives, we believe that you are the appropriate person to contact. We urge you to consider these recommendations and introduce them. If you have any questions about the recommendations or the research, please feel free to contact me.

Sincerely,

Demetrius L. Kravitz

1 IN THE SENATE

BY THE RULES COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to financial disclosure; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 39.50.030(a) is amended to read:

10 (a) Each statement shall be an accurate representation of the
11 financial affairs of the public official or candidate and shall con-
12 tain the same information for each member of the [HIS] family and of
13 the household of the public official or candidate, as specified in (b)
14 of this section, to the extent that it is ascertainable by the public
15 official or candidate. An asset or liability under \$1,000 [\$500],
16 household goods, and personal effects need not be identified.

17 * Sec. 2. AS 39.50.030(b) is amended to read:

18 (b) Each statement filed by a public official or candidate under
19 this chapter shall include:

20 (1) the source of all income over \$500 [\$100], including
21 capital gains, whether or not taxable, received by the public official
22 or candidate or by a member of the family or of the household of the
23 public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF
24 HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the
25 preceding calendar year;

26 (2) the identity, by name and address, of each business in
27 which the public official or candidate or a member of the family or of
28 the household of the public official or candidate [HE OR HIS SPOUSE OR
29 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH

1 HIM] was a stockholder, owner, officer, director, partner, proprietor,
2 or employee during the preceding calendar year;

3 (3) the identity and nature of each interest owned by the
4 public official or candidate or a member of the family or of the
5 household of the public official or candidate [HIM OR HIS SPOUSE OR
6 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH
7 HIM,] in any business during the preceding calendar year;

8 (4) the identity and nature of each interest in real prop-
9 erty, including an option to buy, owned by the public official or
10 candidate or by a member of the family or of the household of a public
11 official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR
12 NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during
13 the preceding calendar year;

14 (5) the identity of each trust or other fiduciary relation
15 in which the public official or candidate or a member of the family or
16 of the household of a public official or candidate [HE OR HIS SPOUSE
17 OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING
18 WITH HIM,] held a beneficial interest during the preceding calendar
19 year, a description and identification of the property contained in
20 each trust or relation, and the nature and extent of the beneficial
21 interest in it;

22 (6) any loan or loan guarantee made to the public official
23 or candidate or a member of the family or of the household of the
24 public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF
25 HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the
26 identity of the maker of the loan or loan guarantor and the identity
27 of each creditor to whom the public official or candidate or a member
28 of the family or of the household of a public official or candidate
29 [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF

1 HIS WHO IS LIVING WITH HIM] owed \$500 or more;

2 (7) a list of all contracts and offers to contract with the
3 state, or an instrumentality of the state, during the preceding calen-
4 dar year, held, bid or offered by the public official or candidate or
5 a member of the family or of the household of the public official or
6 candidate [HIM, HIS SPOUSE, DEPENDENT CHILD OF HIS OR NONDEPENDENT
7 CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a part-
8 nership or professional corporation of which the public official or
9 candidate or a member of the family or of the household of the public
10 official or candidate [HE] is a member, or a corporation in which the
11 public official or candidate or a member of the family or of the
12 household of the public official or candidate [HE OR HIS SPOUSE OR HIS
13 CHILDREN,] or a combination of them, hold a controlling interest; and

14 (8) a list of all mineral, timber, oil, or any other
15 natural resource lease held, or lease offer made, during the preceding
16 calendar year by the public official or candidate or a member of the
17 family or of the household of a public official or candidate [HIM, A
18 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH
19 HIM, HIS MOTHER OR FATHER] or a partnership or professional corpo-
20 ration of which the public official or candidate or a member of the
21 family or of the household of the public official or candidate [HE] is
22 a member, or a corporation in which the public official or candidate
23 or a member of the family or of the household of a public official or
24 candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of
25 them, hold a controlling interest.

26 * Sec. 3. AS 39.50.090 is repealed and reenacted to read:

27 Sec. 39.50.090. PROHIBITED ACTS. (a) The official position or
28 office of a public official may not be used for the primary purpose of
29 obtaining financial gain, special privileges, exemptions, or compensa-

1 tion for the benefit of the public official or for the benefit of a
2 member of the family or of the household of the public official or for
3 the benefit of a business with which the public official or a member
4 of the family or of the household of the public official is associated
5 or owns stock.

6 (b) A public official and a former public official may not
7 disclose information that by law or regulation is not available to a
8 member of the public and that the public official or employee of the
9 legislature acquired during the course of official duties for the
10 personal gain or benefit of the public official or anyone else.

11 (c) Violation of a provision of (a) or (b) of this section is a
12 class C felony.

13 (d) The provisions of (a) and (b) of this section do not pre-
14 clude a member of the legislature from introducing, advocating, or
15 voting for legislation that affects the public generally or that
16 affects a specific class of individuals of which the member of the
17 legislature or a member of the family or of the household of a member
18 of the legislature is a member.

19 (e) A person may not offer or pay to a public official and a
20 public official may not solicit or receive money for advice or assis-
21 tance given in the course of the public office or employment of the
22 public official. Each member of a state commission or board who is a
23 full-time public official of the state and each municipal officer who
24 serves as a full-time employee with the municipality may not solicit
25 or receive money for advice or assistance if the subject matter of the
26 advice or assistance is related to the function of the commission,
27 board, or municipality.

28 (f) A full-time public official of the state may not represent a
29 client before a state agency for a fee. Each member of a state

1 commission or board who is not a full-time employee of the state may
2 represent a client before a different commission or board for a fee.

3 (g) A municipal officer may not represent a client for a fee
4 before the municipal body that the municipal officer serves.

5 (h) A former public official may not within 12 months after
6 termination of office or employment assist any person or act in a
7 representative capacity for a fee or other consideration on a matter
8 in which the public official personally participated as a public
9 official. This subsection does not prohibit any agency from contract-
10 ing with a former public official and does not prevent a public offi-
11 cial from appearing before the public agency in regard to the office
12 or employment.

13 (i) A public official may not apply for a loan from a state
14 agency unless the application is simultaneously filed with the commis-
15 sion. A state agency may not approve a loan to a public official who
16 fails to file the application with the commission and a state agency
17 may not grant special consideration to the application of a public
18 official.

19 (j) A public official, a member of the family or of the house-
20 hold of a public official, and a business with which the public offi-
21 cial or the member of the family or of the household of a public
22 official is associated may not enter into a contract with the state
23 valued at \$100 or more unless the contract is awarded under competi-
24 tive bidding. A member of the legislature shall simultaneously file
25 the offer to contract with the commission; if the offer to contract is
26 a sealed bid, the commission may not open the offer to contract until
27 after the offer to contract has been opened by the agency receiving
28 the offer to contract. A state agency may not award a contract to a
29 public official or to a person known to be a member of the family or

1 of the household of a public official or to a business that is asso-
2 ciated with the public official or with a member of the family or of
3 the household of a public official unless the offer to contact is
4 filed with the commission.

5 (k) A member of the legislature and a person acting on behalf of
6 a member of the legislature and a member of the family or of the
7 household of a member of the legislature may not solicit or accept
8 funds for political contributions to the campaign treasury of the
9 member of the legislature during a legislative session.

10 (l) A violation of AS 39.50.090(e) - (k) is a class A misde-
11 meanor.

12 (m) In this section, "public official" includes, in addition to
13 the persons specified in AS 39.50.200(a)(1), each member of a commis-
14 sion or board established by law as an agency of the state.

15 * Sec. 4. AS 39.50 is amended by adding a new section to read:

16 Sec. 39.50.095. ADVICE FROM ATTORNEY GENERAL. A public offi-
17 cial, a member of the family or of the household of a public official,
18 and a business with which the public official is associated that is
19 concerned whether action may constitute a violation of this chapter
20 may request the attorney general to determine whether a violation
21 would exist under the situation presented in the request. The attor-
22 ney general shall issue the determination within 30 days of the re-
23 ceipt of the request; if the attorney general does not issue a deter-
24 mination within 30 days of the request, the situation as presented in
25 the request does not constitute a violation of this chapter.

26 * Sec. 5. AS 39.50.200(a)(8) is amended to read:

27 (8) "source of income" means the entity for which service
28 is performed or which is otherwise the origin of payment; if the
29 person whose income is being reported is employed by another, the

1 [HIS] employer of the person is the source of the [HIS] income; but if
2 the person [HE] is self-employed by means of a sole proprietorship,
3 partnership, professional corporation, or a corporation in which the
4 person or a member of the family or of the household of the person [HE
5 OR HIS SPOUSE OR HIS CHILDREN], or a combination of them, hold a
6 controlling interest, the "source" is the client or customer of the
7 proprietorship, partnership or corporation, but if the entity which is
8 the origin of payment is not the same as the client or customer for
9 whom the service is performed, both are [CONSIDERED] the source;

10 * Sec. 6. AS 39.50.200(a) is amended by adding new paragraphs to read:

11 (10) "member of the household" means

12 (A) a person whose permanent address is the same as
13 the permanent address of the public official; and

14 (B) a person who actually resides in the household of
15 the public official;

16 (11) "member of the family" means a spouse, mother, father,
17 a mother or father of a spouse, child, and brother or sister of a
18 public official.

19 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1983

SUBJECT: Legislative reform
(Work Order No. 13-0599)

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Richard A. Bradley
Legislative Counsel 

I have prepared the attached bill consistently with your request to the extent possible. But to the extent that the request suggests the content of bills that may not be dealt with by a bill or which if included in this bill might violate the single subject requirements of the constitution, I have omitted those items. I will identify those issues for your consideration.

In my view, the thrust of the bill is basically a broadening of the coverage of financial disclosure statements required by AS 39.50; the bill therefore concerns "financial disclosure".

One observation should perhaps be made, though a person such as a legislator who has filed financial disclosure statements will understand it.

While the legislature may require a public official to file a financial disclosure statement and may require that information concerning members of the family of household be included, the constitutional right of privacy and practical realities cannot oblige a person who is not a public official to make information available to the public official for inclusion in the report. There will, therefore, inevitably be gaps in the information disclosed as to the kin of the public official and the provisions of sec. 30(a) acknowledges this fact. I mention this only so that it will be clear that there are practical limits to legislative power in this area.

Senator Jan Faiks
Page 2
February 2, 1983

One other problem with the existing structure of AS 39.50.030 that your request does not address should be noted. There is tension between the requirement in sec. 30(a) that "assets and liabilities (over) \$500" be listed and the requirement in sec. 30(b) that items which constitute in fact "assets and liabilities" be listed without regard to value or when the value exceeds either \$100 or \$500.

The question has been addressed in the past by eliminating the phrase "assets and liabilities" in sec. 30(a). See, for example, SCS CSHB 1~~57~~ (Finance).

Apart from the changes to the language of sec. 30 required by Chapter 58, SLA 1982, I have followed the language in your draft.

The drafting of AS 39.50.090 was more difficult. In the amendment to existing sec. 90(a), I added the suggested phrase "special privileges, exemptions, or compensation" to the existing "financial gain". I suggest, however, that the material added adds little, if anything, to the section. As a matter of legislative drafting and logic, a broader coverage is almost inevitably better achieved by a single generic phrase than by a series of narrower particular phrases. In my view, "financial gain" is likely to cover everything that a corrupt public official is likely to do wrong.

In sec. 90(a), the usage of "associated" in the last sentence is weak.

The concern that the prohibitions not inhibit legislative activity is included but seems unnecessary. No bill on any subject may deprive a legislator of the constitutionally granted prerogative of using legislative office properly; abuse of legislative office is appropriately dealt with in the section. The proviso from the draft is moved to new sec. 90(d).

The request of the draft that public officials not disclose information not available generally for personal gain is included as new sec. 90(b).

I have deleted the portion of the request that deals with "legislative employees" for several reasons.

Senator Jan Faiks
Page 3
February 2, 1983

I have not added them to the bill because they do not fit within a chapter dealing with "financial disclosure". The bill would not have imposed any financial disclosure requirements on them and thus the concept was inappropriate here.

But more to the point, there is an existing burden of confidentiality on employees of the Legislative Affairs Agency in the law establishing the agency (AS 24.20.100). And, of course, there is an existing prohibition against use of confidential information for personal gain in the criminal code: see AS 11.56.860.

If you wish to have that question dealt with legislatively in a fashion different from the existing treatment, I suggest a separate bill.

The provisions of sec. 90(c) are dealt with in new sec. 90(e). The section as originally written was awkward with "exceptions from general prohibitions" and other problems. I have rewritten the section and achieved your goals; here, as before, I eliminated the references to "legislative employees".

Existing sec. 90(f) was renumbered as new sec. 90(g).

New sec. 90(h) is essentially as requested; I suggest that it is not tightly drafted and does not constitute reform of existing law. A more usual "revolving door" prohibition deals with the problem in two particulars: (1) it establishes a lifetime prohibition on matters actually worked on; and (2) it establishes a one year (or similar) prohibition on contacts with the agency.

The bill would permit use of inside information on an item actually worked on after one year. You may wish to review this rule again.

The provisions regarding loans are slightly modified and, I think, improved.

The prohibition against contributions to a member of the legislature during the session is clarified.

The provision permitting advice from the attorney general is included.

With regard to definitions, I have modified the definition of "source of income" as requested. I defined "member of the household" and "member of the family" as suggested. I have not added "legislative employee" for reasons suggested earlier and I have not added "financial gain" because the definition clarifies nothing in the meaning of the term.

I have suggested an immediate effective date.

The remaining aspects of the request are not included in this bill.

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Finally, your request asked for inclusion of language dealing with exclusion of a member of the legislature on conviction of a felony apart from the disqualification existing under the interaction of Article II, section 2 and Article V, section 2. Two problems exist:

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Article V of the constitution regulates voting and provides that

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The disqualification on an individual for conviction of a felony involving moral turpitude is part of Article V, section 2 and therefore is a disqualification "under this article". But if the legislature seeks to establish further disqualifications on the right to vote, the added disqualification is not found "under this article" and therefore seems to constitute a

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Since a person is eligible for election to the legislature if the person is a "qualified voter" who meets the other constitutional requirement of Article II, section 2, I would conclude that the legislature may not by law add additional requirements for election to legislative office.

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In summary, I have provided you under this work order request with a bill amending the "financial disclosure" laws.

In my view, there is no need to add "legislative employees" to the bill because existing law achieves your stated goals.

And provisions relating to either qualifications to vote or to expulsion of a member of the legislature may be dealt with only by constitutional amendment and those concepts may not be added to this bill.

If I may assist further, please advise.

RAB:ljb

Attachment

Offered: 4/13/82
Referred: Rules

Original sponsor: Rules Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 154 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to financial disclosure; and providing
7 for an effective date."

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5 becomes a candidate. A municipal officer who has a current statement
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8 file within the time prescribed shall require that the candidate's
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16 named in AS 39.50.200(b) are not required to file financial statements.

17 * Sec. 2. AS 39.50.030(a) is repealed and reenacted to read:

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19 financial affairs of the public official or candidate and shall contain
20 the information specified in this section concerning each member of the
21 family of the public official or candidate to the extent that the in-
22 formation is ascertainable by the public official or candidate. House-
23 hold goods and personal effects need not be identified.

24 * Sec. 3. AS 39.50.030(b) is amended to read:

25 (b) Each statement filed by a public official or candidate under
26 this chapter shall include:

27 (1) the source of all income over \$5,000 [\$100], including
28 capital gains, whether or not taxable, received by the public official
29 or candidate [HIM] or by the [HIS] spouse or dependent child of the

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2 LIVING WITH HIM,] during the preceding calendar year;

3 (2) the identity, by name and address, of each business in
4 which the public official or candidate [HE] or the [HIS] spouse or
5 dependent child of the public official or candidate [HIS OR NONDEPENDENT
6 CHILD OF HIS WHO IS LIVING WITH HIM] was a stockholder, owner, officer,
7 director, partner, proprietor, or employee during the preceding calendar
8 year;

9 (3) the identity and nature of each interest owned by the
10 public official or candidate [HIM] or the [HIS] spouse or dependent
11 child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF
12 HIS WHO IS LIVING WITH HIM,] in any business during the preceding calen-
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14 (4) the identity and nature of each interest in real property,
15 including an option to buy, owned by the public official or candidate
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17 or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,
18 AT ANY TIME] during the preceding calendar year;

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21 dependent child of the public official or candidate [HIS OR NONDEPENDENT
22 CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during
23 the preceding calendar year, a description and identification of the
24 property contained in each trust or relation, and the nature and extent
25 of the beneficial interest in it;

26 (6) any loan or loan guarantee over \$5,000 made to the public
27 official or candidate [HIM] or the [HIS] spouse or dependent child of the
28 public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS
29 LIVING WITH HIM,] and the identity of the maker of the loan or loan

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2 or candidate [HE] or the [HIS] spouse or dependent child of the public
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4 WITH HIM] owed over \$5,000 [\$500 OR MORE];

5 (7) a list of all contracts and offers to contract with the
6 state, or an instrumentality of the state, during the preceding calendar
7 year, held, bid or offered by the public official or candidate, the
8 [HIM, HIS] spouse or [,] dependent child of the public official or can-
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10 the public official or candidate, the [HIM, HIS] mother or father of the
11 public official or candidate, or a partnership or professional corpora-
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13 corporation in which the public official or candidate [HE] or the [HIS]
14 spouse or [HIS] children of the public official or candidate, or a
15 combination of them, hold a controlling interest; and

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17 resource lease held, or lease offer made, during the preceding calendar
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20 child living with the public official or candidate, the [OF HIS WHO IS
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24 public official or candidate [HE] or the [HIS] spouse or the [HIS]
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26 hold a controlling interest;

27 (9) any other asset or liability valued at over \$5,000.

28 * Sec. 4. AS 39.50.030 is amended by adding new subsections to read:

29 (d) A public official, a candidate for state elective office, or a

1 candidate for elective municipal office who is licensed under AS 08.20,
2 AS 08.32, AS 08.36, AS 08.64, AS 08.68, AS 08.71, AS 08.72, AS 08.80,
3 AS 08.84, or AS 08.86 is not required to report the name of a person who
4 is a patient, client, or customer of the public official or candidate or
5 a patient, client, or customer of an entity that is a source of income
6 to the public official or candidate.

7 (e) A gift from a spouse, child, mother or father, brother or
8 sister, grandparent, or grandchild does not need to be reported under
9 this section.

10 * Sec. 5. AS 39.50.200(a)(6) is amended to read:

11 (6) "municipal officer" includes a borough or city mayor,
12 borough assemblyman, city councilman, school board member, elected
13 utility board member, city or borough manager, charter commission member,
14 members of a city or borough planning or zoning commission within a home
15 rule or general law city or borough, including but not limited to a
16 unified municipality under AS 29.68;

17 * Sec. 6. AS 39.50.200(a) is amended by adding a new paragraph to read:

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19 or city mayor, borough assemblyman, city councilman, school board
20 member, elected utility board member, city or borough manager, charter
21 commission member, city or borough planning or zoning commission member
22 within a home rule or general law city or borough, including but not
23 limited to a unified municipality under AS 29.68.

24 * Sec. 7. AS 39.50.030(d) added by sec. 4 of this Act is retroactive to
25 January 1, 1982.

26 * Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1983.

27 * Sec. 9. Sections 5 - 6 of this Act take effect July 1, 1982.

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29 dance with AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1983

SUBJECT: Legislative reform
(Work Order No. 13-0599)

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Richard A. Bradley
Legislative Counsel

I have prepared the attached bill consistently with your request to the extent possible. But to the extent that the request suggests the content of bills that may not be dealt with by a bill or which if included in this bill might violate the single subject requirements of the constitution, I have omitted those items. I will identify those issues for your consideration.

In my view, the thrust of the bill is basically a broadening of the coverage of financial disclosure statements required by AS 39.50; the bill therefore concerns "financial disclosure".

One observation should perhaps be made, though a person such as a legislator who has filed financial disclosure statements will understand it.

While the legislature may require a public official to file a financial disclosure statement and may require that information concerning members of the family of household be included,

[REDACTED]

There will, therefore, inevitably be gaps in the information disclosed as to the kin of the public official and the provisions of sec. 30(a) acknowledges this fact. I mention this only so that it will be clear that there are practical limits to legislative power in this area.

One other problem with the existing structure of AS 39.50.030 that your request does not address should be noted. There is tension between the requirement in sec. 30(a) that "assets and liabilities (over) \$500" be listed and the requirement in sec. 30(b) that items which constitute in fact "assets and liabilities" be listed without regard to value or when the value exceeds either \$100 or \$500.

The question has been addressed in the past by eliminating the phrase "assets and liabilities" in sec. 30(a). See, for example, SCS CSHB 1~~57~~ (Finance).

Apart from the changes to the language of sec. 30 required by Chapter 58, SLA 1982, I have followed the language in your draft.

The drafting of AS 39.50.090 was more difficult. In the amendment to existing sec. 90(a), I added the suggested phrase "special privileges, exemptions, or compensation" to the existing "financial gain". I suggest, however, that the material added adds little, if anything, to the section. As a matter of legislative drafting and logic, a broader coverage is almost inevitably better achieved by a single generic phrase than by a series of narrower particular phrases. In my view, "financial gain" is likely to cover everything that a corrupt public official is likely to do wrong.

In sec. 90(a), the usage of "associated" in the last sentence is weak.

The concern that the prohibitions not inhibit legislative activity is included but seems unnecessary. No bill on any subject may deprive a legislator of the constitutionally granted prerogative of using legislative office properly; abuse of legislative office is appropriately dealt with in the section. The proviso from the draft is moved to new sec. 90(d).

The request of the draft that public officials not disclose information not available generally for personal gain is included as new sec. 90(b).

I have deleted the portion of the request that deals with "legislative employees" for several reasons.

I have not added them to the bill because they do not fit within a chapter dealing with "financial disclosure". The bill would not have imposed any financial disclosure requirements on them and thus the concept was inappropriate here.

But more to the point, there is an existing burden of confidentiality on employees of the Legislative Affairs Agency in the law establishing the agency (AS 24.20.100). And, of course, there is an existing prohibition against use of confidential information for personal gain in the criminal code: see AS 11.56.860.

If you wish to have that question dealt with legislatively in a fashion different from the existing treatment, I suggest a separate bill.

The provisions of sec. 90(c) are dealt with in new sec. 90(e). The section as originally written was awkward with "exceptions from general prohibitions" and other problems. I have rewritten the section and achieved your goals; here, as before, I eliminated the references to "legislative employees".

Existing sec. 90(f) was renumbered as new sec. 90(g).

New sec. 90(h) is essentially as requested; I suggest that it is not tightly drafted and does not constitute reform of existing law. A more usual "revolving door" prohibition deals with the problem in two particulars: (1) it establishes a lifetime prohibition on matters actually worked on; and (2) it establishes a one year (or similar) prohibition on contacts with the agency.

The bill would permit use of inside information on an item actually worked on after one year. You may wish to review this rule again.

The provisions regarding loans are slightly modified and, I think, improved.

The prohibition against contributions to a member of the legislature during the session is clarified.

The provision permitting advice from the attorney general is included.

With regard to definitions, I have modified the definition of "source of income" as requested. I defined "member of the household" and "member of the family" as suggested. I have not added "legislative employee" for reasons suggested earlier and I have not added "financial gain" because the definition clarifies nothing in the meaning of the term.

I have suggested an immediate effective date.

The remaining aspects of the request are not included in this bill.

The revision to the bribery statute should be included in a separate bill. I suspect that the amendment suggested is unnecessary because a "promise of future employment" is not excluded under AS 11.56.120. It seems clearly within the definition of "benefit". But I would prefer to defer that very technical question to a request on that subject.

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4 is a patient, client, or customer of the public official or candidate or
5 a patient, client, or customer of an entity that is a source of income
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9 this section.

10 * Sec. 5. AS 39.50.200(a)(6) is amended to read:

11 (6) "municipal officer" includes a borough or city mayor,
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25 January 1, 1982.

26 * Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1983.

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14 of this section, to the extent that it is ascertainable by the public
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17 * Sec. 2. AS 39.50.030(b) is amended to read:

18 (b) Each statement filed by a public official or candidate under
19 this chapter shall include:

20 (1) the source of all income over \$500 [\$100], including
21 capital gains, whether or not taxable, received by the public official
22 or candidate or by a member of the family or of the household of the
23 public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF
24 HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the
25 preceding calendar year;

26 (2) the identity, by name and address, of each business in
27 which the public official or candidate or a member of the family or of
28 the household of the public official or candidate [HE OR HIS SPOUSE OR
29 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH

1 HIM] was a stockholder, owner, officer, director, partner, proprietor,
2 or employee during the preceding calendar year;

3 (3) the identity and nature of each interest owned by the
4 public official or candidate or a member of the family or of the
5 household of the public official or candidate [HIM OR HIS SPOUSE OR
6 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH
7 HIM,] in any business during the preceding calendar year;

8 (4) the identity and nature of each interest in real prop-
9 erty, including an option to buy, owned by the public official or
10 candidate or by a member of the family or of the household of a public
11 official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR
12 NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during
13 the preceding calendar year;

14 (5) the identity of each trust or other fiduciary relation
15 in which the public official or candidate or a member of the family or
16 of the household of a public official or candidate [HE OR HIS SPOUSE
17 OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING
18 WITH HIM,] held a beneficial interest during the preceding calendar
19 year, a description and identification of the property contained in
20 each trust or relation, and the nature and extent of the beneficial
21 interest in it;

22 (6) any loan or loan guarantee made to the public official
23 or candidate or a member of the family or of the household of the
24 public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF
25 HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the
26 identity of the maker of the loan or loan guarantor and the identity
27 of each creditor to whom the public official or candidate or a member
28 of the family or of the household of a public official or candidate
29 [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF

1 HIS WHO IS LIVING WITH HIM] owed \$500 or more;

2 (7) a list of all contracts and offers to contract with the
3 state, or an instrumentality of the state, during the preceding calen-
4 dar year, held, bid or offered by the public official or candidate or
5 a member of the family or of the household of the public official or
6 candidate [HIM, HIS SPOUSE, DEPENDENT CHILD OF HIS OR NONDEPENDENT
7 CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a part-
8 nership or professional corporation of which the public official or
9 candidate or a member of the family or of the household of the public
10 official or candidate [HE] is a member, or a corporation in which the
11 public official or candidate or a member of the family or of the
12 household of the public official or candidate [HE OR HIS SPOUSE OR HIS
13 CHILDREN,] or a combination of them, hold a controlling interest; and

14 (8) a list of all mineral, timber, oil, or any other
15 natural resource lease held, or lease offer made, during the preceding
16 calendar year by the public official or candidate or a member of the
17 family or of the household of a public official or candidate [HIM, A
18 DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH
19 HIM, HIS MOTHER OR FATHER] or a partnership or professional corpo-
20 ration of which the public official or candidate or a member of the
21 family or of the household of the public official or candidate [HE] is
22 a member, or a corporation in which the public official or candidate
23 or a member of the family or of the household of a public official or
24 candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of
25 them, hold a controlling interest.

26 * Sec. 3. AS 39.50.090 is repealed and reenacted to read:

27 Sec. 39.50.090. PROHIBITED ACTS. (a) The official position or
28 office of a public official may not be used for the primary purpose of
29 obtaining financial gain, special privileges, exemptions, or compensa-

1 tion for the benefit of the public official or for the benefit of a
2 member of the family or of the household of the public official or for
3 the benefit of a business with which the public official or a member
4 of the family or of the household of the public official is associated
5 or owns stock.

6 (b) A public official and a former public official may not
7 disclose information that by law or regulation is not available to a
8 member of the public and that the public official or employee of the
9 legislature acquired during the course of official duties for the
10 personal gain or benefit of the public official or anyone else.

11 (c) Violation of a provision of (a) or (b) of this section is a
12 class C felony.

13 (d) The provisions of (a) and (b) of this section do not pre-
14 clude a member of the legislature from introducing, advocating, or
15 voting for legislation that affects the public generally or that
16 affects a specific class of individuals of which the member of the
17 legislature or a member of the family or of the household of a member
18 of the legislature is a member.

19 (e) A person may not offer or pay to a public official and a
20 public official may not solicit or receive money for advice or assis-
21 tance given in the course of the public office or employment of the
22 public official. Each member of a state commission or board who is a
23 full-time public official of the state and each municipal officer who
24 serves as a full-time employee with the municipality may not solicit
25 or receive money for advice or assistance if the subject matter of the
26 advice or assistance is related to the function of the commission,
27 board, or municipality.

28 (f) A full-time public official of the state may not represent a
29 client before a state agency for a fee. Each member of a state

1 commission or board who is not a full-time employee of the state may
2 represent a client before a different commission or board for a fee.

3 (g) A municipal officer may not represent a client for a fee
4 before the municipal body that the municipal officer serves.

5 (h) A former public official may not within 12 months after
6 termination of office or employment assist any person or act in a
7 representative capacity for a fee or other consideration on a matter
8 in which the public official personally participated as a public
9 official. This subsection does not prohibit any agency from contract-
10 ing with a former public official and does not prevent a public offi-
11 cial from appearing before the public agency in regard to the office
12 or employment.

13 (i) A public official may not apply for a loan from a state
14 agency unless the application is simultaneously filed with the commis-
15 sion. A state agency may not approve a loan to a public official who
16 fails to file the application with the commission and a state agency
17 may not grant special consideration to the application of a public
18 official.

19 (j) A public official, a member of the family or of the house-
20 hold of a public official, and a business with which the public offi-
21 cial or the member of the family or of the household of a public
22 official is associated may not enter into a contract with the state
23 valued at \$100 or more unless the contract is awarded under competi-
24 tive bidding. A member of the legislature shall simultaneously file
25 the offer to contract with the commission; if the offer to contract is
26 a sealed bid, the commission may not open the offer to contract until
27 after the offer to contract has been opened by the agency receiving
28 the offer to contract. A state agency may not award a contract to a
29 public official or to a person known to be a member of the family or

1 of the household of a public official or to a business that is asso-
2 ciated with the public official or with a member of the family or of
3 the household of a public official unless the offer to contact is
4 filed with the commission.

5 (k) A member of the legislature and a person acting on behalf of
6 a member of the legislature and a member of the family or of the
7 household of a member of the legislature may not solicit or accept
8 funds for political contributions to the campaign treasury of the
9 member of the legislature during a legislative session.

10 (l) A violation of AS 39.50.090(e) - (k) is a class A misde-
11 meanor.

12 (m) In this section, "public official" includes, in addition to
13 the persons specified in AS 39.50.200(a)(1), each member of a commis-
14 sion or board established by law as an agency of the state.

15 * Sec. 4. AS 39.50 is amended by adding a new section to read:

16 Sec. 39.50.095. ADVICE FROM ATTORNEY GENERAL. A public offi-
17 cial, a member of the family or of the household of a public official,
18 and a business with which the public official is associated that is
19 concerned whether action may constitute a violation of this chapter
20 may request the attorney general to determine whether a violation
21 would exist under the situation presented in the request. The attor-
22 ney general shall issue the determination within 30 days of the re-
23 ceipt of the request; if the attorney general does not issue a deter-
24 mination within 30 days of the request, the situation as presented in
25 the request does not constitute a violation of this chapter.

26 * Sec. 5. AS 39.50.200(a)(8) is amended to read:

27 (8) "source of income" means the entity for which service
28 is performed or which is otherwise the origin of payment; if the
29 person whose income is being reported is employed by another, the

1 [HIS] employer of the person is the source of the [HIS] income; but if
2 the person [HE] is self-employed by means of a sole proprietorship,
3 partnership, professional corporation, or a corporation in which the
4 person or a member of the family or of the household of the person [HE
5 OR HIS SPOUSE OR HIS CHILDREN], or a combination of them, hold a
6 controlling interest, the "source" is the client or customer of the
7 proprietorship, partnership or corporation, but if the entity which is
8 the origin of payment is not the same as the client or customer for
9 whom the service is performed, both are [CONSIDERED] the source;

10 * Sec. 6. AS 39.50.200(a) is amended by adding new paragraphs to read:

11 [REDACTED]
12 [REDACTED] is the same as
13 [REDACTED] and
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] public official;

20 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).
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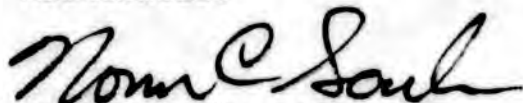
MEMORANDUM

State of Alaska

TO: Heads of All Departments,
Boards, Commissions, and
Authorities

DATE: December 28, 1982

FILE NO:



TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Implementation of
Conflict of
Interests Opinion

By now I hope you have had the opportunity to review the opinion issued by this office on December 3, 1982 concerning conflicts of interest. All supervisors should be aware of, and sensitive to, the concerns addressed in that opinion.

I recognize the opinion sets out principles which are, in large part, new to virtually all state officers and employees. As a practical result, therefore, persons with the kinds of conflicts addressed in the opinion may find it difficult to immediately eliminate them. Also, as recognized in the opinion, the common law rules relating to conflicts of interest may be modified or even rejected by the legislature through the enactment of general laws dealing with the subject. Obviously, the legislature has not yet had an opportunity to consider the rules set out in the opinion and determine whether, or to what extent, it may wish to alter them in Alaska.

Consequently, given the potentially harsh consequences (e.g. termination of employment, cancellation of contracts, and forced divestiture of various business and property interests), I believe it appropriate to exercise the discretion which I have by deferring, except in more serious circumstances (e.g. where an official's public duties may directly advantage his or her private business interests or where the conflict violates express civil or criminal statutes), any "enforcement" action until after the close of the upcoming legislative session. By doing so, the legislature will have the opportunity to address the common law rules set out in the opinion and make whatever changes to them it considers appropriate.

I suggest that you ask your officers and employees to examine their private business interests and dealings to determine if there are interests which might be viewed as causing divided loyalty. If there are such interests, then you should consider how, in the coming months, either their duties or their business interests might be changed to eliminate the conflict.

Additionally, I believe it would be helpful to the legislature in addressing conflicts problems if it had as complete a listing of the kinds of potential conflicts which may exist as possible. In this regard, I would appreciate it if you would advise me of any situations which you identify as potentially coming within the proscriptions of the conflicts opinion.

cc: Representative Joe Hayes
Speaker of the House

Senator Jalmar Kerttula
Senate President

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 3, 1982

Hon. Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: Conflict of interests
Our files: 366-255-83, 366-286-83,
A66-393-81, J66-457-81

Dear Governor Hammond:

I. INTRODUCTION

Seven situations have been brought to our attention which require analysis of the law of conflict of interests. We address this opinion to you because of the statewide importance of these questions and because of the profound implications of our remarks for all officers and employees of state government.

At the outset we must emphasize our key theme. The fact that there may be no conflict of interests statute that makes a particular course of conduct criminal or otherwise improper does not mean that it is legal. A transaction may not violate Alaska's criminal conflict of interests law, AS 39.50.-090; it may not even violate any one of a dozen civil statutes which prohibit conflicts of interests in specific agencies; yet it may still be illegal. By this opinion, we hope to make state officers and employees aware of an ethical code which is not in

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the Alaska Statutes but which is in force in Alaska: the common law. Unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interests, as declared by the courts, prescribes the standards of conduct which must be followed by all state officers and employees.

The common law provides, generally, that public officers and employees are trustees of the people, and as such they are forbidden to have outside interests which conflict with that trust; they not only may not, as public officers, make decisions to benefit their own private businesses (or influence other public officers to do so), but they must avoid even the appearance that they have engaged in self-dealing or attempts to influence official decision-making for their private advantage. Where there is the fact or appearance of impropriety, the courts will declare the contract, transaction, or decision void unless a statute permits the action in question, and this result cannot be avoided by the expedient of letting a "disinterested" colleague or subordinate make the decision.

The questions which prompted this opinion are related below. Our analysis follows thereafter.

First, may a legislator, or his or her company, contract with the state to provide the state with goods or services? The answer is no.

Second, may a legislator, state officer, or state em-

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ployee receive a loan from the state? The answer with respect to educational and residential loans is a qualified yes. Because educational and residential loan programs have relatively rigid requirements and loan ceilings, there is much less opportunity for improper influence; thus, state legislators, officers, and employees may receive such loans. However, it would be incumbent upon the applicant/lendee to insure that no one takes any step which might be viewed as an attempt to influence the administrators of the program in their evaluation of the applicant/lendee's application and their administration of the loan. Commercial loans are much more questionable transactions which we will discuss below.

Third, may a legislator vote on a bill which will inure to the financial benefit of the legislator? The answer is yes, unless the legislator's interest is peculiarly personal, such as when the bill benefits only a tiny class of which the legislator is a member, or when the bill concerns a project on which the legislator, or the legislator's company, is a contractor.

Fourth, may a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute hold that position if he or she is also an officer, manager, or large stockholder of a private company which has entered into contracts to provide the state with goods or services? If the director's company has a contract with an agency of state

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government different from the agency in which the director serves, and if the likelihood that the two agencies will interact on other than routine, ministerial matters is small, there would be no conflict. If, however, the director's company has contracts with the agency in which the director serves, the director must divest himself of his private holdings or resign his directorship; otherwise, any contracts his company executes with that agency would be void.

Fifth, may an officer of the Division of Minerals and Energy Management of the Department of Natural Resources (DMEM) own a mineral claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction? Ownership of such interests is not prohibited under AS 27.05.010 unless DMEM is engaged in an "investigation" described in AS 27.05.010 -- 27.05.070. However, the common law does prohibit the ownership of such interests: A conflict of interests would exist because the officer (or the officer's subordinates) would be required to review and approve the officer's filings with DMEM concerning the officer's mining interests. In addition, the officer would have a substantial voice in the department's land use classifications, which could inure very much to the officer's benefit were he an actual or potential investor in mineral claims on land subject to state regulation.

Sixth, may an inspector in a state regulatory agency

sell the right to use a process the inspector developed and patented to companies whose plants he inspects? The answer is no. Neither may that inspector obtain a state grant to test the process in plants which he inspects.

Seventh, may a person with an interest in a business that has a contract with the state be a member of the board of the Alaska Resources Corporation (ARC)? The answer is a qualified yes. A member is forbidden to acquire any conflicting interest after joining the board. AS 37.12.065(b). Concerning interests which a member holds and held before joining the board, there are two answers: First, if the contract is with an agency other than ARC, and if that other agency has only routine, ministerial contacts with ARC, there is no conflict. Second, if the contract is with ARC, the board member must abstain from voting and take no formal or informal part in discussions of ARC's policies or actions toward the business in which the member has an interest. Id.

II. THE ROLE OF THE ATTORNEY GENERAL

The attorney general is the chief legal officer of the state and "the legal advisor of the governor and other state officers." AS 44.23.020(a). As such, he is duty bound to assist the governor in "the faithful execution of the laws." Alaska Const., art. III, § 16. These laws include the common law of

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conflict of interest, see AS 01.10.010; the constitutional requirements that "[no] appropriation of public money [be] made ... except for a public purpose," and that "[n]o obligation for the payment of money shall be incurred except as authorized by law." Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.

The attorney general performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal opinions. AS 44.23.020(b)(4). The attorney general is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090. Short of court action, the attorney general may advise against an agency course of action which he believes is against the public interest. See Mobil Oil Corp. v. Kelley, 353 F. Supp. 582, 586 (S.D. Ala. 1973), aff'd 493 F.2d 784 (5th Cir. 1974). Indeed, the attorney general is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators. D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974)(In Bank); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865 (Ky. 1974). The first allegiance of the attorney general is to the public interest. Id.

In this opinion, we advise on various courses of action. This advice is based upon our best reading of the case law

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and our conviction that, were the specific situations presented to a court in a lawsuit, particular outcomes would follow. This is not a certain prospect: as will be made clearer below, we are, with few exceptions, dealing not with specific statutes but with the common law, a general and changing body of principles developed and applied by courts over the centuries. Our conclusions are based upon what we believe a court would do given those general principles, prevailing public policy, the public interest, and the continuing silence of the legislature in this area generally. Thus, this memorandum is a prescription for agency action in the face of conflicts of interests not addressed by statute, and a guide for legislative action should the agency or court resolution be unsatisfactory to the legislature.

State agencies, officers, and employees should heed advice in this memorandum until ordered to do otherwise by a court. See Gray v. Main, 309 F. Supp. 207, 220 (M.D. Ala. 1968); State v. District Court of Mayes County, 440 P.2d 700, 707 (Okla. 1968).

III. STATUTES AND COMMON LAW PRINCIPLES

There are more than a dozen provisions dealing with conflict of interests scattered through the Alaska Statutes. Only AS 39.50 applies to state officers generally. One of that chapter's purposes is "to discourage public officials from acting

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upon a private or business interest in the performance of a public duty," AS 39.50.010(a)(1), and it declares that "public office is a public trust which should be free from the danger of conflict of interest." AS 39.50.010(b)(1). Its main feature is its disclosure requirements. E.g., AS 39.50.020. The chapter's only prohibitions are contained in AS 39.50.090, subsection (a) of which provides:

No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

Violation of this subsection is a crime. AS 39.50.090(d).

Other Alaska conflict statutes incorporate AS 39.50 by reference, 1/ or impose other limitations. 2/ The other limitations range from a simple prohibition on the employment of close relatives, AS 14.14.140, to a duty to divest oneself of the conflicting interest or suffer forfeiture of one's office. AS 42.-07.061.

The statutes mentioned above speak only to a relative handful of government agencies, boards, corporations, and commissions. 3/ In some cases, the statutes prescribe rules of conduct

1/ AS 24.55.310; AS 46.12.090.

2/ AS 08.88.391; AS 14.14.140; AS 18.55.080; 18.55.500; AS 21.-06.040; AS 24.20.291; AS 27.05.020; AS 37.12.065(b); AS 38.06.-035; AS 42.07.061; AS 44.07.330; and AS 44.88.180.

3/ See nn.1, 2, supra.

for officers of state agencies, but offer no guidance for employees. 4/ There remain hundreds of conflict situations to which no Alaska conflict legislation 5/ pertains except as AS 39.50. 6/

It is well-settled in the federal courts, particularly with regard to criminal sanctions for bribery and fraud, that the existence of criminal statutes (such as AS 39.50.090) does not extinguish the common law rights and remedies which would ordinarily exist. United States v. Kearns, 595 F.2d 729, 732-733 (D.C. Cir 1978); Continental Management, Inc. v. United States, 527 F.2d 613, 620 (Ct. Cl. 1975), and cases cited therein. We believe that the same rule would apply in Alaska: AS 39.50 will not be held to repeal, amend, or preempt the common law of conflict of interests which will apply "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew, 629 P.2d

4/ Compare AS 21.06.040, AS 27.05.020, and AS 44.07.330 with AS 44.88.180, AS 46.12.090, and AS 48.55.500.

5/ Personnel Rules 13 12.0 and 13 16.0 apply to most executive branch personnel and prohibit conflicts of interests in terms which essentially incorporate the standards of the common law.

6/ AS 39.50 governs the conduct of very few persons. AS 39.50.-200(a)(1) limits the chapter's scope by excluding officers or employees below the director level from the coverage of the provision. There remain outside the coverage of the Act deputy directors in the executive branch, assistant attorneys general, appointive officers of the legislative branch (including legislative assistants), non-judicial officers of the court system, and all subordinate employees of these agencies. Thus, fully 90 percent of state officers and employees are beyond the reach of the criminal sanctions in AS 39.50.090(a).

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969, 973 (Alaska 1981). Thus, a person may act illegally without violating the criminal law, and serious non-penal consequences may follow.

Neither is it possible to formulate a rule of administrative decision for a given situation by analogy, based upon legislative pronouncements with respect to other agencies, for no consistent policy is apparent from an examination of the various statutes. One statute lays down no other rule than that school boards may not hire close relatives of the board members, AS 14.-14.140, and even that rule may be waived by the commissioner of education. Id. Thus, on local school boards, were it not for the common law rule and AS 39.50.090(a), a board member could let a contract to himself. ^{7/} In another agency, the law provides that a board member may not vote on a contract with his own firm or one in which he holds a "direct" ownership interest, but he need not divest himself of the interest. AS 44.88.180. In still other agencies, such interests are prohibited and the officer must dispose of the interest or forfeit the office. AS 42.07.-061. See AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 38.06.025. From this range of solutions, no overriding general policy prescription is apparent for the guidance of public officers and employees.

^{7/} A stricter rule applies to regional school boards. AS 14.-08.131.

* * * *

Most conflict of interests situations in Alaska are covered not by statute but by the common law. Judge Wickersham described the common law in In Re Burkell, 2 Alaska 108 (D. Alaska 1903):

The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the Legislature (1 Kent's Com. 533); a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country (Pierce v. Props. Swan Point Cemetery, 10 R.I. 227, 14 Am. Rep. 667).

Id. at 117. See Howard v. Pfeifer, 443 P.2d 39, 44 (Alaska 1968). In Alaska, the common law controls judicial decision-making "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew. See AS 01.10.010.

The common law of conflict of interests is clearest in the case of a contract made by a public officer who will, as a private person, benefit from the contract. The most comprehensive discussion of the typical situation, the controlling rule, and the underlying public policy is found in Beebe v. Supervisors of Sullivan County, 19 N.Y.S. 629 (App. Div. 1892), aff'd 37 N.E. 566 (N.Y. 1894):

At the time of his employment [by the board of supervisors as the board's attorney in several

collection matters], the defendant Anderson was a member of the board of supervisors. They were the agents of the county of Sullivan, and as such had no right to enter into contracts for their own benefit with their principal, the county of Sullivan. They are trustees, and have no right to enter into contracts with each other at the expense of those for whom they are acting, and whose interests they are bound to guard and protect. The illegality of such contracts does not depend upon statutory enactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with the municipality of which they are officers; and this principle applies with particular force to members of a board like the board of supervisors, which not only makes the contract, but subsequently audits the bill.

But it is said that in the case before us the supervisor who was employed did not vote on the question of his own employment, or upon the audit of his bill. That does not cure the evil. The influence upon fellow members is the same. His constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act. He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests. He is a part of the board of supervisors. Its act is his act; and he cannot, as a supervisor, make a contract with himself as a private citizen.

Id. at 630 (citations omitted).

IV. THE PROCESS OF COMMON LAW ADJUDICATION

In the absence of legislation, it is the task of the courts, with the assistance of the attorney general, other mem-

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bers of the bar, litigants, and amici curiae, to apply common law principles and policies articulated by the Beebe court and hundreds of other courts and commentators before and since. The task is a difficult one because, with the exception of the self-dealing public officer situation just described, the law is not settled; the courts must reason from the 'tuations already addressed by the courts to solutions for new questions presented.

For this undertaking the common law is well-suited, as Chief Justice Lemuel Shaw noted in his classic description of the process:

It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adopted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles founded on reason, natural justice, and enlightened public policy modified and adapted to the circumstances of all the particular cases which fall within it.

....

Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances.

Norway Plains Co. v. Boston & Main Railroad, 1 Gray (67 Mass.)

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263 (1854), reprinted in Hart and Sacks, The Legal Process: Basic Problems In The Making And Application Of Law (1958) 386-395. 8/

It is our task to begin with the legislative solutions to determine if any statute answers any of the conflict questions posed. Failing that, we must turn to the common law and, beginning with the first principles, reason to the conclusion the courts would likely reach given the facts, judicial precedent in analogous cases, and prevailing public policy.

V. LEGISLATOR CONFLICTS

Two questions are presented concerning potential legislator conflicts: First, may a legislator, or his or her firm or business, contract with the state to provide the state with goods or services? Second, may a legislator receive a state loan?

The first question does not concern classic self-dealing, the letting of contracts by an official to himself or his relatives, associates or company. It is a different problem described in the following terms:

There is a great possibility that an official who has no immediate administrative connection with

8/ Thus, even if there is no statute and not one case addressing the situation before a court, that court may, by the process of common law adjudication, formulate a wholly new answer to settle the dispute which gave rise to the lawsuit. See Howard v. Pfeifer, 443 P.2d at 44.

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the contract may be sufficiently motivated by his personal interest to exert whatever influence his position allows to pressure the public official who in fact has a direct responsibility concerning the contract to favor that personal interest. In this way, an official without a personal interest in the contract acquires a conflicting interest in the sense that he must choose between appeasing the pressuring official and properly discharging his duties in the matter.

Experience indicates the harm that may flow from [this situation]. Contracts may be awarded that are over-priced or unnecessary, or the performance rendered under the contract may be inferior, all because of official favoritism, compromise or intentional oversight. Even if the abuse is nothing more than partiality in awarding a contract, it may import an aspect of unfairness into public administration, engendering popular disrespect for government.

Note, Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation, 107 U. Pa. L. Rev. 985, 987-988 (1959). See Eisenberg, Conflict of Interest Situations And Remedies, 13 Rutgers L. Rev. 666, 686 (1959).

There are no cases which squarely hold, as a matter of common law, that a legislator, having no formal, institutional connection with the letting or oversight of a contract, can or cannot contract with the state. The archetypical situation arises in the municipal context where principles of separation of powers do not apply and assemblymen or councilmen act administratively as well as legislatively. Thus, an assemblyman might, in a private contractor capacity, offer goods or services to the city, which goods or services are accepted, inspected, super-

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vised, and compensated by the assembly on which the contractor sits. It is the virtually universal rule at common law that such a transaction is illegal, even if the assemblyman-contractor abstains and takes no part in the review and compensation of the performance. E.g., Beebe v. Supervisors of Sullivan County, quoted supra. While some commentators have declared that the common law rule has been extended to bar such transactions if any public officer or employee, regardless of their official connection with the transaction, is the private contractor, 9/ a close analysis of the cases decided to date and due regard for the difference between holding and dicta belie the claim. 10/

Many states have statutes or constitutional provisions which prohibit legislators or other public officers from contracting with the state. A number of cases have declared that such provisions are declaratory of the common law, i.e., even if there were no statute, the same rule would apply by force of the common law. One case is Schultze v. City of New York, 136 N.Y.S.

9/ E.g., Note, Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034, 1039 (1961).

10/ Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Col. L. Rev. 157, 158-174 (1958). We were guilty of uncritically accepting the conclusion of the Virginia Law Review note writer in our formal opinion of August 8, 1979; fortunately, it made no difference in the result in that opinion since the individual in question was an officer with authority to vote on the award of contracts and review the contractor's performance.

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715 (App. Div. 1912), aff'd 106 N.E. 1042 (N.Y. 1914). Schultze was a duly appointed coroner's physician whose duty it was to perform autopsies and give evidence at coroners' inquests. He was called upon to assist the district attorney in a homicide case involving a decedent whom Schultze had not examined; he acted as an expert consultant. He submitted a bill which was disapproved under a charter provision which forbade officers to become interested, directly or indirectly, in performance of any contract or work to be paid for from the city treasury; a violation was a misdemeanor, the violator forfeited his office, and the contract was voidable. The court held that the city was not required to pay the bill, and observed that "[t]hese prohibitions are merely declaratory of the common law." Id. at 718. Accord, Marjohn Realty Co. v. City of Long Beach, 204 N.Y.S. 53, 55 (Sup. Ct. 1924), aff'd 206 N.Y.S. 933 (App. Div. 1924).

The case of Norbeck & Nicholson Co. v. State, 142 N.W. 847 (S.D. 1913), involved a legislator who contracted with the state to drill a well. The contract was voided on the basis of a constitutional provision which prohibited legislators to be directly or indirectly interested in any state contract. However, there followed extremely broad dicta:

A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the

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state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.

Id. at 849.

On the other hand, at least two courts have described statutory prohibitions of such contracts as new legislative rules foreign to the common law. In re Opinion of Justices, 82 A. 90, 93 (Me. 1911); Lindberg v. Benson, 70 N.W.2d 42, 45 (N.D. 1955). However, the Lindberg court went on to state in forceful terms the very public policy considerations which militate in favor of a common law rule in the absence of legislative action:

The purpose of the enactment was to extend the ancient common-law rule that no state officer may be interested in any contract which he has a voice in letting (which rule is expressed in many statutes of this state) by providing a more comprehensive legislative rule, founded in public policy, which would take away from legislators as a class any personal incentive to increase their opportunities to make profitable contracts by their votes in the legislature or to use their influence as legislators in securing contracts or the approval of the work done under them. The members of the Legislative Assembly exercise a high degree of control over the fiscal affairs of the State and its subdivisions. They regulate assessments and tax levy limits. They authorize bond issues and, for the State, they make all appropriations. By enacting this initiated measure the people have attempted to remove from the legislators temptation to venality in the exercise of their legislative functions. Many states have constitutional or legislative provisions which are similar in

nature and which have remained in force unchal-
lenged for many years.

Id. at 45-46.

In two recent cases, courts have held that legislator attorneys may not represent persons in litigation against their city or state. In Georgia Department of Human Resources v. Sistrunk, 291 S.E.2d 524 (Ga. 1982), the Sistrunks were represented by Hill, a state legislator. The department invoked fiduciary principles and a Georgia constitutional provision which declared that "[p]ublic officers are the trustees and servants of the people, and at all times are amenable to them." The court expressly noted that this was not analogous to the classic self-dealing situation, since Hill was not representing both the Sistrunks and the state. Id. at 526.

The Sistrunk court framed the issued in the following terms:

All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.

....

May one trustee of the people, as attorney and for his own financial gain, negotiate on behalf of another for a favorable official dispensation at the hands of another trustee of the people?

Specifically concerning legislators, may one

trustee of the people -- in whose office are vested the powers of enhancement, diminution, and destruction of the office of another trustee of the people -- as attorney and for his own financial gain act in a manner to hinder or frustrate the discharge by such other trustee of the duties of their common trust?

No.

Id. at 528.

It bears noting that the court in Sistrunk based its decision on a Georgia constitutional provision and not on the common law. However, that provision is so general in its terms and was analyzed with such close attention to common law trust principles that the Sistrunk holding has significance independent of the constitutional language. A similar provision appears in Alaska law. 11/

In a California case, People v. Municipal Court of San Diego Judicial District, 138 Cal. Rptr. 235, 238 (Cal. App. 1977), the court barred a city councilman-attorney from representing a defendant being prosecuted by the city. The decision appears to rest primarily on the ethical standards of, and trust reposed in, members of the bar, rather than on any statutory or constitutional provision. 12/

11/ Compare the Georgia constitutional provision quoted in the text with AS 39.50.010(b)(1), which provides "public office is a public trust which should be free from the danger of conflict of interest."

12/ However, the court did, in passing, compare the councilman's

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A legislator contract also raises novel and troubling questions of separation of powers. The federal courts have, in perhaps a dozen cases, condemned the practice of interference by individual legislators or committees in executive branch decision-making. The leading case is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a decision of the FTC in its quasi-judicial capacity was invalidated because of intense Congressional committee pressure while the decision was pending.

Much less pressure was required to invalidate the decision at issue in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied 439 U.S. 1052 (1978). The court ruled that a letter sent by Congressman Dingell to the Secretary of the Interior, in effect urging him to deny several applications for "native village" status, compromised the Secretary's impartiality in a quasi-judicial proceeding; the court ordered reconsideration of the applications by the new Secretary. In other cases, however, explicit and extreme threats were said to be required before invalidation would occur. E.g., D.C. Federation v. Volpe, 459 F.2d 1231 (D.C. Cir. 1972)(threat of loss of appropriation for unrelated project); Texas Medical Association v. Mathews, 408 F.

12/ cont. . . .
representation to conduct by "[a] local agency officer or employee" which is statutorily proscribed as "incompatible." Id. at 238.

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Supp. 303 (W.D. Tex. 1976)(threat of loss of job).

Here, as in the federal legislator influence cases, the legislators would be placing themselves in a non-legislative, i.e., administrative or quasi-judicial, arena. But the kind of legislator pressure which caused the court in Pillsbury to invalidate the FTC decision is not involved here. Still, the federal legislator interference cases lead us to conclude that a court would not require a showing of direct threats where a legislator acted on behalf of himself rather than on behalf of a constituent.

The remarks of the Alaska Supreme Court in two opinions bear on this inquiry. Both cases, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), and Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976), involved legislators who held or wished to hold an office of state government outside the legislative branch.

In Begich, the court observed generally:

Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government.

441 P.2d at 35.

In Warwick, the court considered Alaska Constitution, article II, section 5, which forbids a person to accept a government post which was created, or the salary for which was increased, while that person served in the legislature. The court observed:

There is little disagreement as to the purpose of the type of constitutional provision under consideration here. Although the exact language varies from state to state, all such provisions are aimed at a common goal: to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. In one often-cited quotation, Justice Story, commenting upon a like provision in the Constitution of the United States, said:

The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness.

This type of constitutional provision is designed not only to stop overt trafficking in offices, but also to prevent less obvious influences on a legislator's actions:

[T]his constitutional provision was enacted through fear that a legislator might be, either consciously or unconsciously, influenced by selfish motives when voting for or against a bill.

Another purpose has been said to be the elimination of even the suspicion that legislators were acting with improper motives. As in the case of the judiciary, it is important that the legislature not only avoid impropriety, but also the appearance of impropriety.

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548 P.2d at 387-388 (emphasis added by the court, footnotes omitted).

Both the Alaska Constitution and AS 39.50 were adopted by popular vote. From these electoral expressions it is clear that Alaskans view as morally opprobrious public officials who use public office for private gain. Indeed, even the appearance of impropriety is a circumstance to be avoided. Warwick at 388, quoted supra; Falcon v. A.P.O.C., 570 P.2d 469, 477 (Alaska 1977). See AS 39.50.010(b)(1) ("public office is a public trust which should be free from the danger of conflict of interest").

The size of the legislature and the executive branch is also an important consideration. There are only 60 legislators, all of whom are likely well-known to the relatively few departmental commissioners, deputy commissioners and directors. Most of these persons work together in close proximity in Juneau for five months of the year.

Our legislators have a keen interest in the budget process. Those legislators who sit on the finance committees are usually familiar with the thousands of pages of budget documents in the minutest detail and make allocations in multi-billion dollar budgets in increments of thousands of dollars. Any legislator, and especially a member of the finance committees or the free conference committee on the budget, can have an enormous impact on the budget of a state agency. Recent legislative ses-

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sions have seen both the creation and destruction of agencies at the behest of single or a few legislators who took the initiative to bless or gut the agencies. In recent years, the legislature has also taken to designating its own non-governmental agents to carry out state programs. E.g., p. 25, § 51, ch. 120, SLA 1980.

Alaska is a very small state, with a small pool of talented people from which to draw its leaders. Many of the most talented have extensive commercial enterprises which may do business with the state. Unreasonable barriers should not be placed before these most promising aspirants to public service. Yet, with the legislature tending toward a half-time profession, and with the great potential for conflicts of interests with multi-billion dollar budgets and pervasive government involvement in private commerce, the courts might well be convinced that the only solution in the public interest is a common law prohibition. This would be all the more compelling in the absence of evidence that aspirants to public service are being dissuaded by a common law rule prohibiting legislator contracts, and in the absence of legislative action in this area. Indeed, such a common law prohibition might be a telling experiment for the information of the courts and the legislature.

As we have already noted, there is no case authority directly on point pro or con, but the foundation is there, in Beebe and its progeny, in Begich, in Warwick, and in AS 39.50,

upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

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ceive loans from the state. The only case which offers even brief analysis of the public policy considerations which would underlie an exception to the common law rule is State v. Yoakum, 306 S.W.2d 39 (Tenn. App. 1957). In explaining why a loan to a school board of which the president of the lender bank was a member did not violate a statutory prohibition of a direct or indirect interest in a public contract, the court impliedly undercut any common law prohibition:

A loan of money, however, is unlike a contract for goods or services involved in all our reported decisions. Because they involve questions of value, contracts relating to goods and services provide opportunity for imposition upon the public. In the loan of money the law fixes the maximum rate of interest and no question of value is involved. Only a rate of interest below the maximum fixed by law can be the subject of negotiation. In the loan here involved it is not insisted that such a short term loan could have been made elsewhere at a lower rate of interest and, as we have seen, the loan actually resulted in a loss to the Bank. To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority.

Id. at 40.

While the analysis is terse, Yoakum provides a basis for distinguishing the loan situation from other contracts between the state and legislators. However, we can say this with confidence only in the cases of loans for tuition or personal residences, where loan ceilings are relatively low, eligibility

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standards are fixed, and the range of administrator discretion subject to influence and abuse is small. 17/ Commercial loan programs, where ceilings are much higher and where evaluation of credit-worthiness is more subjective, may yet present conflicts of interests where the loans are made to legislators.

However, there is potential for influence or abuse in any loan program, especially when foreclosure or other enforcement actions must be considered. Thus, whether the loan is educational, residential, or commercial, a conflict of interests may arise, and state legislators (and some state officers and employees) and their agents, must act with the greatest circumspection and propriety in dealing with the agency concerning the loan or any other matter. The agency, in order to maintain public confidence in the fairness of its program, should brook not even a hint of interference and should report questionable communications to the attorney general.

* * * *

We view the third question, concerning the propriety of a legislator voting on a bill which will financially advantage the legislator, in a different light. It is clear in the case law that, when a legislator acts in a legislative capacity, that

17/ Even a competitive bidding procedure is subject to greater influence and abuse where the contracting officer has discretion in evaluating the responsibility of the bidders. AS 39.05.230. See AS 36.98.040 -- 36.98.050.

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action can be challenged only when the legislator's conduct is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power." Rollins v. Carter, 69 A. 777 (N.H. 1908); Pyatt v. Mayor of Dunellen, 89 A.2d 1, 3 (N.J. 1952); MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522. However, when a legislator acts outside the legislative sphere, with respect to a particular transaction or adjudication in which the legislator is interested, a challenge may be sustained if there is found a "private interest at variance with the impartial performance of ... public duty." Pyatt; Rollins. See Burton v. United States, 202 U.S. 344, 366-367 (1906); Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952, 964 (5th Cir. 1966); Note, Conflicts of Interest of State Legislators, 76 Harv. L. Rev. 1209, 1214, n.38 (1963)("[I]mproper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator.").

Therefore, where a legislator votes on a bill which will financially benefit the legislator as a member of the public generally, e.g., personal income tax repeal, or where a legislator votes on a bill which will financially benefit the legislator as a member of a numerous though limited class of Alaskans, e.g., bank deregulation or corporate income tax repeal which will benefit shareholders, the legislator's vote may not be challenged. See the memorandum opinion from Kenneth E. Vassar to Wilson L.

Condon dated April 1, 1982.

Where, however, the class of beneficiaries of the legislation is tiny, especially where the bill relates to a project for which the legislator is a private contractor or affiliated with a private contractor, the legislator must disclose the conflict of interests and the legislative body should bar the legislator from voting. See MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522 (1979).

VI. OFFICER CONFLICTS

Four potential conflicts of interests by executive branch officers have been presented for our review. We will treat them in turn.

It is first asked whether a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute has a conflict if he or she is an officer, employee, or large stockholder of a company or firm which has contracts with the state to provide goods or services. If there is a conflict, what remedial steps need be taken?

The question is answered by the Beebe case, quoted supra, and the accompanying discussion: a conflict clearly does exist if the person with the potential conflict is associated with both parties to the contract, i.e., the state agency procuring the goods or services and the private contractor providing

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them. 18/ If, however, the person with the potential conflict works for a state agency with no contracts with the private contractor with which the person is associated, there would be no conflict. 19/

The Beebe case makes it clear that public service demands total fidelity to the public interest at all times. A public servant, faced with a conflict of interests by reason of private financial associations may not pass official decision-making responsibility on to a colleague or subordinate who may share the same prejudice or be subject to influence. "He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests." Id. at 630. Faced with a conflict, the person must either resign his or her position, or forego the private opportunity to do business with the state.

18/ If the person is only an employee, there may not be a conflict. Those situations must be addressed on a case-by-case basis.

19/ We must qualify this last mentioned conclusion by noting that a conflict might arise even if the person was not an official in the contracting state agency if the person nevertheless has extensive contacts with the contracting state agency. For example, certain officers of the Department of Law and the Office of the Governor, though not within the Department of Administration, may have extensive contacts with, and considerable influence in, the Department of Administration. A person with similar "interdepartmental" duties might be in a conflict situation if he or she entered into an agreement as a private contractor with the other department.

* * * *

It is next asked whether an officer of the Division of Minerals and Energy Management (DMEM) may hold a mining claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction. AS 27.05.020 provides:

In conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070, no officer or employee of the department may have any personal or private interest in a mine or the products of a mine under investigation, or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer or other expert whose principal professional practice is outside his employment by the department.

The syntax of AS 27.05.020 is not an aid to understanding. A thoughtful reading of the provision reveals that it is not any officer or employee of the department who is prohibited from holding an interest in a mine under investigation; only officers and employees "conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070" are so restricted. We are informed by the director of DMEM that that division conducts virtually none of the "investigations" in question; those matters are within the jurisdiction of the Division of Geological and Geophysical Surveys. However, there is still the common law.

DMEM is the state agency which regulates the acquisition of mining claims and leases on lands under state jurisdiction, see AS 38.05.185 -- 38.05.280; 11 AAC 86, and issues mis-

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cellaneous land use permits. See 11 AAC 96. DMEM also has a representative on the regional planning teams which make recommendations to the commissioner on state land use classifications. See AS 38.04.065; 11 AAC 55.

As the regulatory agency for mining claims, DMEM receives the filings of persons who stake mineral claims. See AS 38.05.195. It must review the filings to verify that there has been a discovery, see 11 AAC 86.105, and that the claim has been properly staked. See 11 AAC 86.205 -- 11 AAC 86.215. On an annual basis, DMEM receives additional filings from each claim owner attesting to the performance of statutorily-required annual labor on the claim, see AS 38.05.210; 11 AAC 86.220, and must verify that the claimed labor meets prescribed requirements. Id. A major component of the DMEM mining section's effort and budget is devoted to this "adjudication" of mineral claims.

In this light, we believe that an ownership interest in mineral claims (or in a company which owns mineral claims) on lands under state jurisdiction creates a common law conflict of interests on the part of officers and employees of DMEM. Given the size of the mining section of DMEM (25 persons) and the likely close working association of all the officers and employees, it is probable that a court, as a matter of common law, would forbid any person in DMEM to own a mineral claim on lands under state jurisdiction since the opportunity for influence is so evi-

dent. It is even clearer that a court would forbid a supervisory officer to own such a mineral claim since it would be that person's subordinate who would review the sufficiency of the claim and the annual labor affidavit. 20/ And, as we noted, supra, at page 31, the conflict is not cured by removing oneself from the review of one's own filings: the public has the right to demand that a state officer bring his or her skills to bear in all matters which the office calls upon him or her to consider.

DMEM is one of only three agencies principally responsible for overseeing mineral exploration and mining activities on lands under state jurisdiction. DMEM personnel cannot be both regulators and regulated. If they wish to serve in DMEM, they must forego this relatively narrow range of investment opportunities. The common law requires officers and employees in DMEM who have interests in mining claims to dispose of those interests with all deliberate speed, or resign. 21/

20/ DMEM officers and employees also have access to confidential geological, geochemical, geophysical, and airborne surveys. See AS 38.05.240. Were they permitted to own mineral claims, they might have a distinct advantage over other prospectors, miners, and investors. This is another aspect of the conflict of interests inherent in the situation.

21/ The Department of Law has had the full cooperation of DMEM officers and employees in this inquiry; indeed, it was a DMEM officer with an interest in mineral claims who first asked our advice on this matter. At that time, we informally advised him that there was no conflict, and he ordered his affairs accordingly. Thus, it was our erroneous advice, and no wrongdoing by the DMEM officer, that allowed the conflict situation to develop.

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* * * *

It is next inquired whether a Department of Environmental Conservation (DEC) inspector of seafood processing plants may sell the right to use a process he developed and patented to companies whose plants he inspects. The answer is clearly no.

The evil of such an arrangement is patent: seafood processors might feel compelled to purchase the right to use the process or suffer the wrath of the seller when next he inspects their plants.

We hasten to add that there is not the slightest suggestion that the particular inspector involved has ever acted improperly; it is the appearance of impropriety which condemns these proposed transactions. If the inspector wishes to market his process, he must resign or sell his rights in the process to another who may market it. 22/

The same inspector also wishes to apply to the Department of Commerce and Economic Development (DCED) for a grant to test his process. Because the grant project would likely involve one or more seafood processors in a cooperative effort to test the process, a conflict of interests on the inspector's part

22/ If the inspector chooses the latter course, he may not reserve any right to receive royalties or license fees; were he to do so, the spectre of influence would again appear since, though he is not personally marketing the process, each seafood processor that used the process would be paying the inspector indirectly.

would almost certainly arise. In that case, the grant would be illegal. See Newton v. Demas, 258 A.2d 376 (N.J. App. 1969)(municipal engineer had an outside contract with a developer to design a water system; the contract was void because the engineer would have had to review his own design in his official capacity).

* * * * *

It is last asked whether a member of the board of the Alaska Resources Corporation (ARC) has a conflict of interests if he or she is associated with a company that has a contract with the state. AS 37.12.065 provides:

(a) Members of the board are subject to the provisions of AS 39.50.

(b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

Subsection (b) modifies the common law as it would apply to ARC. Under the common law, the member could neither acquire a new interest nor keep an old interest in a company doing business with ARC, and this disability could not be cured by abstaining on votes and taking no part in deliberations. Under AS 37.12.065, acquisition is forbidden, but interests owned upon appointment may be retained, so long as the member abstains from

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voting and has no contact, formal or informal, with other members concerning ARC's policies or actions toward the firm in which the member has an interest. This departure from the common law applies only to members and employees of ARC. 23/

VII. CONCLUSION

The common law of conflict of interests is uncharted water for most public officials, including government attorneys. They err when they believe that a public official's conflict can be cured if the official takes no part in the decision in which he or she is interested. They err when they believe that a court will not invalidate a contract if, though a party to the contract has a conflict, it is still a fair price.

The courts take the view that officials have a duty to the public to participate in all the decisions they were elected or appointed to make. The courts ordinarily will not allow an

23/ It was also inquired whether an ARC board member may also be a member of the Alaska Historical Commission. AS 44.27.061, et seq. In view of the clear prohibition on holding "any other state or federal office, position, or employment . . .," AS 37.12.045(b), we believe the board member must resign from either ARC or the Alaska Historical Commission. This prohibition goes further than the common law; indeed, as applied in this situation, it appears to advance no laudable goal. But it is within the legislature's power, and it does prevent the appearance of conflict of interests in many other situations. If a more refined provision is to be substituted, one which is better able to discriminate between real and imagined potential for abuse, the legislature alone has the power to do it.

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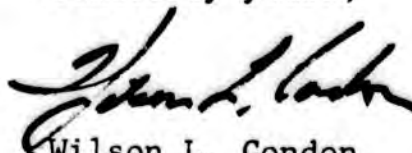
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official to decline to make a decision in order that he or she might be free to have the benefit of that decision.

The courts will not allow an official to make a contract with his agency and, when challenged, assert as a defense that the contract was more advantageous to the state than any other offer received.

The common law of conflict of interests aims not only to prevent officials from actually taking unfair advantage of their office. It also aims to eliminate the potential for abuse and the appearance to the public that officials are subject to temptation. For these reasons, the courts have dealt sternly with officials in conflict situations, and they will continue to do so. Unless the legislature formulates another means to sustain the public's confidence that public officials are not benefiting in private from their positions in public, we, and all public officials, must abide by the common law.

Sincerely yours,



Wilson L. Condon
Attorney General

WLC/pjg

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 3, 1982

Hon. Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: Conflict of interests
Our files: 366-255-83, 366-286-83,
A66-393-81, J66-457-81

Dear Governor Hammond:

I. INTRODUCTION

Seven situations have been brought to our attention which require analysis of the law of conflict of interests. We address this opinion to you because of the statewide importance of these questions and because of the profound implications of our remarks for all officers and employees of state government.

At the outset we must emphasize our key theme. The fact that there may be no conflict of interests statute that makes a particular course of conduct criminal or otherwise improper does not mean that it is legal. A transaction may not violate Alaska's criminal conflict of interests law, AS 39.50.-090; it may not even violate any one of a dozen civil statutes which prohibit conflicts of interests in specific agencies; yet it may still be illegal. By this opinion, we hope to make state officers and employees aware of an ethical code which is not in

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the Alaska Statutes but which is in force in Alaska: the common law. Unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interests, as declared by the courts, prescribes the standards of conduct which must be followed by all state officers and employees.

The common law provides, generally, that public officers and employees are trustees of the people, and as such they are forbidden to have outside interests which conflict with that trust; they not only may not, as public officers, make decisions to benefit their own private businesses (or influence other public officers to do so), but they must avoid even the appearance that they have engaged in self-dealing or attempts to influence official decision-making for their private advantage. Where there is the fact or appearance of impropriety, the courts will declare the contract, transaction, or decision void unless a statute permits the action in question, and this result cannot be avoided by the expedient of letting a "disinterested" colleague or subordinate make the decision.

The questions which prompted this opinion are related below. Our analysis follows thereafter.

First, may a legislator, or his or her company, contract with the state to provide the state with goods or services? The answer is no.

Second, may a legislator, state officer, or state em-

ployee receive a loan from the state? The answer with respect to educational and residential loans is a qualified yes. Because educational and residential loan programs have relatively rigid requirements and loan ceilings, there is much less opportunity for improper influence; thus, state legislators, officers, and employees may receive such loans. However, it would be incumbent upon the applicant/lendee to insure that no one takes any step which might be viewed as an attempt to influence the administrators of the program in their evaluation of the applicant/lendee's application and their administration of the loan. Commercial loans are much more questionable transactions which we will discuss below.

Third, may a legislator vote on a bill which will inure to the financial benefit of the legislator? The answer is yes, unless the legislator's interest is peculiarly personal, such as when the bill benefits only a tiny class of which the legislator is a member, or when the bill concerns a project on which the legislator, or the legislator's company, is a contractor.

Fourth, may a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute hold that position if he or she is also an officer, manager, or large stockholder of a private company which has entered into contracts to provide the state with goods or services? If the director's company has a contract with an agency of state

government different from the agency in which the director serves, and if the likelihood that the two agencies will interact on other than routine, ministerial matters is small, there would be no conflict. If, however, the director's company has contracts with the agency in which the director serves, the director must divest himself of his private holdings or resign his directorship; otherwise, any contracts his company executes with that agency would be void.

Fifth, may an officer of the Division of Minerals and Energy Management of the Department of Natural Resources (DMEM) own a mineral claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction? Ownership of such interests is not prohibited under AS 27.05.010 unless DMEM is engaged in an "investigation" described in AS 27.05.010 -- 27.05.070. However, the common law does prohibit the ownership of such interests: A conflict of interests would exist because the officer (or the officer's subordinates) would be required to review and approve the officer's filings with DMEM concerning the officer's mining interests. In addition, the officer would have a substantial voice in the department's land use classifications, which could inure very much to the officer's benefit were he an actual or potential investor in mineral claims on land subject to state regulation.

Sixth, may an inspector in a state regulatory agency

sell the right to use a process the inspector developed and patented to companies whose plants he inspects? The answer is no. Neither may that inspector obtain a state grant to test the process in plants which he inspects.

Seventh, may a person with an interest in a business that has a contract with the state be a member of the board of the Alaska Resources Corporation (ARC)? The answer is a qualified yes. A member is forbidden to acquire any conflicting interest after joining the board. AS 37.12.065(b). Concerning interests which a member holds and held before joining the board, there are two answers: First, if the contract is with an agency other than ARC, and if that other agency has only routine, ministerial contacts with ARC, there is no conflict. Second, if the contract is with ARC, the board member must abstain from voting and take no formal or informal part in discussions of ARC's policies or actions toward the business in which the member has an interest. Id.

II. THE ROLE OF THE ATTORNEY GENERAL

The attorney general is the chief legal officer of the state and "the legal advisor of the governor and other state officers." AS 44.23.020(a). As such, he is duty bound to assist the governor in "the faithful execution of the laws." Alaska Const., art. III, § 16. These laws include the common law of

conflict of interest, see AS 01.10.010; the constitutional requirements that "[no] appropriation of public money [be] made ... except for a public purpose," and that "[n]o obligation for the payment of money shall be incurred except as authorized by law." Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.

The attorney general performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal opinions. AS 44.23.020(b)(4). The attorney general is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090. Short of court action, the attorney general may advise against an agency course of action which he believes is against the public interest. See Mobil Oil Corp. v. Kelley, 353 F. Supp. 582, 586 (S.D. Ala. 1973), aff'd 493 F.2d 784 (5th Cir. 1974). Indeed, the attorney general is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators. D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974)(In Bank); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865 (Ky. 1974). The first allegiance of the attorney general is to the public interest. Id.

In this opinion, we advise on various courses of action. This advice is based upon our best reading of the case law

and our conviction that, were the specific situations presented to a court in a lawsuit, particular outcomes could follow. This is not a certain prospect: as will be made clearer below, we are, with few exceptions, dealing not with specific statutes but with the common law, a general and changing body of principles developed and applied by courts over the centuries. Our conclusions are based upon what we believe a court would do given those general principles, prevailing public policy, the public interest, and the continuing silence of the legislature in this area generally. Thus, this memorandum is a prescription for agency action in the face of conflicts of interests not addressed by statute, and a guide for legislative action should the agency or court resolution be unsatisfactory to the legislature.

State agencies, officers, and employees should heed advice in this memorandum until ordered to do otherwise by a court. See Gray v. Main, 309 F. Supp. 207, 220 (M.D. Ala. 1968); State v. District Court of Mayes County, 440 P.2d 700, 707 (Okla. 1968).

III. STATUTES AND COMMON LAW PRINCIPLES

There are more than a dozen provisions dealing with conflict of interests scattered through the Alaska Statutes. Only AS 39.50 applies to state officers generally. One of that chapter's purposes is "to discourage public officials from acting

upon a private or business interest in the performance of a public duty," AS 39.50.010(a)(1), and it declares that "public office is a public trust which should be free from the danger of conflict of interest." AS 39.50.010(b)(1). Its main feature is its disclosure requirements. E.g., AS 39.50.020. The chapter's only prohibitions are contained in AS 39.50.090, subsection (a) of which provides:

No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

Violation of this subsection is a crime. AS 39.50.090(d).

Other Alaska conflict statutes incorporate AS 39.50 by reference, 1/ or impose other limitations. 2/ The other limitations range from a simple prohibition on the employment of close relatives, AS 14.14.140, to a duty to divest oneself of the conflicting interest or suffer forfeiture of one's office. AS 42.07.061.

The statutes mentioned above speak only to a relative handful of government agencies, boards, corporations, and commissions. 3/ In some cases, the statutes prescribe rules of conduct

1/ AS 24.55.310; AS 46.12.090.

2/ AS 08.88.391; AS 14.14.140; AS 18.55.080; 18.55.500; AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 37.12.065(b); AS 38.06.035; AS 42.07.061; AS 44.07.330; and AS 44.88.180.

3/ See nn.1, 2, supra.

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for officers of state agencies, but offer no guidance for employees. 4/ There remain hundreds of conflict situations to which no Alaska conflict legislation 5/ pertains except as AS 39.50. 6/

It is well-settled in the federal courts, particularly with regard to criminal sanctions for bribery and fraud, that the existence of criminal statutes (such as AS 39.50.090) does not extinguish the common law rights and remedies which would ordinarily exist. United States v. Kearns, 595 F.2d 729, 732-733 (D.C. Cir 1978); Continental Management, Inc. v. United States, 527 F.2d 613, 620 (Ct. Cl. 1975), and cases cited therein. We believe that the same rule would apply in Alaska: AS 39.50 will not be held to repeal, amend, or preempt the common law of conflict of interests which will apply "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew, 629 P.2d

4/ Compare AS 21.06.040, AS 27.05.020, and AS 44.07.330 with AS 44.88.180, AS 46.12.090, and AS 48.55.500.

5/ Personnel Rules 13 12.0 and 13 16.0 apply to most executive branch personnel and prohibit conflicts of interests in terms which essentially incorporate the standards of the common law.

6/ AS 39.50 governs the conduct of very few persons. AS 39.50.-200(a)(1) limits the chapter's scope by excluding officers or employees below the director level from the coverage of the provision. There remain outside the coverage of the Act deputy directors in the executive branch, assistant attorneys general, appointive officers of the legislative branch (including legislative assistants), non-judicial officers of the court system, and all subordinate employees of these agencies. Thus, fully 90 percent of state officers and employees are beyond the reach of the criminal sanctions in AS 39.50.090(a).

969, 973 (Alaska 1981). Thus, a person may act illegally without violating the criminal law, and serious non-penal consequences may follow.

Neither is it possible to formulate a rule of administrative decision for a given situation by analogy, based upon legislative pronouncements with respect to other agencies, for no consistent policy is apparent from an examination of the various statutes. One statute lays down no other rule than that school boards may not hire close relatives of the board members, AS 14.-14.140, and even that rule may be waived by the commissioner of education. Id. Thus, on local school boards, were it not for the common law rule and AS 39.50.090(a), a board member could let a contract to himself. 7/ In another agency, the law provides that a board member may not vote on a contract with his own firm or one in which he holds a "direct" ownership interest, but he need not divest himself of the interest. AS 44.88.180. In still other agencies, such interests are prohibited and the officer must dispose of the interest or forfeit the office. AS 42.07.-061. See AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 38.06.035. From this range of solutions, no overriding general policy prescription is apparent for the guidance of public officers and employees.

7/ A stricter rule applies to regional school boards. AS 14.-08.131.

* * * *

Most conflict of interests situations in Alaska are covered not by statute but by the common law. Judge Wickersham described the common law in In Re Burkell, 2 Alaska 108 (D. Alaska 1903):

The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the Legislature (1 Kent's Com. 533); a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country (Pierce v. Props. Swan Point Cemetery, 10 R.I. 227, 14 Am. Rep. 667).

Id. at 117. See Howard v. Pfeifer, 443 P.2d 39, 44 (Alaska 1968). In Alaska, the common law controls judicial decision-making "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew. See AS 01.10.010.

The common law of conflict of interests is clearest in the case of a contract made by a public officer who will, as a private person, benefit from the contract. The most comprehensive discussion of the typical situation, the controlling rule, and the underlying public policy is found in Beebe v. Supervisors of Sullivan County, 19 N.Y.S. 629 (App. Div. 1892), aff'd 37 N.E. 566 (N.Y. 1894):

At the time of his employment [by the board of supervisors as the board's attorney in several

collection matters], the defendant Anderson was a member of the board of supervisors. They were the agents of the county of Sullivan, and as such had no right to enter into contracts for their own benefit with their principal, the county of Sullivan. They are trustees, and have no right to enter into contracts with each other at the expense of those for whom they are acting, and whose interests they are bound to guard and protect. The illegality of such contracts does not depend upon statutory enactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with the municipality of which they are officers; and this principle applies with particular force to members of a board like the board of supervisors, which not only makes the contract, but subsequently audits the bill.

But it is said that in the case before us the supervisor who was employed did not vote on the question of his own employment, or upon the audit of his bill. That does not cure the evil. The influence upon fellow members is the same. His constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act. He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests. He is a part of the board of supervisors. Its act is his act; and he cannot, as a supervisor, make a contract with himself as a private citizen.

Id. at 630 (citations omitted).

IV. THE PROCESS OF COMMON LAW ADJUDICATION

In the absence of legislation, it is the task of the courts, with the assistance of the attorney general, other mem-

bers of the bar, litigants, and amici curiae, to apply common law principles and policies articulated by the Beebe court and hundreds of other courts and commentators before and since. The task is a difficult one because, with the exception of the self-dealing public officer situation just described, the law is not settled; the courts must reason from the situations already addressed by the courts to solutions for new questions presented.

For this undertaking the common law is well-suited, as Chief Justice Lemuel Shaw noted in his classic description of the process:

It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adopted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles founded on reason, natural justice, and enlightened public policy modified and adapted to the circumstances of all the particular cases which fall within it.

....

Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances.

Norway Plains Co. v. Boston & Main Railroad, 1 Gray (67 Mass.)

263 (1854), reprinted in Hart and Sacks, The Legal Process: Basic Problems In The Making And Application Of Law (1958) 386-395. 8/

It is our task to begin with the legislative solutions to determine if any statute answers any of the conflict questions posed. Failing that, we must turn to the common law and, beginning with the first principles, reason to the conclusion the courts would likely reach given the facts, judicial precedent in analogous cases, and prevailing public policy.

V. LEGISLATOR CONFLICTS

Two questions are presented concerning potential legislator conflicts: First, may a legislator, or his or her firm or business, contract with the state to provide the state with goods or services? Second, may a legislator receive a state loan?

The first question does not concern classic self-dealing, the letting of contracts by an official to himself or his relatives, associates or company. It is a different problem described in the following terms:

There is a great possibility that an official who has no immediate administrative connection with

8/ Thus, even if there is no statute and not one case addressing the situation before a court, that court may, by the process of common law adjudication, formulate a wholly new answer to settle the dispute which gave rise to the lawsuit. See Howard v. Pfeifer, 443 P.2d at 44.

the contract may be sufficiently motivated by his personal interest to exert whatever influence his position allows to pressure the public official who in fact has a direct responsibility concerning the contract to favor that personal interest. In this way, an official without a personal interest in the contract acquires a conflicting interest in the sense that he must choose between appeasing the pressuring official and properly discharging his duties in the matter.

Experience indicates the harm that may flow from [this situation]. Contracts may be awarded that are over-priced or unnecessary, or the performance rendered under the contract may be inferior, all because of official favoritism, compromise or intentional oversight. Even if the abuse is nothing more than partiality in awarding a contract, it may import an aspect of unfairness into public administration, engendering popular disrespect for government.

Note, Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation, 107 U. Pa. L. Rev. 985, 987-988 (1959). See Eisenberg, Conflict of Interest Situations And Remedies, 13 Rutgers L. Rev. 666, 686 (1959).

There are no cases which squarely hold, as a matter of common law, that a legislator, having no formal, institutional connection with the letting or oversight of a contract, can or cannot contract with the state. The archetypical situation arises in the municipal context where principles of separation of powers do not apply and assemblymen or councilmen act administratively as well as legislatively. Thus, an assemblyman might, in a private contractor capacity, offer goods or services to the city, which goods or services are accepted, inspected, super-

vised, and compensated by the assembly on which the contractor sits. It is the virtually universal rule at common law that such a transaction is illegal, even if the assemblyman-contractor abstains and takes no part in the review and compensation of the performance. E.g., Beebe v. Supervisors of Sullivan County, quoted supra. While some commentators have declared that the common law rule has been extended to bar such transactions if any public officer or employee, regardless of their official connection with the transaction, is the private contractor, 9/ a close analysis of the cases decided to date and due regard for the difference between holding and dicta belie the claim. 10/

Many states have statutes or constitutional provisions which prohibit legislators or other public officers from contracting with the state. A number of cases have declared that such provisions are declaratory of the common law, i.e., even if there were no statute, the same rule would apply by force of the common law. One case is Schultze v. City of New York, 136 N.Y.S.

9/ E.g., Note, Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034, 1039 (1961).

10/ Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Col. L. Rev. 157, 158-174 (1958). We were guilty of uncritically accepting the conclusion of the Virginia Law Review note writer in our formal opinion of August 8, 1979; fortunately, it made no difference in the result in that opinion since the individual in question was an officer with authority to vote on the award of contracts and review the contractor's performance.

715 (App. Div. 1912), aff'd 106 N.E. 1042 (N.Y. 1914). Schultze was a duly appointed coroner's physician whose duty it was to perform autopsies and give evidence at coroners' inquests. He was called upon to assist the district attorney in a homicide case involving a decedent whom Schultze had not examined; he acted as an expert consultant. He submitted a bill which was disapproved under a charter provision which forbade officers to become interested, directly or indirectly, in performance of any contract or work to be paid for from the city treasury; a violation was a misdemeanor, the violator forfeited his office, and the contract was voidable. The court held that the city was not required to pay the bill, and observed that "[t]hese prohibitions are merely declaratory of the common law." Id. at 718. Accord, Marjohn Realty Co. v. City of Long Beach, 204 N.Y.S. 53, 55 (Sup. Ct. 1924), aff'd 206 N.Y.S. 933 (App. Div. 1924).

The case of Norbeck & Nicholson Co. v. State, 142 N.W. 847 (S.D. 1913), involved a legislator who contracted with the state to drill a well. The contract was voided on the basis of a constitutional provision which prohibited legislators to be directly or indirectly interested in any state contract. However, there followed extremely broad dicta:

A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the

state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.

Id. at 849.

On the other hand, at least two courts have described statutory prohibitions of such contracts as new legislative rules foreign to the common law. In re Opinion of Justices, 82 A. 90, 93 (Me. 1911); Lindberg v. Benson, 70 N.W.2d 42, 45 (N.D. 1955). However, the Lindberg court went on to state in forceful terms the very public policy considerations which militate in favor of a common law rule in the absence of legislative action:

The purpose of the enactment was to extend the ancient common-law rule that no state officer may be interested in any contract which he has a voice in letting (which rule is expressed in many statutes of this state) by providing a more comprehensive legislative rule, founded in public policy, which would take away from legislators as a class any personal incentive to increase their opportunities to make profitable contracts by their votes in the legislature or to use their influence as legislators in securing contracts or the approval of the work done under them. The members of the Legislative Assembly exercise a high degree of control over the fiscal affairs of the State and its subdivisions. They regulate assessments and tax levy limits. They authorize bond issues and, for the State, they make all appropriations. By enacting this initiated measure the people have attempted to remove from the legislators temptation to venality in the exercise of their legislative functions. Many states have constitutional or legislative provisions which are similar in

nature and which have remained in force unchal-
lenged for many years.

Id. at 45-46.

In two recent cases, courts have held that legislator attorneys may not represent persons in litigation against their city or state. In Georgia Department of Human Resources v. Sistrunk, 291 S.E.2d 524 (Ga. 1982), the Sistrunks were represented by Hill, a state legislator. The department invoked fiduciary principles and a Georgia constitutional provision which declared that "[p]ublic officers are the trustees and servants of the people, and at all times are amenable to them." The court expressly noted that this was not analogous to the classic self-dealing situation, since Hill was not representing both the Sistrunks and the state. Id. at 526.

The Sistrunk court framed the issued in the following terms:

All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.

....

May one trustee of the people, as attorney and for his own financial gain, negotiate on behalf of another for a favorable official dispensation at the hands of another trustee of the people?

Specifically concerning legislators, may one

trustee of the people -- in whose office are vested the powers of enhancement, diminution, and destruction of the office of another trustee of the people -- as attorney and for his own financial gain act in a manner to hinder or frustrate the discharge by such other trustee of the duties of their common trust?

No.

Id. at 528.

It bears noting that the court in Sistrunk based its decision on a Georgia constitutional provision and not on the common law. However, that provision is so general in its terms and was analyzed with such close attention to common law trust principles that the Sistrunk holding has significance independent of the constitutional language. A similar provision appears in Alaska law. 11/

In a California case, People v. Municipal Court of San Diego Judicial District, 138 Cal. Rptr. 235, 238 (Cal. App. 1977), the court barred a city councilman-attorney from representing a defendant being prosecuted by the city. The decision appears to rest primarily on the ethical standards of, and trust reposed in, members of the bar, rather than on any statutory or constitutional provision. 12/

11/ Compare the Georgia constitutional provision quoted in the text with AS 39.50.010(b)(1), which provides "public office is a public trust which should be free from the danger of conflict of interest."

12/ However, the court did, in passing, compare the councilman's

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A legislator contract also raises novel and troubling questions of separation of powers. The federal courts have, in perhaps a dozen cases, condemned the practice of interference by individual legislators or committees in executive branch decision-making. The leading case is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a decision of the FTC in its quasi-judicial capacity was invalidated because of intense Congressional committee pressure while the decision was pending.

Much less pressure was required to invalidate the decision at issue in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied 439 U.S. 1052 (1978). The court ruled that a letter sent by Congressman Dingell to the Secretary of the Interior, in effect urging him to deny several applications for "native village" status, compromised the Secretary's impartiality in a quasi-judicial proceeding; the court ordered reconsideration of the applications by the new Secretary. In other cases, however, explicit and extreme threats were said to be required before invalidation would occur. E.g., D.C. Federation v. Volpe, 459 F.2d 1231 (D.C. Cir. 1972)(threat of loss of appropriation for unrelated project); Texas Medical Association v. Mathews, 408 F.

12/ cont. . . .
representation to conduct by "[a] local agency officer or employee" which is statutorily proscribed as "incompatible." Id. at 238.

Supp. 303 (W.D. Tex. 1976)(threat of loss of job).

Here, as in the federal legislator influence cases, the legislators would be placing themselves in a non-legislative, i.e., administrative or quasi-judicial, arena. But the kind of legislator pressure which caused the court in Pillsbury to invalidate the FTC decision is not involved here. Still, the federal legislator interference cases lead us to conclude that a court would not require a showing of direct threats where a legislator acted on behalf of himself rather than on behalf of a constituent.

The remarks of the Alaska Supreme Court in two opinions bear on this inquiry. Both cases, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), and Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976), involved legislators who held or wished to hold an office of state government outside the legislative branch.

In Begich, the court observed generally:

Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government.

441 P.2d at 35.

In Warwick, the court considered Alaska Constitution, article II, section 5, which forbids a person to accept a government post which was created, or the salary for which was increased, while that person served in the legislature. The court observed:

There is little disagreement as to the purpose of the type of constitutional provision under consideration here. Although the exact language varies from state to state, all such provisions are aimed at a common goal: to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. In one often-cited quotation, Justice Story, commenting upon a like provision in the Constitution of the United States, said:

The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness.

This type of constitutional provision is designed not only to stop overt trafficking in offices, but also to prevent less obvious influences on a legislator's actions:

[T]his constitutional provision was enacted through fear that a legislator might be, either consciously or unconsciously, influenced by selfish motives when voting for or against a bill.

Another purpose has been said to be the elimination of even the suspicion that legislators were acting with improper motives. As in the case of the judiciary, it is important that the legislature not only avoid impropriety, but also the appearance of impropriety.

548 P.2d at 387-388 (emphasis added by the court, footnotes omitted).

Both the Alaska Constitution and AS 39.50 were adopted by popular vote. From these electoral expressions it is clear that Alaskans view as morally opprobrious public officials who use public office for private gain. Indeed, even the appearance of impropriety is a circumstance to be avoided. Warwick at 388, quoted supra; Falcon v. A.P.O.C., 570 P.2d 469, 477 (Alaska 1977). See AS 39.50.010(b)(1) ("public office is a public trust which should be free from the danger of conflict of interest").

The size of the legislature and the executive branch is also an important consideration. There are only 60 legislators, all of whom are likely well-known to the relatively few departmental commissioners, deputy commissioners and directors. Most of these persons work together in close proximity in Juneau for five months of the year.

Our legislators have a keen interest in the budget process. Those legislators who sit on the finance committees are usually familiar with the thousands of pages of budget documents in the minutest detail and make allocations in multi-billion dollar budgets in increments of thousands of dollars. Any legislator, and especially a member of the finance committees or the free conference committee on the budget, can have an enormous impact on the budget of a state agency. Recent legislative ses-

sions have seen both the creation and destruction of agencies at the behest of single or a few legislators who took the initiative to bless or gut the agencies. In recent years, the legislature has also taken to designating its own non-governmental agents to carry out state programs. E.g., p. 25, § 51, ch. 120, SLA 1980.

Alaska is a very small state, with a small pool of talented people from which to draw its leaders. Many of the most talented have extensive commercial enterprises which may do business with the state. Unreasonable barriers should not be placed before these most promising aspirants to public service. Yet, with the legislature tending toward a half-time profession, and with the great potential for conflicts of interests with multi-billion dollar budgets and pervasive government involvement in private commerce, the courts might well be convinced that the only solution in the public interest is a common law prohibition. This would be all the more compelling in the absence of evidence that aspirants to public service are being dissuaded by a common law rule prohibiting legislator contracts, and in the absence of legislative action in this area. Indeed, such a common law prohibition might be a telling experiment for the information of the courts and the legislature.

As we have already noted, there is no case authority directly on point pro or con, but the foundation is there, in Beebe and its progeny, in Begich, in Warwick, and in AS 39.50,

upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

ceive loans from the state. The only case which offers even brief analysis of the public policy considerations which would underlie an exception to the common law rule is State v. Yoakum, 306 S.W.2d 39 (Tenn. App. 1957). In explaining why a loan to a school board of which the president of the lender bank was a member did not violate a statutory prohibition of a direct or indirect interest in a public contract, the court impliedly undercut any common law prohibition:

A loan of money, however, is unlike a contract for goods or services involved in all our reported decisions. Because they involve questions of value, contracts relating to goods and services provide opportunity for imposition upon the public. In the loan of money the law fixes the maximum rate of interest and no question of value is involved. Only a rate of interest below the maximum fixed by law can be the subject of negotiation. In the loan here involved it is not insisted that such a short term loan could have been made elsewhere at a lower rate of interest and, as we have seen, the loan actually resulted in a loss to the Bank. To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority.

Id. at 40.

While the analysis is terse, Yoakum provides a basis for distinguishing the loan situation from other contracts between the state and legislators. However, we can say this with confidence only in the cases of loans for tuition or personal residences, where loan ceilings are relatively low, eligibility

standards are fixed, and the range of administrator discretion subject to influence and abuse is small. 17/ Commercial loan programs, where ceilings are much higher and where evaluation of credit-worthiness is more subjective, may yet present conflicts of interests where the loans are made to legislators.

However, there is potential for influence or abuse in any loan program, especially when foreclosure or other enforcement actions must be considered. Thus, whether the loan is educational, residential, or commercial, a conflict of interests may arise, and state legislators (and some state officers and employees) and their agents, must act with the greatest circumspection and propriety in dealing with the agency concerning the loan or any other matter. The agency, in order to maintain public confidence in the fairness of its program, should brook not even a hint of interference and should report questionable communications to the attorney general.

* * * *

We view the third question, concerning the propriety of a legislator voting on a bill which will financially advantage the legislator, in a different light. It is clear in the case law that, when a legislator acts in a legislative capacity, that

17/ Even a competitive bidding procedure is subject to greater influence and abuse where the contracting officer has discretion in evaluating the responsibility of the bidders. AS 39.05.230. See AS 36.98.040 -- 36.98.050.

action can be challenged only when the legislator's conduct is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power." Rollins v. Carter, 69 A. 777 (N.H. 1908); Pyatt v. Mayor of Dunellen, 89 A.2d 1, 3 (N.J. 1952); MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522. However, when a legislator acts outside the legislative sphere, with respect to a particular transaction or adjudication in which the legislator is interested, a challenge may be sustained if there is found a "private interest at variance with the impartial performance of ... public duty." Pyatt; Rollins. See Burton v. United States, 202 U.S. 344, 366-367 (1906); Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952, 964 (5th Cir. 1966); Note, Conflicts of Interest of State Legislators, 76 Harv. L. Rev. 1209, 1214, n.38 (1963) ("[I]mproper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator.").

Therefore, where a legislator votes on a bill which will financially benefit the legislator as a member of the public generally, e.g., personal income tax repeal, or where a legislator votes on a bill which will financially benefit the legislator as a member of a numerous though limited class of Alaskans, e.g., bank deregulation or corporate income tax repeal which will benefit shareholders, the legislator's vote may not be challenged. See the memorandum opinion from Kenneth E. Vassar to Wilson L.

Condon dated April 1, 1982.

Where, however, the class of beneficiaries of the legislation is tiny, especially where the bill relates to a project for which the legislator is a private contractor or affiliated with a private contractor, the legislator must disclose the conflict of interests and the legislative body should bar the legislator from voting. See MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522 (1979).

VI. OFFICER CONFLICTS

Four potential conflicts of interests by executive branch officers have been presented for our review. We will treat them in turn.

It is first asked whether a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute has a conflict if he or she is an officer, employee, or large stockholder of a company or firm which has contracts with the state to provide goods or services. If there is a conflict, what remedial steps need be taken?

The question is answered by the Beebe case, quoted supra, and the accompanying discussion: a conflict clearly does exist if the person with the potential conflict is associated with both parties to the contract, i.e., the state agency procuring the goods or services and the private contractor providing

them. 18/ If, however, the person with the potential conflict works for a state agency with no contracts with the private contractor with which the person is associated, there would be no conflict. 19/

The Beebe case makes it clear that public service demands total fidelity to the public interest at all times. A public servant, faced with a conflict of interests by reason of private financial associations may not pass official decision-making responsibility on to a colleague or subordinate who may share the same prejudice or be subject to influence. "He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests." Id. at 630. Faced with a conflict, the person must either resign his or her position, or forego the private opportunity to do business with the state.

18/ If the person is only an employee, there may not be a conflict. Those situations must be addressed on a case-by-case basis.

19/ We must qualify this last mentioned conclusion by noting that a conflict might arise even if the person was not an official in the contracting state agency if the person nevertheless has extensive contacts with the contracting state agency. For example, certain officers of the Department of Law and the Office of the Governor, though not within the Department of Administration, may have extensive contacts with, and considerable influence in, the Department of Administration. A person with similar "interdepartmental" duties might be in a conflict situation if he or she entered into an agreement as a private contractor with the other department.

* * * * *

It is next asked whether an officer of the Division of Minerals and Energy Management (DMEM) may hold a mining claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction. AS 27.05.020 provides:

In conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070, no officer or employee of the department may have any personal or private interest in a mine or the products of a mine under investigation, or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer or other expert whose principal professional practice is outside his employment by the department.

The syntax of AS 27.05.020 is not an aid to understanding. A thoughtful reading of the provision reveals that it is not any officer or employee of the department who is prohibited from holding an interest in a mine under investigation; only officers and employees "conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070" are so restricted. We are informed by the director of DMEM that that division conducts virtually none of the "investigations" in question; those matters are within the jurisdiction of the Division of Geological and Geophysical Surveys. However, there is still the common law.

DMEM is the state agency which regulates the acquisition of mining claims and leases on lands under state jurisdiction, see AS 38.05.185 -- 38.05.280; 11 AAC 86, and issues mis-

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cellaneous land use permits. See 11 AAC 96. DMEM also has a representative on the regional planning teams which make recommendations to the commissioner on state land use classifications. See AS 38.04.065; 11 AAC 55.

As the regulatory agency for mining claims, DMEM receives the filings of persons who stake mineral claims. See AS 38.05.195. It must review the filings to verify that there has been a discovery, see 11 AAC 86.105, and that the claim has been properly staked. See 11 AAC 86.205 -- 11 AAC 86.215. On an annual basis, DMEM receives additional filings from each claim owner attesting to the performance of statutorily-required annual labor on the claim, see AS 38.05.210; 11 AAC 86.220, and must verify that the claimed labor meets prescribed requirements. Id. A major component of the DMEM mining section's effort and budget is devoted to this "adjudication" of mineral claims.

In this light, we believe that an ownership interest in mineral claims (or in a company which owns mineral claims) on lands under state jurisdiction creates a common law conflict of interests on the part of officers and employees of DMEM. Given the size of the mining section of DMEM (25 persons) and the likely close working association of all the officers and employees, it is probable that a court, as a matter of common law, would forbid any person in DMEM to own a mineral claim on lands under state jurisdiction since the opportunity for influence is so evi-

dent. It is even clearer that a court would forbid a supervisory officer to own such a mineral claim since it would be that person's subordinate who would review the sufficiency of the claim and the annual labor affidavit. 20/ And, as we noted, supra, at page 31, the conflict is not cured by removing oneself from the review of one's own filings: the public has the right to demand that a state officer bring his or her skills to bear in all matters which the office calls upon him or her to consider.

DMEM is one of only three agencies principally responsible for overseeing mineral exploration and mining activities on lands under state jurisdiction. DMEM personnel cannot be both regulators and regulated. If they wish to serve in DMEM, they must forego this relatively narrow range of investment opportunities. The common law requires officers and employees in DMEM who have interests in mining claims to dispose of those interests with all deliberate speed, or resign. 21/

20/ DMEM officers and employees also have access to confidential geological, geochemical, geophysical, and airborne surveys. See AS 38.05.240. Were they permitted to own mineral claims, they might have a distinct advantage over other prospectors, miners, and investors. This is another aspect of the conflict of interests inherent in the situation.

21/ The Department of Law has had the full cooperation of DMEM officers and employees in this inquiry; indeed, it was a DMEM officer with an interest in mineral claims who first asked our advice on this matter. At that time, we informally advised him that there was no conflict, and he ordered his affairs accordingly. Thus, it was our erroneous advice, and no wrongdoing by the DMEM officer, that allowed the conflict situation to develop.

* * * *

It is next inquired whether a Department of Environmental Conservation (DEC) inspector of seafood processing plants may sell the right to use a process he developed and patented to companies whose plants he inspects. The answer is clearly no.

The evil of such an arrangement is patent: seafood processors might feel compelled to purchase the right to use the process or suffer the wrath of the seller when next he inspects their plants.

We hasten to add that there is not the slightest suggestion that the particular inspector involved has ever acted improperly; it is the appearance of impropriety which condemns these proposed transactions. If the inspector wishes to market his process, he must resign or sell his rights in the process to another who may market it. 22/

The same inspector also wishes to apply to the Department of Commerce and Economic Development (DCED) for a grant to test his process. Because the grant project would likely involve one or more seafood processors in a cooperative effort to test the process, a conflict of interests on the inspector's part

22/ If the inspector chooses the latter course, he may not reserve any right to receive royalties or license fees; were he to do so, the spectre of influence would again appear since, though he is not personally marketing the process, each seafood processor that used the process would be paying the inspector indirectly.

would almost certainly arise. In that case, the grant would be illegal. See Newton v. Demas, 258 A.2d 376 (N.J. App. 1969) (municipal engineer had an outside contract with a developer to design a water system; the contract was void because the engineer would have had to review his own design in his official capacity).

* * * *

It is last asked whether a member of the board of the Alaska Resources Corporation (ARC) has a conflict of interests if he or she is associated with a company that has a contract with the state. AS 37.12.065 provides:

(a) Members of the board are subject to the provisions of AS 39.50.

(b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

Subsection (b) modifies the common law as it would apply to ARC. Under the common law, the member could neither acquire a new interest nor keep an old interest in a company doing business with ARC, and this disability could not be cured by abstaining on votes and taking no part in deliberations. Under AS 37.12.065, acquisition is forbidden, but interests owned upon appointment may be retained, so long as the member abstains from

voting and has no contact, formal or informal, with other members concerning ARC's policies or actions toward the firm in which the member has an interest. This departure from the common law applies only to members and employees of ARC. 23/

VII. CONCLUSION

The common law of conflict of interests is uncharted water for most public officials, including government attorneys. They err when they believe that a public official's conflict can be cured if the official takes no part in the decision in which he or she is interested. They err when they believe that a court will not invalidate a contract if, though a party to the contract has a conflict, it is still a fair price.

The courts take the view that officials have a duty to the public to participate in all the decisions they were elected or appointed to make. The courts ordinarily will not allow an

23/ It was also inquired whether an ARC board member may also be a member of the Alaska Historical Commission. AS 44.27.061, et seq. In view of the clear prohibition on holding "any other state or federal office, position, or employment . . .," AS 37.-12.045(b), we believe the board member must resign from either ARC or the Alaska Historical Commission. This prohibition goes further than the common law; indeed, as applied in this situation, it appears to advance no laudable goal. But it is within the legislature's power, and it does prevent the appearance of conflict of interests in many other situations. If a more refined provision is to be substituted, one which is better able to discriminate between real and imagined potential for abuse, the legislature alone has the power to do it.

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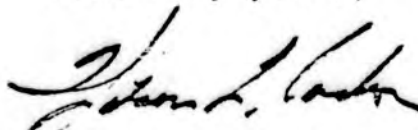
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official to decline to make a decision in order that he or she might be free to have the benefit of that decision.

The courts will not allow an official to make a contract with his agency and, when challenged, assert as a defense that the contract was more advantageous to the state than any other offer received.

The common law of conflict of interests aims not only to prevent officials from actually taking unfair advantage of their office. It also aims to eliminate the potential for abuse and the appearance to the public that officials are subject to temptation. For these reasons, the courts have dealt sternly with officials in conflict situations, and they will continue to do so. Unless the legislature formulates another means to sustain the public's confidence that public officials are not benefiting in private from their positions in public, we, and all public officials, must abide by the common law.

Sincerely yours,



Wilson L. Condon
Attorney General

WLC/pjg

13-1184
Berrier
4/6/83

Comments by Ken Winstolen, Esq.
consultant to NCSL on Alaska
JRC Ethics Project ; 4/6/83

1 IN THE HOUSE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and establishing a
8 Legislative Ethics Commission."

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

0 * Section 1. AS 24 is amended by adding a new chapter to read:

1 CHAPTER 60. STANDARDS OF CONDUCT.

2 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
3 ture finds that it is essential in the conduct of public business that
4 legislators hold the respect and confidence of the people. Legisla-
5 tors must avoid conduct that even appears to violate the trust the
6 people have placed in them. To ensure and preserve public confidence,
7 legislators should have the benefit of specific standards to guide
8 their conduct. Article II, sec. 12, Constitution of the State of
9 Alaska grants to each house of the legislature the power to judge the
10 qualifications of its members. It is the purpose of this Act to
11 establish standards of conduct for state legislators and legislative
12 employees and to establish the Legislative Ethics Commission to con-
13 sider alleged violations of this chapter and to render advisory
14 opinions to persons affected by this chapter.

15 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
16 member of the legislature, to a person employed by a member of the
17 legislature, and to a permanent or temporary employee of an agency of
18 the legislature established under AS 24.20. This chapter does not
19 apply to a former member of the legislature or to a person formerly
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Such persons may, however, request an advisory opinion from the Legislative Ethics Commission immediately upon their election.

employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies.

This chapter does not apply ^{ies} to a ^{newly-} person elected ^{members of} to the legislature who ^{only upon the commencement of the next} at the time of election is not a member of the legislature. ^{ive} session.

(b) The provisions of this chapter specifically ~~repeal the~~ ^{supersede any} provisions of the common law relating to legislative ~~conflict of~~ ^{ethics which are inconsistent with this chapter.} interest ~~that~~ may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature established under AS 24.20.]

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence [which could benefit or harm] ^{or} any matter in which the person has a private interest.

(b) Conflicts of interest are prohibited [?] but there is not a conflict of interest if the commission determines that as to a specific ^{matter} [contract or loan] there is no substantial impropriety or appearance of impropriety because

(1) the [legislator's ^{person's interest} interest or the interest of a person employed by the legislator or an agency of the legislature] is relatively insignificant;

(2) the [legislator's ^{person's authority} authority or the authority of a person employed by the legislator or an agency of the legislature] is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action; or

(3) the interest is of a type that is readily available to

1 the public or to a large class of ^{citizens} persons to which the ^{person} legislator, or
 2 ~~a person employed by the legislator or an agency of the legislature~~
 3 belongs.

4 Sec. 24.60.040. ADOPTION OF REGULATIONS BY ETHICS COMMISSION.
 5 The commission may adopt regulations regulating ^{the specific} conduct of a person to
 6 whom this chapter applies consistent with the general principles
 7 stated in this chapter, [although the specific conduct is not provided
 8 for in this chapter.]

9 Sec. 24.60.050. CONTRACTS. (a) A person to whom this chapter
 0 applies may not be a party to or have an interest in a state contract
 1 unless the contract is let by competitive bidding or the total annual
 2 amount of the state contract is \$1000 or less. ~~A person has an inter-~~
 3 ~~est in a state contract~~ ^{exists} under this section if the contract is awarded
 4 to

5 (1) the ^{person} legislator, or a member of the immediate family of
 6 the ^{person} legislator;

7 (2) a firm, corporation, or association in which the person
 8 owns more than 50 percent of the stock ^{or serves as an officer or director} ~~of the firm, corporation, or~~
 9 ~~association~~ ^{relatively large interest allowed}

10 (3) a partnership in which the person is a partner.

11 Sec. 24.60.060. STATE LOANS. (a) It is not a conflict of
 12 interest for a person to whom this chapter applies, a person in close
 13 economic association with that person, or a member of that person's
 14 family to receive a loan from the state if the loan is generally
 15 available to members of the public, is subject to fixed eligibility
 16 standards, and minimal discretion is exercised in determining qualifi-
 17 cation for the loan.

18 (b) In determining whether a conflict of interest exists with
 19 respect to a state loan other than loans described in (a) of this

1 section, because a ^{person} legislator may be in a position to influence the
 2 loan agency, the ethics commission must consider, but is not limited
 3 to, the adequacy of ~~existing~~ administrative procedures for granting
 4 and reviewing loans to legislators ^{and legislative staff.}

5 (c) Upon application for a state loan by a person to whom this
 6 chapter applies [other than loans ^{why not all loans?} described in (a) of this section]
 7 the lending agency must send a copy of the application and supporting
 8 documentation to the Alaska Public Offices Commission, which will
 9 incorporate the material into the applicant's financial disclosure
 10 statement, if the applicant is required to file a disclosure statement
 11 or is a member of the immediate family of a person required to file a
 12 disclosure statement. All records relating to a state loan to a
 13 person to whom this chapter applies, a person in close economic asso-
 14 ciation with the person, or a member of the person's family, are
 15 public records and may not be made confidential.

16 (d) Each February 1st, each loan agency must publish a listing
 17 of all outstanding loans to ^{persons to whom this chapter applies} [legislators, except for loans described in
 18 (a) of this section.] The list must include the name of the ^{person} legisla-
 19 tor, the date of issuance and current status of the loan.

20 (e) A legislator, a person in close economic association with a
 21 legislator, or a member of the legislator's family or staff, is pro-
 22 hibited from applying for a state loan from a loan program that was
 23 created or expanded by legislation acted on during the term for which
 24 the legislator was elected, and for one year thereafter.

25 (f) State agencies that have authority to grant loans shall
 26 adopt regulations that establish separate procedures for granting and
 27 reviewing loans to a person to whom this chapter applies. [However,
 28 the regulations need not govern loans described in (a) of this sec-
 29 tion.] ^{(this forces agency to decide if its program fits (a))}

fwtea: to whom this chapter applies

(g) The division of legislative audit shall annually review state loans granted to or held by ^{persons fwtea} ~~legislators~~ to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics committee by April 15.

Sec. 24.60.070. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.080. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a potential conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter between

(1) the person and a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) ^{the} a person [to whom this chapter applies] and a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50; or

(4) ^{the} a person [to whom this chapter applies] and a lobbyist.

Sec. 24.60.090. GIFTS. (a) A person to whom this chapter applies may not ~~solicit~~, accept, or receive, directly or indirectly a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended

1 as a reward for an official action on the part of the person.

2 (b) There is no conflict of interest under this section if a
3 person to whom this chapter applies accepts

4 (1) hospitality at another person's residence, including
5 meals, lodging or [ground] transportation;

6 (2) discounts that are generally available to the public or
7 a large class of persons to which the person belongs;

8 (3) an invitation to attend a meal or social event that
9 does not exceed \$50 in value received by the person ~~for each meal or~~
10 ~~event~~ and that does not in the aggregate exceed \$250 in value ^{received} during
11 the calendar year from one person ^{or organization}.

12 (c) The commission may establish policies that limit the extent
13 to which persons to whom this chapter applies may accept the benefits
14 set out in (b)(2) of this section, or which require public officials
15 to turn over the benefits to the agency.

16 Sec. 24.60.100. NEPOTISM. (a) An individual who is related to
17 a member of the legislature may not be employed in the house in which
18 the legislator is a member. An individual who is related to an
19 employee of the legislature may not be employed in a position over
20 which the employee has supervisory authority. In this subsection, "an
21 individual who is related to" means husband, wife, mother, father,
22 sister or brother. ^{and includes an unmarried individual living in a spousal}
23 ^{capacity with the person.}

24 (b) An individual is not employed if no compensation is received
25 from the state for the services provided.

26 Sec. 24.60.110. REPRESENTATION BY LEGISLATORS. (a) Except as
27 provided in this section, a person to whom this chapter applies may
28 not represent another person for compensation before an agency, board,
29 or commission of the state or a municipality of the state, *except in*

(b) ~~A member of the legislature and a person employed by a~~

if at residence, why not allow
plane travel also

?

1 ~~member of the legislature may represent a client in~~

2 (1) a criminal action before a court of the state; or

3 (2) a civil action before a court of the state if the state
4 is not a party to the action.

5 (c) A legislator or a person ^{twtea} employed by a member of the legis-
6 lature cannot avoid a conflict of interest under this section by
7 waiving compensation for representing another person under circum-
8 stances where compensation would ordinarily be expected.

9 Sec. 24.60.120. ACTION ON A CONFLICT OF INTEREST. (a) A legis-
10 ator who has a conflict of interest shall immediately

11 (1) ^{refrain from acting on the matter}
~~resign the position;~~

12 (2) ^{divest the interest}
~~dispose of the matter~~ which has resulted in the con-
13 flict or potential conflict; or

14 (3) may disclose the potential conflict of interest ^{to the} ~~in the~~
15 ^{commission and abide by its recommendation.}
~~Daily Journal of the appropriate body.~~

16 Sec. 24.60.130. STATE PROPERTY AND FUNDS. A ^{ptwtca} member of the
17 legislature or a person employed by a member of the legislature may
18 not use state property or funds for personal or campaign purposes.

19 Sec. 24.60.140. LEGISLATIVE ETHICS COMMISSION. (a) There is
20 established within the legislative branch of the state government the
21 Legislative Ethics Commission.

22 (b) The commission consists of seven members appointed as fol-
23 lows:

24 (1) the president of the senate shall appoint one member to
25 the commission from the senate;

26 (2) the speaker of the house of representatives shall
27 appoint one member to the commission from the house of representa-
28 tives;

29 (3) the president of the senate shall appoint to the

1 commission two persons who are citizens of the United States and resi-
2 dents of the state;

3 (4) the speaker of the house of representatives shall
4 appoint to the commission two persons who are citizens of the United
5 States and residents of the state;

6 (5) one member of the commission shall be a former legisla-
7 tor of the state who is appointed by the other members of the commis-
8 sion.

9 (c) No more than four members of the commission may be members
10 of the same political party or residents of the same borough or of the
11 unorganized borough.

12 (d) The term of office of a public member of the commission is
13 four years from February 1 of the year of appointment and until a
14 successor is appointed and qualifies. A legislator appointed to the
15 commission may not serve beyond the expiration of the legislative term
16 of office. A commission member may not serve more than one full term.

17 (e) A member of the commission may not
18 (1) hold or seek elective office; ~~other than in an election~~
19 (2) be an officer of a political party, political commit-
20 tee, or group; or
21 (3) lobby.

22 (f) The provisions of (e) of this section do not apply to the
23 members of the commission appointed under (b)(1) and (2) of this
24 section.

25 (g) A vacancy on the commission shall be filled under (b) of
26 this section for the balance of the term.

27 (h) The commission may employ an executive director and staff as
28 it considers necessary ^{subject to approval of both houses}. A member of the commission may not serve as
29 executive director or on the staff of the commission.

1 (i) A member of the commission receives no compensation for
2 service on the commission. Members of the commission are entitled to
3 travel expenses and per diem authorized by law for members of boards
4 and commissions under AS 39.20.180, but a member of the commission who
5 is a legislator is not entitled to travel expenses and per diem from
6 the commission if the legislator is receiving travel expenses and per
7 diem as a legislator.

8 Sec. 24.60.150. DUTIES OF THE COMMISSION. (a) The commission
9 shall

10 (1) adopt regulations to facilitate the receipt of inquir-
11 ies and prompt ^{rendering} ~~rendition~~ of its opinions;

12 (2) recommend ~~to the legislature~~ legislation the commission
13 considers desirable or necessary to promote and maintain high stan-
14 dards of ethical conduct in government;

15 (3) subpoena witnesses, administer oaths, and take testi-
16 mony relating to matters before the commission, and may require the
17 production for examination of any books or papers relating to any
18 matter under investigation before the commission;

19 (4) publish yearly summaries of decisions, advisory
20 opinions and informal advisory opinions, with sufficient deletions in
21 the summaries to prevent disclosing the identity of the persons in-
22 volved in the decisions or opinions which have remained confidential.

23 (b) The commission may adopt regulations to implement, clarify,
24 and interpret this chapter. *already covered in 24.60.040 (p3)*

25 Sec. 24.60.160. ADVISORY OPINIONS. The commission shall issue
26 an advisory opinion on the request of a person to whom the chapter
27 applies as to whether the facts and circumstances of a particular case
28 constitute a violation of ethical standards. If an advisory opinion
29 is not issued within 30 days after the request is filed with the

1 commission, the facts and circumstances of the particular case do not
2 constitute a violation of the ethical standards. The opinion issued
3 or considered issued is binding on the commission and in any subse-
4 quent proceedings concerning the facts and circumstances of the par-
5 ticular case unless material facts were omitted or misstated in the
6 request for the advisory opinion.

7 Sec. 24.60.170. COMPLAINTS. (a) The commission may initiate,
8 receive and consider complaints alleging a violation of this chapter.

9 (b) Before the commission may exercise power authorized in (c)
0 of this section, the commission shall by resolution, supported by a
1 vote of three members of the commission, define the nature and scope
2 of the inquiry.

3 (c) The commission may investigate a violation of this chapter
4 in a proceeding begun within one year after termination of state
5 service. Nothing in this subsection bars proceedings against a person
6 who by fraud prevents discovery of a violation of this chapter. A
7 proceeding is commenced by the filing of a complaint with the commis-
8 sion.

9 (d) A complaint shall be in writing and signed under oath by the
10 person making the complaint. A complaint may also be initiated by
11 three or more members of the commission. The commission shall notify
12 in writing each person against whom a complaint is received and afford
13 the person an opportunity to explain the conduct alleged to be a
14 violation of this chapter.

15 (e) The commission shall investigate ^{a complaint} ~~the charges~~ filed under
16 this section and issue an advisory opinion to the person alleged to
17 have violated a provision of this chapter. The commission shall
18 investigate all complaints on a confidential basis. If the advisory
19 opinion indicates a probable violation, the person against whom the
20

1 complaint was made may request a formal opinion or comply with the
2 advisory opinion. If the person fails to comply with the advisory
3 opinion or if a majority of the members of the commission determine
4 that there is probable cause for belief that a violation of this
5 chapter has occurred, the commission shall ^{render} file ~~a complaint~~ against
6 the person charged with a violation of this chapter and the complaint
7 ^a and statement of the alleged violation ^{which} shall be personally served on
8 the person charged. The alleged violator has 20 days after service of
9 the ~~complaint and~~ statement to respond in writing to the commission.

0 (f) The commission may set a time and place for a hearing with
1 notice to the complainant, if any, and to the person charged with a
2 violation of this chapter. The executive director of the commission
3 and the person charged with a violation of this chapter shall have an
4 opportunity to be heard, to subpoena witnesses and require the produc-
5 tion of books or papers relating to the proceedings, to be represented
6 by counsel, and to have the right of cross-examination. Each witness
7 shall testify under oath. The hearings are closed to the public
8 unless the person charged with a violation of this chapter requests an
9 open hearing. The commission is not bound by the rules of evidence
0 but the commission's findings must be based upon competent and sub-
1 stantial evidence. The testimony taken at the hearing shall be re-
2 corded and evidence shall be maintained. A copy of transcripts of the
3 testimony is available only to the staff of the commission and to the
4 person charged with a violation of this chapter. If the person
5 charged with the violation of a provision of this chapter requests a
6 copy of the transcript of testimony, the commission may assess one
7 half of the cost of the preparation of the transcript of testimony
8 against the person charged.

9 (g) A decision of the commission shall be in writing and signed

1 by three or more members of the commission.

2 (h) If the commission issues a decision that a member of the
3 legislature has violated a provision of this chapter or that a legis-
4 lator has declined or failed to cooperate with the commission, it
5 shall refer the decision to the presiding officers of the legislature.
6 The decision shall contain a statement of the facts determined to
7 constitute the violation and may contain recommendations concerning
8 penalties including imposition of civil penalties in an amount not to
9 exceed \$25,000. If within 30 days after the referral, a committee of
10 the legislature has not reported action on the decision, the commis-
11 sion shall make the decision public. Days during which the legisla-
12 ture is not in session may not be counted in determining the 30-day
13 period. The legislature shall act on the decision as it considers
14 appropriate.

15 (i) If four members of the commission agree to a decision that a
16 former member of the legislature or an employee or a former employee
17 of a legislator or of an agency of the legislature has violated a
18 provision of this chapter, the commission may issue a public statement
19 of its decision. The attorney general may exercise whatever remedies
20 may be available to the state.

21 (j) A commission member or individual who divulges information
22 concerning a charge before the ^{rendering of a decision} ~~filing of a complaint~~ by the commis-
23 sion, ~~except as permitted by this chapter~~, is guilty of a class C
24 felony.

25 Sec. 24.60.250. In this chapter, "commission" means the Legisla-
26 tive Ethics Commission.

27 define: "private interest" (see p 2 lines 5-6)

28 "close economic assoc" used several times

file + time
mentioned - implies
total coverage

ptwtea

13-1185
Berrier
4/7/83 ✓

1 IN THE SENATE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and establishing a
8 Legislative Ethics Commission."

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

10 * Section 1. AS 24 is amended by adding a new chapter to read:

11 CHAPTER 60. STANDARDS OF CONDUCT.

12 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
13 ture finds that it is essential in the conduct of public business that
14 legislators hold the respect and confidence of the people. Legisla-
15 tors must avoid conduct that even appears to violate the trust the
16 people have placed in them. To ensure and preserve public confidence,
17 legislators should have the benefit of specific standards to guide
18 their conduct. Article II, sec. 12, Constitution of the State of
19 Alaska grants to each house of the legislature the power to judge the
20 qualifications of its members. It is the purpose of this Act to
21 establish standards of conduct for state legislators and legislative
22 employees and to establish the Legislative Ethics Commission to con-
23 sider alleged violations of this chapter and to render advisory
24 opinions to persons affected by this chapter.

25 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
26 member of the legislature, to a person employed by a member of the
27 legislature, and to a permanent or temporary employee of an agency of
28 the legislature established under AS 24.20. This chapter applies when
29 a person listed above has a direct beneficial interest in a matter

1 whether or not the person is a party to the matter. This chapter does
2 not apply to a former member of the legislature or to a person former-
3 ly employed by a member of the legislature or an agency of the legis-
4 lature unless the provision specifically states that it so applies.
5 This chapter does not apply to a person elected to the legislature who
6 at the time of election is not a member of the legislature.

7 (b) The provisions of this chapter specifically repeal the
8 provisions of the common law relating to legislative conflict of
9 interest that may apply to a member of the legislature, a person
10 employed by a member of the legislature, or to a permanent or tempo-
11 rary employee of an agency of the legislature established under
12 AS 24.20.

13 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A conflict of
14 interest exists when a person to whom this chapter applies has discre-
15 tion to take or withhold official action or exert influence which
16 could substantially benefit or harm a financial matter in which the
17 person has a direct or indirect private interest.

18 (b) Conflicts of interest are prohibited but there is not a
19 conflict of interest if the commission determines that as to a speci-
20 fic matter there is no substantial impropriety or appearance of im-
21 propriety because

22 (1) the legislator's interest or the interest of a person
23 employed by the legislator or an agency of the legislature is rela-
24 tively insignificant;

25 (2) the legislator's authority or the authority of a person
26 employed by the legislator or an agency of the legislature is rela-
27 tively far removed from any official action that could reasonably be
28 affected by the potential conflict of interest, provided that no
29 attempt has been made to remove the appearance of impropriety by

1 delegating responsibility for official action; or

2 (3) the interest is of a type that is readily available to
3 the public or to a large class of persons to which the legislator, or
4 a person employed by the legislator or an agency of the legislature
5 belongs.

6 Sec. 24.60.040. CONTRACTS. A person to whom this chapter ap-
7 plies may not be a party to or have an interest in a state contract
8 unless the contract is let by competitive bidding or the total annual
9 amount of the state contract is \$1000 or less. A person has an inter-
10 est in a state contract under this section if direct or indirect
11 financial benefits inure to the person.

12 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
13 interest for a person to whom this chapter applies to participate in a
14 state program or to receive a loan from the state if the program or
15 loan is generally available to members of the public, is subject to
16 fixed eligibility standards, and minimal discretion is exercised in
17 determining qualification.

18 (b) In determining whether a conflict of interest exists with
19 respect to a state program or to a state loan other than those de-
20 scribed in (a) of this section, because a legislator may be in a
21 position to influence the loan agency, the ethics commission must
22 consider, but is not limited to, the adequacy of existing administra-
23 tive procedures for granting and reviewing loans to legislators.

24 (c) Upon application for a state loan by a person to whom this
25 chapter applies, other than loans described in (a) of this section,
26 the lending agency must send a copy of the application to the Alaska
27 Public Offices Commission, which will incorporate the material into
28 the applicant's financial disclosure statement, if the applicant is
29 required to file a disclosure statement. All records relating to a

1 state loan to a person to whom this chapter applies may be disclosed
2 to the commission.

3 (d) Each February 1st, each loan agency must publish a listing
4 of all outstanding loans to legislators, except for loans described in
5 (a) of this section. The list must include the name of the legisla-
6 tor, the date of issuance and current status of the loan.

7 (e) A legislator is prohibited from applying for participation
8 in a state program or for a state loan from a loan program that was
9 created or the class of persons who qualify for the program or loan
10 was expanded by legislation acted on during the term for which the
11 legislator was elected for a period of one year after the effective
12 date of the Act which created the program or expanded the class.

13 (f) State agencies that have authority to grant loans shall
14 adopt regulations that establish separate procedures for granting and
15 reviewing loans to a person to whom this chapter applies. However,
16 the regulations need not govern loans described in (a) of this sec-
17 tion.

18 (g) The division of legislative audit shall annually review
19 state loans granted to or held by legislators to determine whether
20 appropriate procedures were observed in granting or reviewing the
21 loans. The division shall report its findings to the ethics commis-
22 sion by April 1.

23 (h) For purposes of this section "state program" means a program
24 in which tangible assets of the state or a right to use tangible
25 assets of the state are transferred from the state to a private per-
26 son.

27 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
28 interest if a person to whom this chapter applies discloses or uses
29 for personal gain or for the personal gain of another, information

1 that by law is not available to the public and that the person ac-
2 quired in the course of official duties.

3 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
4 person to whom this chapter applies shall disclose to the commission
5 the formation or maintenance of a close economic association involving
6 a substantial financial matter with

7 (1) a supervisor who has responsibility or authority,
8 either directly or indirectly, over the person's employment, including
9 preparing or reviewing performance evaluations, or granting or approv-
10 ing pay raises or promotions;

11 (2) legislators;

12 (3) a public official in another branch, if the public
13 official is required to file a financial disclosure statement under
14 AS 39.50.

15 (b) It is a prohibited conflict of interest for a person to whom
16 this chapter applies to form or maintain a close economic association
17 involving a substantial financial matter with a lobbyist.

18 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
19 applies may not solicit, accept, or receive, directly or indirectly a
20 gift, in excess of \$100, whether in the form of money, services, a
21 loan, travel, entertainment, hospitality, or other form, under circum-
22 stances in which it may reasonably be inferred that the gift is in-
23 tended to influence the person in the performance of the duties of the
24 person or is intended as a reward for an official action on the part
25 of the person.

26 (b) There is no conflict of interest under this section if a
27 person to whom this chapter applies accepts

28 (1) hospitality at another person's residence, including
29 meals, lodging or ground transportation;

1 (2) discounts that are generally available to the public or
2 a large class of persons to which the person belongs;

3 (3) an invitation to attend a meal or social event that
4 does not exceed \$100 in value received by the person for each meal or
5 event and that does not in the aggregate exceed \$250 in value during
6 the calendar year from one person;

7 (4) gifts from the person's immediate family.

8 (c) The commission may establish policies that limit the extent
9 to which persons to whom this chapter applies may accept the benefits
10 set out in (b)(2) of this section, or which require public officials
11 to turn over the benefits to the agency.

12 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
13 a member of the legislature may not be employed in the house in which
14 the legislator is a member. An individual who is related to an em-
15 ployee of the legislature may not be employed in a position over which
16 the employee has supervisory authority. In this subsection, "an
17 individual who is related to" means a child, husband, wife, mother,
18 father, sister or brother.

19 (b) An individual is not employed if no compensation is received
20 from the state for the services provided.

21 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
22 provided in this section, a person to whom this chapter applies may
23 not represent another person for compensation before an agency, board,
24 or commission of the state.

25 (b) A member of the legislature and a person employed by a
26 member of the legislature may represent a client in

27 (1) an action before a court of the state; or

28 (2) a matter which was pending at the time a person to whom
29 this chapter applies assumes office or is employed.

1 (c) A legislator or a person employed by a member of the legis-
2 lature cannot avoid a conflict of interest under this section by
3 waiving compensation for representing another person under circum-
4 stances where compensation would ordinarily be expected.

5 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
6 who has a conflict of interest shall immediately

7 (1) resign the position;

8 (2) dispose of the matter which has resulted in the con-
9 flict or potential conflict; or

10 (3) may disclose the conflict of interest in the journal of
11 the appropriate body or if the legislature is not in session to the
12 commission which shall maintain a public record of the disclosure and
13 forward the disclosure to the respective house for inclusion in the
14 journal for the first day of the session.

15 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A member of the
16 legislature or a person employed by a member of the legislature may
17 not use state property or funds for personal or campaign purposes.

18 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is
19 established within the legislative branch of the state government the
20 Legislative Ethics Commission.

21 (b) The commission consists of seven members appointed as fol-
22 lows:

23 (1) the president of the senate shall appoint one member to
24 the commission from the senate with the concurrence by roll call vote
25 of three-fourths of the full membership of the senate;

26 (2) the speaker of the house of representatives shall
27 appoint one member to the commission from the house of representatives
28 with the concurrence by roll call vote of three-fourths of the full
29 membership of the house;

1 (3) the president of the senate shall appoint to the com-
2 mission two persons who are citizens of the United States and resi-
3 dents of the state with the concurrence by roll call vote of two-
4 thirds of the full membership of the senate;

5 (4) the speaker of the house of representatives shall
6 appoint to the commission two persons who are citizens of the United
7 States and residents of the state with the concurrence by roll call
8 vote of two-thirds of the full membership of the house;

9 (5) one member of the commission shall be a former legisla-
10 tor of the state who is appointed by the other members of the commis-
11 sion.

12 (c) No more than four members of the commission may be members
13 of the same political party or residents of the same borough or of the
14 unorganized borough.

15 (d) The term of office of a public member of the commission is
16 four years from February 1 of the year of appointment and until a
17 successor is appointed and qualifies. A legislator appointed to the
18 commission may not serve beyond the expiration of the legislative term
19 of office. A commission member may not serve more than one full term.

20 (e) A member of the commission may not

21 (1) hold or seek elective office;

22 (2) be an officer of a political party, political commit-
23 tee, or group; or

24 (3) lobby.

25 (f) The provisions of (e) of this section do not apply to the
26 members of the commission appointed under (b)(1) and (2) of this
27 section.

28 (g) A vacancy on the commission shall be filled under (b) of
29 this section for the balance of the term.

1 (h) The commission may employ an executive director and staff as
2 it considers necessary. A member of the commission may not serve as
3 executive director or on the staff of the commission.

4 (i) A member of the commission receives no compensation for
5 service on the commission. Members of the commission are entitled to
6 travel expenses and per diem authorized by law for members of boards
7 and commissions under AS 39.20.180, but a member of the commission who
8 is a legislator is not entitled to travel expenses and per diem from
9 the commission if the legislator is receiving travel expenses and per
10 diem as a legislator.

11 Sec. 24.60.140. DUTIES OF THE COMMISSION. (a) The commission
12 shall

13 (1) adopt regulations to facilitate the receipt of inquir-
14 ies and prompt rendition of its opinions;

15 (2) recommend to the legislature legislation the commission
16 considers desirable or necessary to promote and maintain high stan-
17 dards of ethical conduct in government;

18 (3) subpoena witnesses, administer oaths, and take testi-
19 mony relating to matters before the commission, and may require the
20 production for examination of any books or papers relating to any
21 matter under investigation before the commission;

22 (4) publish yearly summaries of decisions, advisory
23 opinions and informal advisory opinions, with sufficient deletions in
24 the summaries to prevent disclosing the identity of the persons in-
25 volved in the decisions or opinions which have remained confidential.

26 (b) The commission may adopt regulations to implement, clarify,
27 and interpret this chapter.

28 Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue
29 an advisory opinion on the request of a person to whom the chapter

1 applies as to whether the facts and circumstances of a particular case
2 constitute a violation of ethical standards. If an advisory opinion
3 is not issued within 30 days after the request is filed with the
4 commission, the facts and circumstances of the particular case do not
5 constitute a violation of the ethical standards. The opinion issued
6 or considered issued is binding on the commission and in any subse-
7 quent proceedings concerning the facts and circumstances of the par-
8 ticular case unless material facts were omitted or misstated in the
9 request for the advisory opinion. Except as provided in this chapter
10 an advisory opinion is confidential.

11 Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate,
12 receive and consider complaints alleging a violation of this chapter.

13 (b) Before the commission may exercise power authorized in (c)
14 of this section, the commission shall by resolution, supported by a
15 vote of three members of the commission, define the nature and scope
16 of the inquiry.

17 (c) The commission may investigate a violation of this chapter
18 in a proceeding begun within one year after termination of state
19 service. Nothing in this subsection bars proceedings against a person
20 who by fraud prevents discovery of a violation of this chapter. A
21 proceeding is commenced by the filing of a complaint with the commis-
22 sion. No complaint, other than a complaint initiated by three or more
23 members of the commission may be received within a period of 60 days
24 preceding a state primary or general election.

25 (d) A complaint shall be in writing and signed under oath by the
26 person making the complaint. A complaint may also be initiated by
27 three or more members of the commission. The commission shall notify
28 in writing each person against whom a complaint is received and afford
29 the person an opportunity to explain the conduct alleged to be a

1 violation of this chapter.

2 (e) The commission shall investigate the charges filed under
3 this section and issue an advisory opinion to the person alleged to
4 have violated a provision of this chapter. The commission shall
5 investigate all complaints on a confidential basis. If the advisory
6 opinion indicates a probable violation, the person against whom the
7 complaint was made may request a formal opinion or comply with the
8 advisory opinion. If the person fails to comply with the advisory
9 opinion or if a majority of the members of the commission determine
10 that there is probable cause for belief that a violation of this
11 chapter has occurred, the commission shall file a complaint against
12 the person charged with a violation of this chapter and the complaint
13 and statement of the alleged violation shall be personally served on
14 the person charged. The alleged violator has 20 days after service of
15 the complaint and statement to respond in writing to the commission.

16 (f) The commission may set a time and place for a hearing with
17 notice to the complainant, if any, and to the person charged with a
18 violation of this chapter. The executive director of the commission
19 and the person charged with a violation of this chapter shall have an
20 opportunity to be heard, to subpoena witnesses and require the produc-
21 tion of books or papers relating to the proceedings, to be represented
22 by counsel, and to have the right of cross-examination. Each witness
23 shall testify under oath. The hearings are closed to the public
24 unless the person charged with a violation of this chapter requests an
25 open hearing. The commission is not bound by the rules of evidence
26 but the commission's findings must be based upon competent and sub-
27 stantial evidence. The testimony taken at the hearing shall be re-
28 corded and evidence shall be maintained. The testimony and evidence
29 is available only to the staff of the commission and to the person

1 charged with a violation of this chapter. If the person charged with
2 the violation of a provision of this chapter requests a copy of the
3 transcript of testimony, the copy shall be furnished by the commission
4 without charge.

5 (g) A decision of the commission shall be in writing and signed
6 by four or more members of the commission.

7 (h) If the commission issues a decision that a member of the
8 legislature has violated a provision of this chapter or that a legis-
9 lator has declined or failed to cooperate with the commission, it
10 shall refer the decision to the presiding officers of the legislature.
11 The decision shall contain a statement of the facts determined to
12 constitute the violation and may contain recommendations concerning
13 penalties including imposition of civil penalties in an amount not to
14 exceed \$25,000. If within 30 days after the referral, a committee of
15 the legislature has not reported action on the decision, the commis-
16 sion shall make the decision public. Days during which the legisla-
17 ture is not in session may not be counted in determining the 30-day
18 period. The legislature shall act on the decision as it considers
19 appropriate.

20 (i) If four members of the commission agree to a decision that a
21 former member of the legislature or an employee or a former employee
22 of a legislator or of an agency of the legislature has violated a
23 provision of this chapter, the commission may issue a public statement
24 of its decision. The attorney general may exercise whatever remedies
25 may be available to the state.

26 (j) A commission member or individual who divulges information
27 concerning a charge before the filing of a complaint by the commis-
28 sion, except as permitted by this chapter, is guilty of a class C
29 felony.

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Sec. 24.60.170. In this chapter, "commission" means the Legislative Ethics Commission.

1 IN THE SENATE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and establishing a
8 Legislative Ethics Commission."

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

10 * Section 1. AS 24 is amended by adding a new chapter to read:

11 CHAPTER 60. STANDARDS OF CONDUCT.

12 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
13 ture finds that it is essential in the conduct of public business that
14 legislators hold the respect and confidence of the people. Legisla-
15 tors must avoid conduct that even appears to violate the trust the
16 people have placed in them. To ensure and preserve public confidence,
17 legislators should have the benefit of specific standards to guide
18 their conduct. Article II, sec. 12, Constitution of the State of
19 Alaska grants to each house of the legislature the power to judge the
20 qualifications of its members. It is the purpose of this Act to
21 establish standards of conduct for state legislators and legislative
22 employees and to establish the Legislative Ethics Commission to con-
23 sider alleged violations of this chapter and to render advisory
24 opinions to persons affected by this chapter.

25 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
26 member of the legislature, to a person employed by a member of the
27 legislature, and to a permanent or temporary employee of an agency of
28 the legislature established under AS 24.20. [This chapter does not
29 apply to a former member of the legislature or to a person formerly

1 employed by a member of the legislature or an agency of the legisla-
2 ture unless the provision specifically states that it so applies.]
3 This chapter does not apply to a person elected to the legislature who
4 at the time of election is not a member of the legislature.

5 (b) The provisions of this chapter specifically repeal the
6 provisions of the common law relating to legislative conflict of
7 interest that may apply to a member of the legislature, a person
8 employed by a member of the legislature, or to a permanent or tempo-
9 rary employee of an agency of the legislature established under
10 AS 24.20.

11 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom
12 this chapter applies may not use public office for private advancement
13 or gain.

14 (b) A conflict of interest exists when a person to whom this
15 chapter applies has discretion to take or withhold official action or
16 exert influence which could substantially benefit or harm a financial
17 matter in which the person has a direct or indirect private interest.

18 (c) Conflicts of interest are prohibited but there is not a
19 conflict of interest if the commission determines that as to a speci-
20 fic matter there is no substantial impropriety or appearance of im-
21 propriety because

22 (1) the person's interest is relatively insignificant;

23 (2) the person's authority is relatively far removed from
24 any official action that could reasonably be affected by the potential
25 conflict of interest, provided that no attempt has been made to remove
26 the appearance of impropriety by delegating responsibility for offi-
27 cial action.

28 (d) A conflict does not exist if the commission determines that
29 no benefit or detriment accrues to a person to whom this chapter

1 applies beyond that which accrues uniformly to members of the profes-
2 sion, occupation or group to which the person belongs, or to the
3 public at large.

4 Sec. 24.60.040. CONTRACTS. A person to whom this chapter ap-
5 plies may not be a party to or have an interest in a state contract
6 unless the contract is let by competitive bidding or the total annual
7 amount of the state contract is \$1000 or less. A person has an inter-
8 est in a state contract under this section if the person receives
9 direct or indirect financial benefits. A person has an interest in a
10 state contract under this section if the contract is awarded to

11 (1) a firm, corporation, or association in which the person
12 has an ownership interest greater than ___ percent; or

13 (2) a partnership in which the person is a partner.

14 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
15 interest for a person to whom this chapter applies to participate in a
16 state program or to receive a loan from the state if the program or
17 loan is generally available to members of the public, is subject to
18 fixed eligibility standards, and minimal discretion is exercised in
19 determining qualification.

20 (b) In determining whether a conflict of interest exists with
21 respect to a state program or to a state loan other than those de-
22 scribed in (a) of this section, because a legislator may be in a
23 position to influence the loan agency, the ethics commission must
24 consider, but is not limited to, the adequacy of existing administra-
25 tive procedures for granting and reviewing loans to legislators.

26 (c) Upon application for a state loan by a person to whom this
27 chapter applies, other than loans described in (a) of this section,
28 the lending agency must send a copy of the application to the Alaska
29 Public Offices Commission, which will incorporate the material into

1 the applicant's financial disclosure statement, if the applicant is
2 required to file a disclosure statement. All records relating to a
3 state loan to a person to whom this chapter applies may be disclosed
4 to the commission.

5 (d) Each February 1st, each loan agency must publish a listing
6 of all outstanding loans to persons to whom this chapter applies,
7 except for loans described in (a) of this section. The list must
8 include the name of the person, the date of issuance and current
9 status of the loan.

10 (e) A legislator is prohibited from applying for participation
11 in a state program or for a state loan from a loan program that was
12 created or the class of persons who qualify for the program or loan
13 was expanded by legislation acted on during the term for which the
14 legislator was elected for a period of one year after the effective
15 date of the Act which created the program or expanded the class.

16 (f) State agencies that have authority to grant loans shall
17 adopt regulations that establish separate procedures for granting and
18 reviewing loans to a person to whom this chapter applies. However,
19 the regulations need not govern loans described in (a) of this sec-
20 tion.

21 (g) The division of legislative audit shall annually review
22 state loans granted to or held by persons to whom this chapter applies
23 to determine whether appropriate procedures were observed in granting
24 or reviewing the loans. The division shall report its findings to the
25 ethics commission by April 1.

26 (h) For purposes of this section "state program" means a program
27 in which tangible assets of the state or a right to use tangible
28 assets of the state are transferred from the state to a private per-
29 son.

1 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
2 interest if a person to whom this chapter applies discloses or uses
3 for personal gain or for the personal gain of another, information
4 that by law is not available to the public and that the person ac-
5 quired in the course of official duties.

6 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
7 person to whom this chapter applies shall disclose to the commission
8 the formation or maintenance of a close economic association involving
9 a substantial financial matter with

10 (1) a supervisor who has responsibility or authority,
11 either directly or indirectly, over the person's employment, including
12 preparing or reviewing performance evaluations, or granting or approv-
13 ing pay raises or promotions;

14 (2) legislators;

15 (3) a public official in another branch, if the public
16 official is required to file a financial disclosure statement under
17 AS 39.50.

18 (b) It is a prohibited conflict of interest for a person to whom
19 this chapter applies to form or maintain a close economic association
20 involving a substantial financial matter with a lobbyist who is not a
21 member of the immediate family of the person.

22 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
23 applies may not solicit a gift, or accept or receive, directly or
24 indirectly, a gift, in excess of \$100, whether in the form of money,
25 services, a loan, travel, entertainment, hospitality, or other form,
26 under circumstances in which it may reasonably be inferred that the
27 gift is intended to influence the person in the performance of the
28 duties of the person or is intended as a reward for an official action
29 by the person.

1 (b) It is not a conflict of interest under this section if a
2 person to whom this chapter applies accepts

3 (1) hospitality at another person's residence, including
4 meals, lodging or ground or water transportation;

5 (2) discounts that are generally available to the public or
6 a large class of persons to which the person belongs;

7 (3) an invitation to attend a meal or social event that
8 does not exceed \$100 in value received by the person for each meal or
9 event and that does not in the aggregate exceed \$250 in value during
10 the calendar year from one person; or

11 (4) gifts from the person's immediate family.

12 (c) The commission may establish policies that limit the extent
13 to which persons to whom this chapter applies may accept the benefits
14 set out in (b)(2) of this section, or that require public officials to
15 turn over the benefits to the agency.

16 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
17 a member of the legislature may not be employed in the house in which
18 the legislator is a member, by an agency of the legislature estab-
19 lished under AS 24.20, or in the other house during the interim be-
20 tween sessions. An individual who is related to an employee of the
21 legislature may not be employed in a position over which the employee
22 has supervisory authority. In this subsection, "an individual who is
23 related to" means a child, husband, wife, mother, father, sister or
24 brother.

25 (b) An individual is not employed if no compensation is received
26 from the state for the services provided.

27 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
28 provided in this section, a member of the legislature or a person
29 employed by an agency of the legislature established under AS 24.20

1 may not represent another person for compensation before an agency,
2 board, or commission of the state.

3 (b) A member of the legislature may represent a client in

4 (1) an action before a court of the state; or

5 (2) a matter which was pending at the time a person to whom
6 this chapter applies assumes office or is employed.

7 (c) A legislator cannot avoid a conflict of interest under this
8 section by waiving compensation for representing another person under
9 circumstances where compensation would ordinarily be expected.

10 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
11 who has a conflict of interest shall immediately

12 (1) resign the position;

13 (2) divest the interest that has resulted in the conflict
14 or potential conflict; or

15 (3) disclose the conflict of interest in the journal of the
16 appropriate body or if the legislature is not in session to the com-
17 mission which shall maintain a public record of the disclosure and
18 forward the disclosure to the respective house for inclusion in the
19 journal for the first day of the session.

20 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this
21 chapter applies may not use state property or funds for private gain
22 or campaign purposes.

23 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is
24 established within the legislative branch of the state government the
25 Legislative Ethics Commission.

26 (b) The commission consists of seven members appointed as fol-
27 lows:

28 (1) the president of the senate shall appoint one member to
29 the commission from the senate with the concurrence by roll call vote

1 of three-fourths of the full membership of the senate;

2 (2) the speaker of the house of representatives shall
3 appoint one member to the commission from the house of representatives
4 with the concurrence by roll call vote of three-fourths of the full
5 membership of the house;

6 (3) the president of the senate shall appoint to the com-
7 mission two persons who are citizens of the United States and resi-
8 dents of the state with the concurrence by roll call vote of two-
9 thirds of the full membership of the senate;

10 (4) the speaker of the house of representatives shall
11 appoint to the commission two persons who are citizens of the United
12 States and residents of the state with the concurrence by roll call
13 vote of two-thirds of the full membership of the house;

14 (5) one member of the commission shall be a former legisla-
15 tor of the state who is appointed by the other members of the commis-
16 sion.

17 (c) No more than four members of the commission may be members
18 of the same political party or residents of the same borough or of the
19 unorganized borough.

20 (d) The members of the commission shall elect a chair and vice-
21 chair and may elect other officers. Those members of the commission
22 who are members of the legislature may not serve as chair or vice-
23 chair.

24 (e) The term of office of a public member of the commission is
25 four years from February 1 of the year of appointment and until a
26 successor is appointed and qualifies. A legislator appointed to the
27 commission may not serve beyond the expiration of the legislative term
28 of office. A commission member may not serve more than one full term.

29 (f) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(g) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(h) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(i) The commission may contract for professional services and may employ staff as it considers necessary. [A member of the commission may not serve as executive director or on the staff of the commission.]

(j) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

→ Sec. 24.60.140. DUTIES OF THE COMMISSION. (a) The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) recommend to the legislature [legislation] the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the

1 production for examination of any books or papers relating to any
2 matter under investigation before the commission;

3 (4) publish yearly summaries of decisions, advisory opin-
4 ions and informal advisory opinions, with sufficient deletions in the
5 summaries to prevent disclosing the identity of the persons involved
6 in the decisions or opinions which have remained confidential.

7 (b) The commission may adopt regulations to implement, clarify,
8 and interpret this chapter.

9 Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue
10 an advisory opinion on the request of a person to whom the chapter
11 applies as to whether the facts and circumstances of a particular case
12 constitute a violation of ethical standards. If an advisory opinion
13 is not issued within 30 days after the request is filed with the
14 commission, the facts and circumstances of the particular case do not
15 constitute a violation of the ethical standards. The opinion issued
16 or considered issued is binding on the commission and in any subse-
17 quent proceedings concerning the facts and circumstances of the par-
18 ticular case unless material facts were omitted or misstated in the
19 request for the advisory opinion. Except as provided in this chapter
20 an advisory opinion is confidential.

21 Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate,
22 receive and consider complaints alleging a violation of this chapter.

23 (b) Before the commission may exercise power authorized in (c)
24 of this section, the commission shall by resolution, supported by a
25 vote of three members of the commission, define the nature and scope
26 of the inquiry.

27 (c) The commission may investigate a violation of this chapter
28 in a proceeding begun within one year after termination of state
29 service. Nothing in this subsection bars proceedings against a person

1 who by fraud prevents discovery of a violation of this chapter. A
2 proceeding is commenced by the filing of a complaint with the commis-
3 sion. No complaint, other than a complaint initiated by three or more
4 members of the commission may be received within a period of 60 days
5 preceding a state primary or general election.

6 (d) A complaint shall be in writing and signed under oath by the
7 person making the complaint. A complaint may also be initiated by
8 three or more members of the commission. The commission shall notify
9 in writing each person against whom a complaint is received and afford
10 the person an opportunity to explain the conduct alleged to be a
11 violation of this chapter.

12 (e) The commission shall investigate the charges filed under
13 this section and issue an advisory opinion to the person alleged to
14 have violated a provision of this chapter. The commission shall
15 investigate all complaints on a confidential basis. If the advisory
16 opinion indicates a probable violation, the person against whom the
17 complaint was made may request a formal opinion or comply with the
18 advisory opinion. If the person fails to comply with the advisory
19 opinion or if a majority of the members of the commission determine
20 that there is probable cause for belief that a violation of this
21 chapter has occurred, the commission shall file a complaint against
22 the person charged with a violation of this chapter and the complaint
23 and statement of the alleged violation shall be personally served on
24 the person charged. The alleged violator has 20 days after service of
25 the complaint and statement to respond in writing to the commission.

26 (f) The commission may set a time and place for a hearing with
27 notice to the complainant, if any, and to the person charged with a
28 violation of this chapter. The executive director of the commission
29 and the person charged with a violation of this chapter shall have an

1 opportunity to be heard, to subpoena witnesses and require the produc-
2 tion of books or papers relating to the proceedings, to be represented
3 by counsel, and to have the right of cross-examination. Each witness
4 shall testify under oath. The hearings are closed to the public
5 unless the person charged with a violation of this chapter requests an
6 open hearing. The commission is not bound by the rules of evidence
7 but the commission's findings must be based upon competent and sub-
8 stantial evidence. The testimony taken at the hearing shall be re-
9 corded and evidence shall be maintained. The testimony and evidence
10 is available only to the staff of the commission and to the person
11 charged with a violation of this chapter. If the person charged with
12 the violation of a provision of this chapter requests a copy of the
13 transcript of testimony, the copy shall be furnished by the commission
14 without charge.

15 (g) A decision of the commission shall be in writing and signed
16 by four or more members of the commission.

17 (h) If the commission issues a decision that a member of the
18 legislature has violated a provision of this chapter or that a legis-
19 lator has declined or failed to cooperate with the commission, it
20 shall refer the decision to the presiding officers of the legislature.
21 The decision shall contain a statement of the facts determined to
22 constitute the violation and may contain recommendations concerning
23 penalties including imposition of civil penalties in an amount not to
24 exceed \$25,000. If within 30 days after the referral, a committee of
25 the legislature has not reported action on the decision, the commis-
26 sion shall make the decision public. Days during which the legisla-
27 ture is not in session may not be counted in determining the 30-day
28 period. The legislature shall act on the decision as it considers
29 appropriate.

1 (i) If four members of the commission agree to a decision that a
 2 former member of the legislature or an employee or a former employee
 3 of a legislator or of an agency of the legislature has violated a
 4 provision of this chapter, the commission may issue a public statement
 5 of its decision. The attorney general may exercise whatever remedies
 6 may be available to the state.

7 (j) A commission member or individual who divulges information
 8 concerning a charge before the filing of a complaint by the commis-
 9 sion, except as permitted by this chapter, is guilty of a class C
 10 felony.

11 Sec. 24.60.170. In this chapter, "commission" means the Legisla-
 12 tive Ethics Commission.

13 *Definition - Range 16 or under*

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IN THE SENATE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature, ~~established under AS 24.20~~. This chapter does not apply to

1 (1) a former member of the legislature or to a person
2 formerly employed by a member of the legislature or an agency of the
3 legislature unless the provision specifically states that it so ap-
4 plies;

5 (2) a person elected to the legislature who at the time of
6 election is not a member of the legislature;

7 (3) a person employed by a member of the legislature or an
8 employee of an agency of the legislature whose compensation is below
9 Step A, Range 18 of the state salary schedule established in AS 39.-
10 27.011(a).

11 (b) The provisions of this chapter specifically repeal the
12 provisions of the common law relating to legislative conflict of
13 interest that may apply to a member of the legislature, a person
14 employed by a member of the legislature, or to a permanent or tempo-
15 rary employee of an agency of the legislature, ~~established under~~
16 ~~AS 24.20.~~

17 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom
18 this chapter applies may not use public office for private advancement
19 or gain.

20 (b) A conflict of interest exists when a person to whom this
21 chapter applies has discretion to take or withhold official action or
22 exert influence which could substantially benefit or harm a financial
23 matter in which the person has a direct or indirect private interest.

24 (c) Conflicts of interest are prohibited but there is not a
25 conflict of interest if ~~the commission determines that~~ as to a speci-
26 fic matter there is no substantial impropriety or appearance of im-
27 propriety because

28 (1) the person's interest is relatively insignificant;

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1 any official action that could reasonably be affected by the potential
2 conflict of interest, provided that no attempt has been made to remove
3 the appearance of impropriety by delegating responsibility for offi-
4 cial action.

5 (d) A conflict does not exist if ~~the commission determines that~~
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9 public at large.

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12 unless the contract is let by competitive bidding under AS 37.05.230
13 or the total annual amount of the state contract is \$1000 or less. A
14 person has an interest in a state contract under this section if the
15 person receives direct or indirect financial benefits. A person has
16 an interest in a state contract under this section if the contract is
17 awarded to

18 (1) a firm, corporation, or association in which the person
19 has an ownership interest greater than ___ percent; or

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21 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
22 interest for a person to whom this chapter applies to participate in a
23 state program or to receive a loan from the state if the program or
24 loan is generally available to members of the public, is subject to
25 fixed eligibility standards, and minimal discretion is exercised in
26 determining qualification.

27 (b) In determining whether a conflict of interest exists with
28 respect to a state program or to a state loan other than those de-
29 scribed in (a) of this section, because a legislator may be in a

1 position to influence the loan agency, the ethics commission must
2 consider, but is not limited to, the adequacy of existing administra-
3 tive procedures for granting and reviewing loans to legislators.

4 (c) Upon application for a state loan by a person to whom this
5 chapter applies, other than loans described in (a) of this section,
6 the lending agency must send a copy of the application to the Alaska
7 Public Offices Commission, which will incorporate the material into
8 the applicant's financial disclosure statement, if the applicant is
9 required to file a disclosure statement. All records relating to a
10 state loan to a person to whom this chapter applies may be disclosed
11 to the commission.

12 (d) Each February 1st, each loan agency must publish a listing
13 of all outstanding loans to persons to whom this chapter applies,
14 except for loans described in (a) of this section. The list must
15 include the name of the person, the date of issuance and current
16 status of the loan.

17 (e) State agencies that have authority to grant loans shall
18 adopt regulations that establish separate procedures for granting and
19 reviewing loans to a person to whom this chapter applies. However,
20 the regulations need not govern loans described in (a) of this sec-
21 tion.

22 (f) The division of legislative audit shall annually review
23 state loans granted to or held by persons to whom this chapter applies
24 to determine whether appropriate procedures were observed in granting
25 or reviewing the loans. The division shall report its findings to the
26 ethics commission by April 1.

27 (g) For purposes of this section "state program" means a program
28 in which tangible assets of the state or a right to use tangible
29 assets of the state are transferred from the state to a private

1 person.

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3 interest if a person to whom this chapter applies discloses or uses
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8 person to whom this chapter applies shall disclose to the commission
9 the formation or maintenance of a close economic association involving
10 a substantial financial matter with

11 (1) a supervisor who has responsibility or authority,
12 either directly or indirectly, over the person's employment, including
13 preparing or reviewing performance evaluations, or granting or approv-
14 ing pay raises or promotions;

15 (2) legislators;

16 (3) a public official in another branch, if the public
17 official is required to file a financial disclosure statement under
18 AS 39.50.

19 (b) It is a prohibited conflict of interest for a person to whom
20 this chapter applies to form or maintain a close economic association
21 involving a substantial financial matter with a lobbyist who is not a
22 member of the immediate family of the person.

23 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
24 applies may not solicit ^{or may not accept in any amount} a gift, or accept or receive, directly or
25 indirectly, a gift, in excess of \$100, whether in the form of money,
26 services, a loan, travel, entertainment, hospitality, or other form,
27 under circumstances in which it may reasonably be inferred that the
28 gift is intended to influence the person in the performance of the
29 duties of the person or is intended as a reward for an official action

1 by the person.

2 (b) It is not a conflict of interest under this section if a
3 person to whom this chapter applies accepts

4 (1) hospitality at another person's residence, including
5 meals, lodging or ground or water transportation;

6 (2) discounts that are generally available to the public or
7 a large class of persons to which the person belongs;

8 (3) an invitation to attend a meal or social event that
9 does not exceed \$100 in value received by the person for each meal or
10 event and that does not in the aggregate exceed \$250 in value during
11 the calendar year from one person; or

12 (4) gifts from the person's immediate family.

13 (c) The commission may establish policies that limit the extent
14 to which persons to whom this chapter applies may accept the benefits
15 set out in (b)(2) of this section, or that require public officials to
16 turn over the benefits to the agency.

17 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
18 a member of the legislature may not be employed in the house in which
19 the legislator is a member, by an agency of the legislature estab-
20 lished under AS 24.20, or in the other house during the interim be-
21 tween sessions. An individual who is related to an employee of the
22 legislature may not be employed in a position over which the employee
23 has supervisory authority. In this subsection, "an individual who is
24 related to" means a child, husband, wife, mother, father, sister,
25 brother, or a permanent member of the legislator's household.

26 (b) An individual is not employed if no compensation is received
27 from the state for the services provided.

28 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
29 provided in this section, a member of the legislature or a person

1 employed by an agency of the legislature established under AS 24.20
2 may not represent another person for compensation before an agency,
3 board, or commission of the state.

4 (b) A member of the legislature may represent a client in

5 (1) an action before a court of the state; or

6 (2) a matter which was pending at the time a person to whom
7 this chapter applies assumes office or is employed.

8 (c) A legislator cannot avoid a conflict of interest under this'
9 section by waiving compensation for representing another person under
10 circumstances where compensation would ordinarily be expected.

11 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
12 who has a conflict of interest shall immediately

13 (1) resign the position;

14 (2) divest the interest that has resulted in the conflict
15 or potential conflict; or

16 (3) disclose the conflict of interest in the journal of the
17 appropriate body or if the legislature is not in session to the com-
18 mission which shall maintain a public record of the disclosure and
19 forward the disclosure to the respective house for inclusion in the
20 journal for the first day of the session.

21 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this
22 chapter applies may not use state property or funds for private gain
23 or campaign purposes.

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25 established within the legislative branch of the state government the
26 Legislative Ethics Commission.

27 (b) The commission consists of seven members appointed as fol-
28 lows:

29 (1) the president of the senate shall appoint one member to

1 the commission from the senate with the concurrence by roll call vote
2 of three-fourths of the full membership of the senate;

3 (2) the speaker of the house of representatives shall
4 appoint one member to the commission from the house of representatives
5 with the concurrence by roll call vote of three-fourths of the full
6 membership of the house;

7 (3) the president of the senate shall appoint to the com-
8 mission two persons who are citizens of the United States and resi-
9 dents of the state with the concurrence by roll call vote of two-
10 thirds of the full membership of the senate;

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12 appoint to the commission two persons who are citizens of the United
13 States and residents of the state with the concurrence by roll call
14 vote of two-thirds of the full membership of the house;

15 (5) one member of the commission shall be a former legisla-
16 tor of the state who is appointed by the other members of the commis-
17 sion.

18 (c) No more than four members of the commission may be members
19 of the same political party or residents of the same borough or of the
20 unorganized borough.

21 (d) The members of the commission shall elect a chair and vice-
22 chair and may elect other officers. Those members of the commission
23 who are members of the legislature may not serve as chair or vice-
24 chair.

25 (e) The term of office of a public member of the commission is
26 four years from February 1 of the year of appointment and until a
27 successor is appointed and qualifies. A legislator appointed to the
28 commission may not serve beyond the expiration of the legislative term
29 of office. A commission member may not serve more than one full term.

1 (f) A member of the commission may not
2 (1) hold or seek elective office;
3 (2) be an officer of a political party, political commit-
4 tee, or group; or
5 (3) lobby.

6 (g) The provisions of (e) of this section do not apply to the
7 members of the commission appointed under (b)(1) and (2) of this
8 section.

9 (h) A vacancy on the commission shall be filled under (b) of
10 this section for the balance of the term.

11 (i) The commission may contract for professional services and
12 may employ staff as it considers necessary. A member of the commis-
13 sion may not serve on the staff of the commission.

14 (j) A member of the commission receives no compensation for
15 service on the commission. Members of the commission are entitled to
16 travel expenses and per diem authorized by law for members of boards
17 and commissions under AS 39.20.180, but a member of the commission who
18 is a legislator is not entitled to travel expenses and per diem from
19 the commission if the legislator is receiving travel expenses and per
20 diem as a legislator.

21 Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission shall

22 (1) adopt regulations to facilitate the receipt of inquir-
23 ies and prompt rendition of its opinions;

24 (2) recommend legislation to the legislature the commission
25 considers desirable or necessary to promote and maintain high stan-
26 dards of ethical conduct in government;

27 (3) subpoena witnesses, administer oaths, and take testi-
28 mony relating to matters before the commission, and may require the
29 production for examination of any books or papers relating to any

1 matter under investigation before the commission;

2 (4) publish ^{Semi-annual} yearly summaries of decisions, advisory opin-
3 ions and informal advisory opinions, with sufficient deletions in the
4 summaries to prevent disclosing the identity of the persons involved
5 in the decisions or opinions which have remained confidential.

6 Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue
7 an advisory opinion on the request of a person to whom the chapter
8 applies as to whether the facts and circumstances of a particular case
9 constitute a violation of ethical standards. If an advisory opinion
10 is not issued within 30 days after the request is filed with the
11 commission, the facts and circumstances of the particular case do not
12 constitute a violation of the ethical standards. The opinion issued
13 or considered issued is binding on the commission and in any subse-
14 quent proceedings concerning the facts and circumstances of the par-
15 ticular case unless material facts were omitted or misstated in the
16 request for the advisory opinion. Except as provided in this chapter
17 an advisory opinion is confidential.

18 Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate,
19 receive and consider complaints alleging a violation of this chapter.

20 (b) Before the commission may exercise power authorized in (c)
21 of this section, the commission shall by resolution, supported by a
22 vote of three members of the commission, define the nature and scope
23 of the inquiry.

24 (c) The commission may investigate a violation of this chapter
25 in a proceeding begun within one year after termination of state
26 service. Nothing in this subsection bars proceedings against a person
27 who by fraud prevents discovery of a violation of this chapter. A
28 proceeding is commenced by the filing of a complaint with the commis-
29 sion. No complaint, other than a complaint initiated by ⁵(three) or more

1 members of the commission may be received within a period of 60 days
2 preceding a state primary or general election.

3 (d) A complaint shall be in writing and signed under oath by the
4 person making the complaint. A complaint may also be initiated by
5 three or more members of the commission. The commission shall notify
6 in writing each person against whom a complaint is received and afford
7 the person an opportunity to explain the conduct alleged to be a
8 violation of this chapter. If the commission determines that a com-
9 plaint does not contain allegations of facts sufficient, if the al-
10 leged facts are treated as true, to constitute a violation of this
11 chapter the commission shall summarily dismiss the complaint.

12 (e) The commission shall investigate the charges filed under
13 this section and issue an advisory opinion to the person alleged to
14 have violated a provision of this chapter. The commission shall
15 investigate all complaints on a confidential basis. If the advisory
16 opinion indicates a probable violation, the person against whom the
17 complaint was made may request a formal opinion or comply with the
18 advisory opinion. If the person fails to comply with the advisory
19 opinion or if a majority of the members of the commission determine
20 that there is probable cause for belief that a violation of this
21 chapter has occurred, the commission shall file a complaint against
22 the person charged with a violation of this chapter and the complaint
23 and statement of the alleged violation shall be personally served on
24 the person charged. The alleged violator has 20 days after service of
25 the complaint and statement to respond in writing to the commission.

26 (f) The commission may set a time and place for a hearing with
27 notice to the complainant, if any, and to the person charged with a
28 violation of this chapter. A representative of the commission and the
29 person charged with a violation of this chapter shall have an

1 opportunity to be heard, to subpoena witnesses and require the produc-
2 tion of books or papers relating to the proceedings, to be represented
3 by counsel, and to have the right of cross-examination. Each witness
4 shall testify under oath. The hearings are closed to the public
5 unless the person charged with a violation of this chapter requests an
6 open hearing. The commission is not bound by the rules of evidence
7 but the commission's findings must be based upon competent and sub-
8 stantial evidence. The testimony taken at the hearing shall be re-
9 corded and evidence shall be maintained. The testimony and evidence
10 is available only to the staff of the commission and to the person
11 charged with a violation of this chapter. If the person charged with
12 the violation of a provision of this chapter requests a copy of the
13 transcript of testimony, the copy shall be furnished by the commission
14 without charge.

15 (g) A decision of the commission shall be in writing and signed
16 by four or more members of the commission. Each decision of the
17 commission must be accompanied by a written order of the commission
18 determining that a violation of this chapter exists or does not exist.
19 The order is confined to this determination. This order is a public
20 record.

21 (h) If the commission issues a decision that a member of the
22 legislature has violated a provision of this chapter or that a legis-
23 lator has declined or failed to cooperate with the commission, it
24 shall refer the decision to the presiding officers of the legislature.
25 The decision shall contain a statement of the facts determined to
26 constitute the violation or the failure to cooperate and may contain
27 recommendations concerning penalties including imposition of civil
28 penalties in an amount not to exceed \$25,000. The commission shall
29 make the decision public 30 days after the referral. Days during

1 which the legislature is not in session may not be counted in deter-
2 mining the 30-day period. The legislature shall act on the decision
3 as it considers appropriate.

4 (i) If four members of the commission agree to a decision that a
5 former member of the legislature or an employee or a former employee
6 of a legislator or of an agency of the legislature has violated a
7 provision of this chapter, the commission ~~shall~~^{may} issue a public state-
8 ment of its decision 30 days after the date of the decision. ~~The~~
9 ~~attorney general shall exercise whatever remedies may be available to~~
10 ~~the state.~~]

11 (j) A commission member or individual who divulges information
12 concerning a charge before the filing of a complaint by the commis-
13 sion, except as permitted by this chapter, is guilty of a class C
14 felony.

15 Sec. 24.60.170. In this chapter, "commission" means the Legisla-
16 tive Ethics Commission.

13-1185
Berrier
4-12-83.

Compared to 4/11 draft

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~~4~~

1 IN THE SENATE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and establishing a
8 Legislative Ethics Commission."

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

10 * Section 1. AS 24 is amended by adding a new chapter to read:

11 CHAPTER 60. STANDARDS OF CONDUCT.

12 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
13 ture finds that it is essential in the conduct of public business that
14 legislators hold the respect and confidence of the people. Legisla-
15 tors must avoid conduct that even appears to violate the trust the
16 people have placed in them. To ensure and preserve public confidence,
17 legislators should have the benefit of specific standards to guide
18 their conduct. Article II, sec. 12, Constitution of the State of
19 Alaska grants to each house of the legislature the power to judge the
20 qualifications of its members. It is the purpose of this Act to
21 establish standards of conduct for state legislators and legislative
22 employees and to establish the Legislative Ethics Commission to con-
23 sider alleged violations of this chapter and to render advisory opin-
24 ions to persons affected by this chapter.

25 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
26 member of the legislature, to a person employed by a member of the
27 legislature, and to a permanent or temporary employee of an agency of
28 the legislature. This chapter does not apply to

29 (1) a former member of the legislature or to a person

Deleted "established under AS 24.20"

1 formerly employed by a member of the legislature or an agency of the
2 legislature unless the provision specifically states that it so ap-
3 plies;

4 (2) a person elected to the legislature who at the time of
5 election is not a member of the legislature;

6 (3) a person employed by a member of the legislature or an
7 employee of an agency of the legislature whose compensation is below
8 Step A, Range 18 of the state salary schedule established in AS 39.-
9 27.011(a).

10 (b) The provisions of this chapter specifically repeal the
11 provisions of the common law relating to legislative conflict of
12 interest that may apply to a member of the legislature, a person
13 employed by a member of the legislature, or to a permanent or tempo-
14 rary employee of an agency of the legislature! **They do not supersede**
15 **or repeal provisions of the criminal laws of the state.**

16 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom
17 this chapter applies may not use public office for private advancement
18 or gain.

19 (b) A conflict of interest exists when a person to whom this
20 chapter applies has discretion to take or withhold official action or
21 exert influence which could substantially benefit or harm a financial
22 matter in which the person has a direct or indirect private interest.

23 (c) Conflicts of interest are prohibited but there is not a
24 conflict of interest if ~~2~~ as to a specific matter, there is no substan-
25 tial impropriety or appearance of impropriety because

26 (1) the person's interest is relatively insignificant;

27 (2) the person's authority is relatively far removed from
28 any official action that could reasonably be affected by the potential
29 conflict of interest, provided that no attempt has been made to remove

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1 the appearance of impropriety by delegating responsibility for offi-
2 cial action.

3 (d) A conflict does not exist if no benefit or detriment accrues
4 to a person to whom this chapter applies beyond that which accrues
5 uniformly to members of the profession, occupation or group to which
6 the person belongs, or to the public at large.

7 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
8 applies may not be a party to or have an interest in a state contract
9 unless the contract is let by competitive bidding under AS 37.05.230
10 or the total annual amount of the state contract is \$1000 or less. A
11 person has an interest in a state contract under this section if the
12 person receives direct or indirect financial benefits. A person has
13 an interest in a state contract under this section if the contract is
14 awarded to

15 (1) a firm, corporation, or association that has assets in
16 excess of \$5,000,000 and in which the person has an ownership interest
17 greater than 10 percent or that has assets of \$5,000,000 or less and
18 in which the person has an ownership interest greater than 25 percent;
19 or

20 (2) a partnership in which the person is a partner.

21 (b) In this section, "direct or indirect financial benefits"
22 means income, profits or other financial benefits under a state con-
23 tract, without regard to whether the person is a party to the con-
24 tract, and without regard to whether the income, profits or other
25 financial benefits ^{share} ensue to the person as a partner, shareholder,
26 investor, agent, employee, consultant, or joint venturer of the con-
27 tractor.

28 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
29 interest for a person to whom this chapter applies to participate in a

1 state program or to receive a loan from the state if the program or
2 loan is generally available to members of the public, is subject to
3 fixed eligibility standards, and minimal discretion is exercised in
4 determining qualification.

5 (b) In determining whether a conflict of interest exists with
6 respect to a state program or to a state loan other than those de-
7 scribed in (a) of this section, because a legislator may be in a
8 position to influence the loan agency, the ethics commission must
9 consider, but is not limited to, the adequacy of existing administra-
10 tive procedures for granting and reviewing loans to legislators.

11 (c) Upon application for a state loan by a person to whom this
12 chapter applies, other than loans described in (a) of this section,
13 the lending agency must send a copy of the application to the Alaska
14 Public Offices Commission, which will incorporate the material into
15 the applicant's financial disclosure statement, if the applicant is
16 required to file a disclosure statement. All records relating to a
17 state loan to a person to whom this chapter applies may be disclosed
18 to the commission.

19 (d) Each February 1st, each loan agency must publish a listing
20 of all outstanding loans to persons to whom this chapter applies,
21 except for loans described in (a) of this section. The list must
22 include the name of the person, the date of issuance and current
23 status of the loan.

24 (e) State agencies that have authority to grant loans shall
25 adopt regulations that establish separate procedures for granting and
26 reviewing loans to a person to whom this chapter applies. However,
27 the regulations need not govern loans described in (a) of this sec-
28 tion.

29 (f) The division of legislative audit shall annually review

1 state loans granted to or held by persons to whom this chapter applies
2 to determine whether appropriate procedures were observed in granting
3 or reviewing the loans. The division shall report its findings to the
4 ethics commission by April 1.

5 (g) For purposes of this section "state program" means a program
6 in which tangible assets of the state or a right to use tangible
7 assets of the state are transferred from the state to a private per-
8 son.

9 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
10 interest if a person to whom this chapter applies discloses or uses
11 for personal gain or for the personal gain of another, information
12 that by law is not available to the public and that the person ac-
13 quired in the course of official duties.

14 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
15 person to whom this chapter applies shall disclose to the commission
16 the formation or maintenance of a close economic association involving
17 a substantial financial matter with

18 (1) a supervisor who has responsibility or authority,
19 either directly or indirectly, over the person's employment, including
20 preparing or reviewing performance evaluations, or granting or approv-
21 ing pay raises or promotions;

22 (2) legislators;

23 (3) a public official in another branch, if the public
24 official is required to file a financial disclosure statement under
25 AS 39.50.

26 (b) It is a prohibited conflict of interest for a person to whom
27 this chapter applies to form or maintain a close economic association
28 involving a substantial financial matter with a lobbyist who is not a
29 member of the immediate family of the person.

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2 applies may not solicit a gift **in any amount**, or accept or receive,
3 directly or indirectly, a gift in excess of \$100, whether in the form
4 of money, services, a loan, travel, entertainment, hospitality, or
5 other form, under circumstances in which it may reasonably be inferred
6 that the gift is intended to influence the person in the performance
7 of the duties of the person or is intended as a reward for an official
8 action by the person.

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10 person to whom this chapter applies accepts

11 (1) hospitality at another person's residence, including
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16 does not exceed \$100 in value received by the person for each meal or
17 event and that does not in the aggregate exceed \$250 in value during
18 the calendar year from one person; or

19 (4) gifts from the person's immediate family.

20 (c) The commission may establish policies that limit the extent
21 to which persons to whom this chapter applies may accept the benefits
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23 turn over the benefits to the agency.

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26 the legislator is a member, by an agency of the legislature estab-
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28 tween sessions. An individual who is related to an employee of the
29 legislature may not be employed in a position over which the employee

1 has supervisory authority. In this subsection, "an individual who is
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11 tee, or group; or
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4 dards of ethical conduct in government;

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7 production for examination of any books or papers relating to any
8 matter under investigation before the commission;

9 (4) publish **semi-annual** summaries of decisions, advisory
10 opinions and informal advisory opinions, with sufficient deletions in
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12 volved in the decisions or opinions which have remained confidential.

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27 (b) Before the commission may exercise power authorized in (c)
28 of this section, the commission shall by resolution, supported by a
29 vote of three members of the commission, define the nature and scope

1 of the inquiry.

2 (c) The commission may investigate a violation of this chapter
3 in a proceeding begun within 4 years after the alleged violation
4 occurs and within one year after termination of state service. Noth-
5 ing in this subsection bars proceedings against a person who by fraud
6 prevents discovery of a violation of this chapter. A proceeding is
7 commenced by the filing of a complaint with the commission. No com-
8 plaint, other than a complaint initiated by five or more members of
9 the commission may be received within a period of 60 days preceding a
10 state primary or general election.

11 (d) A complaint shall be in writing and signed under oath by the
12 person making the complaint. A complaint may also be initiated by
13 three or more members of the commission. The commission shall notify
14 in writing each person against whom a complaint is received and afford
15 the person an opportunity to explain the conduct alleged to be a
16 violation of this chapter. If the commission determines that a com-
17 plaint does not contain allegations of facts sufficient, if the al-
18 leged facts are treated as true, to constitute a violation of this
19 chapter the commission shall summarily dismiss the complaint.

20 (e) The commission shall investigate the charges filed under
21 this section and issue an advisory opinion to the person alleged to
22 have violated a provision of this chapter. The commission shall
23 investigate all complaints on a confidential basis. If the advisory
24 opinion indicates a probable violation, the person against whom the
25 complaint was made may request a formal opinion or comply with the
26 advisory opinion. If the person fails to comply with the advisory
27 opinion or if a majority of the members of the commission determine
28 that there is probable cause for belief that a violation of this
29 chapter has occurred, the commission shall file a complaint against

1 the person charged with a violation of this chapter and the complaint
2 and statement of the alleged violation shall be personally served on
3 the person charged. The alleged violator has 20 days after service of
4 the complaint and statement to respond in writing to the commission.

5 (f) The commission may set a time and place for a hearing with
6 notice to the complainant, if any, and to the person charged with a
7 violation of this chapter. A representative of the commission and the
8 person charged with a violation of this chapter shall have an oppor-
9 tunity to be heard, to subpoena witnesses and require the production
10 of books or papers relating to the proceedings, to be represented by
11 counsel, and to have the right of cross-examination. Each witness
12 shall testify under oath. The hearings are closed to the public
13 unless the person charged with a violation of this chapter requests an
14 open hearing. The commission is not bound by the rules of evidence
15 but the commission's findings must be based upon competent and sub-
16 stantial evidence. The testimony taken at the hearing shall be re-
17 corded and evidence shall be maintained. The testimony and evidence
18 is available only to the staff of the commission and to the person
19 charged with a violation of this chapter. If the person charged with
20 the violation of a provision of this chapter requests a copy of the
21 transcript of testimony, the copy shall be furnished by the commission
22 without charge.

23 (g) A decision of the commission shall be in writing and signed
24 by four or more members of the commission. Each decision of the
25 commission must be accompanied by a written order of the commission
26 determining that a violation of this chapter exists or does not exist.
27 The order is confined to this determination. This order is a public
28 record.

29 (h) If the commission issues a decision that a member of the

Eff. date
Dobe



1 legislature has violated a provision of this chapter or that a legis-
 2 lator has declined or failed to cooperate with the commission, it
 3 shall refer the decision to the presiding officers of the legislature.
 4 The decision shall contain a statement of the facts determined to
 5 constitute the violation or the failure to cooperate and may contain
 6 recommendations concerning any penalties the legislature may lawfully
 7 impose including imposition of civil penalties in an amount not to
 8 exceed \$25,000, divestment of the interest, repaying profits, censure,
 9 removal from committee assignments, termination of legislative privi-
 10 leges, or expulsion. The commission shall make the decision public 30
 11 days after the referral. Days during which the legislature is not in
 12 session may not be counted in determining the 30-day period. The
 13 legislature shall act on the decision as it considers appropriate.

14 (i) If four members of the commission agree to a decision that a
 15 former member of the legislature or an employee or a former employee
 16 of a legislator or of an agency of the legislature has violated a
 17 provision of this chapter, the commission shall issue a public state-
 18 ment of its decision 30 days after the date of the decision. **The**
 19 **legislature shall act on the decision as it considers appropriate. In**
 20 **the case of an employee the action may include suspension, demotion,**
 21 **or dismissal.**

22 (j) A commission member or individual who divulges information
 23 concerning a charge before the filing of a complaint by the commis-
 24 sion, except as permitted by this chapter, is guilty of **misuse of**
 25 **confidential information under AS 11.56.860.**

26 Sec. 24.60.170. DEFINITION. In this chapter, "commission" means
 27 the Legislative Ethics Commission.
 28

29 *3 deleted "The attorney general shall exercise whatever remedies
 may be available to the state."*

#2

DRAFT
Law 3/29/83 #2

1 IN THE _____

2 _____ BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the responsibilities of the
7 Alaska Public Offices Commission; establishing
8 standards of conduct for public officials; and
9 providing for an effective date."

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

11 * Section 1. AS 39 is amended by adding a new chapter read:

12 CHAPTER 52. STANDARDS OF CONDUCT

13 Sec. 39 .010. LEGISLATIVE FINDINGS. The legislature finds
14 that it is essential in the conduct of public business that public
15 officials hold the respect and confidence of the people. Public
16 officials must avoid conduct that violates the trust the people have
17 placed in them or creates a justifiable impression among the public
18 that the public trust is being violated. To ensure and preserve
19 public confidence, persons serving in state and municipal government
20 should have the benefit of specific standards to guide their conduct.
21 In order to strengthen faith and confidence that the governmental
22 process reflects the will of the people and that each public official
23 considers and makes decisions affecting the public according to the
24 best interests of the public, _____

25 Sec. _____ CONFLICTS OF INTEREST. (a) A conflict of
26 interest exists if a public official is in a position to take or
27 withhold official action or exert influence which could benefit or
28 harm any matter in which the public official has a private interest.

29 (b) All conflicts of interest are prohibited, except that

1 potential conflicts of interest enumerated in AS 39.52.030 --
2 39.52.080 may exist if the ethics agency or a court determines that
3 there is no substantial appearance of impropriety because

4 (1) the public official's interest is relatively
5 insignificant;

6 (2) the public official's authority is relatively far
7 removed from any official action that could reasonably [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]; or

11 (3) the interest is of a type that is readily available to
12 the public or to a large class of persons to which the public official
13 belongs.

14 Sec. 39. [REDACTED].030. CONTRACTS. (a) It is a potential conflict of
15 interest for a public official, or a person in close economic
16 association with the public official, to be a party to, or possess an
17 interest in, a contract with the state or a municipality of the state.

18 (b) In determining whether a public official is in a position to
19 influence the contracting agency, or whether any other appearance of
20 inpropriety exists, the inquiry must consider, but need not be limited
21 to, the following factors, in addition to those set out in
22 AS 39. [REDACTED].020(b):

23 (1) whether [REDACTED];

24 (2) whether there is adequate justification for awarding a
25 sole source contract; and

26 (3) whether existing administrative procedures for granting
27 contracts to public officials are sufficient to avoid the appearance
28 of impropriety.

29 (c) All records relating to a state or municipal contract

1 awarded to a public official, or a person in close association with
2 the public official, are public records and may not be made
3 confidential.

4 (d) The state, or a municipality, may adopt policies to limit
5 the extent to which public officials, or a person in close economic
6 association with a public official, may be awarded contracts.

7 (e) As used in this section, "public official" [REDACTED]
8 [REDACTED]

9 Sec. 39.040. STATE LOANS. (a) It is a potential conflict of
10 interest for a public official, or a person in a close economic
11 association with the public official, to receive a state or municipal
12 loan.

13 (b) There is no potential conflict of interest under this
14 section if the loan program is [REDACTED] generally
15 [REDACTED] of the public, is subject to fixed eligibility
16 [REDACTED] and [REDACTED] is exercised in determining
17 [REDACTED] for the loan.

18 (c) In determining whether a public official is in a position to
19 influence the agency granting or reviewing the loan, or whether any
20 other appearance of impropriety exists, the inquiry must consider, but
21 need not be limited to, in addition the factors set out in Sec.
22 39.020(b), the adequacy of existing administrative procedures for
23 granting and reviewing loans to public officials.

24 (d) All [REDACTED] state or [REDACTED]
25 [REDACTED]
26 the [REDACTED], [REDACTED] [REDACTED] [REDACTED]
27 [REDACTED]

28 Sec. 39.050. INTERESTS IN REGULATED ACTIVITIES. (a) It is a
29 potential conflict of interest for a state or municipal public

1 official, or ^{or} person in close economic association with the public
2 official, to possess or obtain any direct or indirect financial
3 interest in a business or industry regulated by the state or
4 municipality.

*dropped
for me (b) **

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Sec. 39. ⁰.060. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a
10 potential conflict of interest [REDACTED] persons to form or
11 [REDACTED] a close economic association involving a substantial
12 financial matter:

13 (1) a public official and any supervisor who has
14 responsibility or authority, [REDACTED] or industry, over the
15 public official's employment, including preparing or reviewing
16 performance evaluations, or granting or approving pay raises or
17 promotions;

18 (2) legislators;

19 (3) public officials in different branches and levels of
20 government, if one of the public officials is required to file a
21 financial disclosure statement under AS 39.50; or

22 (4) public officials and lobbyists.

23 Sec. 39. ⁰.070. GIFTS. (a) It is a potential conflict of
24 interest for a state or municipal public official to solicit or
25 receive any gift, property, goods, services or other benefit, for less
26 than its fair market value, from any person or group that contracts
27 with, is regulated by, or may benefit from, any action or inaction by
28 the state or municipality.

29 (b) There is no potential conflict of interest under this

1 section if a public official accepts:

2 (1) hospitality at a person's principal place of residence,
3 including meals, lodging or ground transportation; or

4 (2) discounts that are generally available to the public or
5 a large class of persons to which the public official belongs.

6 (c) Government agencies may establish policies that limit the
7 extent to which public officials may accept the benefits set out in
8 (b)(2) of this section, or which require public officials to turn over
9 such benefits to the agency.

10 Sec. 39.080. NEPOTISM. (a) It is a potential conflict of
11 interest for a public official to be a supervisor of a relative where
12 the public official has responsibility or authority, either directly
13 or indirectly, over the relative's employment, including preparing or
14 reviewing performance evaluations, or granting or approving pay raises
15 or promotions.

16 (b) It is a potential conflict of interest for a government
17 agency to employ a relative of a public official who is required to
18 file a statement of financial disclosure under AS 39.50.

19 (c) In determining whether a public official is in a position to
20 influence the employing agency, or whether any other appearance of
21 impropriety exists, the inquiry must consider, but need not be limited
22 to, in addition to the factors set out in AS 39.52.020(b), whether
23 there has been any appearance of influence with respect to a relative
24 who has been employed for a substantial length of time.

25 (d) [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

29 (e) In this section "relative" means spouse or ex-spouse, and
parents, children, grandparents, grandchildren, siblings, aunts, and

1 uncles, either of the whole or half-blood, adopted or step.

2 Sec. 39.110. REPRESENTATION BY FORMER PUBLIC OFFICIALS. (a)
3 It is a conflict of interest for a former public official to render
4 advice or assistance to any person or group, [REDACTED]
5 [REDACTED] on a case, contract, transaction or other matter upon
6 which the person took or withheld official action or exercised
7 discretion while a public official if

8 (1) the advice or assistance is for compensation; or

9 (2) the advice or assistance is without compensation and it
10 is rendered for the benefit of the former public official or for a
11 person in close economic association with the former public official.

12 (b) For purposes of this section, "official action" does not
13 include voting or otherwise considering legislation by a member of the
14 legislature or a municipal legislative body.

15 (c) Except as otherwise provided by law, a former public
16 official may accept employment with or may contract with a
17 governmental agency.

18 Sec. 39.120. REPRESENTATION BY PUBLIC OFFICIALS. (a) It is
19 a conflict of interest for a state or municipal public official to
20 advise or assist a client for compensation in a matter pending before
21 an agency, board, or commission of the state or a municipality of the
22 state, respectively.

23 (b) There is no conflict of interest under this section if a
24 public official who is not an official in the judicial branch of
25 government [REDACTED] a client for compensation in a civil action
26 before a court if neither the state nor the municipality,
27 respectively, is a party to the action.

28 (c) A public official cannot avoid a conflict of interest under
29 this section by waiving compensation for advising or assisting a

1 present or former client, under circumstances where compensation would
2 ordinarily be expected.

3 (d) As used in this section, "client" means a [REDACTED] or group.

4 Sec. 39.130. GOVERNMENTAL OPPORTUNITIES. (a) It is a
5 conflict of interest for a public official to take advantage, either
6 on his own behalf or on behalf of a person with whom he has a close
7 economic association, of an overture for the acquisition or use of
8 property, goods, services or other benefit that the state, or a
9 municipality which employs the official, has or may have an interest
10 in acquiring or using.

11 (b) There is no conflict of interest under this section if

12 (1) the property, goods, services or other benefit is a
13 fungible commodity or of a type that is readily available in
14 quantities appropriate for the state or municipality; or

15 (2) the public official first obtains written permission to
16 take advantage of the overture from an official, not subordinate to
17 him, who is authorized to act on the overture.

18 Sec. 39.140. MEMBERS OF BOARDS AND COMMISSIONS. (a) It is a
19 conflict of interest for a person who is a public member of a board,
20 commission, authority, council, committee, task force or other similar
21 governmental entity, to vote, deliberate, testify, advocate or provide
22 information to another member on a matter in which he, or a person
23 with whom he has a close economic association, has a private interest.

24 (b) There is no conflict of interest under this section if a
25 member participates in the consideration of a matter if

26 (1) [REDACTED]

27 [REDACTED];
28 (2) the member fully discloses the nature of his interest
29 to the body on which he sits; and

1 (3) the official action taken will only affect the member
2 to the same extent as others in the same profession, trade, business
3 or industry.

4 Sec. 39.200. ACTION ON A CONFLICT OF INTEREST. (a) A public
5 official who has a conflict of interest or a potential conflict of
6 interest shall immediately

7 (1) resign his position;

8 (2) divest himself of the matter which has resulted in the
9 conflict or potential conflict; or

10 (3) disclose the matter in writing to his immediate
11 supervisor and refrain from taking any action of any kind that may
12 affect the matter.

13 (b) The immediate supervisor of the public official must
14 immediately notify the ethics agency in writing that a conflict or
15 potential conflict may exist. The ethics agency must then undertake a
16 preliminary investigation, issue an advisory opinion or take other
17 appropriate action.

18 (c) Each governmental agency shall establish rules or policies
19 that specify which public officials are "immediate supervisors" for
20 purposes of this section.

21 Sec. 39.57.210. ADMINISTRATION; COMMISSION POWERS AND DUTIES.

22 (a) The Alaska Public Offices Commission under AS 15.13.020(a) shall
23 administer the provisions of this chapter and shall promulgate
24 regulations to implement and interpret the provisions of this chapter.

25 (b) The commission shall, in addition to its other duties:

26 (1) issue on its own motion, or upon request, opinions on
27 the interpretation of this chapter;

28 (2) investigate on its own motion, or upon request, alleged
29 violations of this chapter;

1 (3) prescribe forms for reports, statements and other
2 documents required by this chapter; and

3 (4) prepare and publish manuals and guides explaining the
4 provisions of this chapter.

5 (c) The commission may subpoena witnesses, compel their
6 attendance and testimony, administer oaths and affirmations, take
7 evidence and require by subpoena the production of books, papers,
8 records or other evidence relevant to the performance of the
9 commission's duties or exercise of powers, including powers of
10 investigation. A subpoena issued by the commission is enforceable in
11 superior court to the same extent as a subpoena issued by the court.

12 Sec. 39.220. COMPLAINTS; HEARINGS. (a) Upon the sworn
13 complaint of any person, or on its own initiative, the commission
14 shall investigate alleged violations of this chapter. Any
15 investigation conducted under this chapter is confidential unless a
16 finding of probable cause is made under (b) of this section.

17 (b) [REDACTED] shall do

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 (c) If the commission determines by a preponderance of the
23 evidence that a violation of this chapter has occurred, it shall issue
24 an order to cease and desist violation of this chapter. A cease and
25 desist order is subject to judicial review [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 (d) The commission may refer violations of this chapter to the

1 Attorney General if it believes that civil or criminal action is
2 warranted.

3 Sec. 39.230. ADVISORY OPINIONS. (a) The commission may, on
4 its own motion or upon request, issue an opinion on the duties of a
5 person under this chapter in a specific factual situation. The
6 commission shall publish its opinions at regular intervals. Opinions
7 shall be modified to maintain confidentiality, when appropriate.

8 (b) Within thirty (30) days of a request for an opinion, the
9 commission shall issue the opinion or advise the person who made the
10 request if or when an opinion will be issued.

11 (c) A person who acts in good faith in reliance on an opinion
12 issued to that person by the commission is not subject to civil
13 penalties under this chapter or AS 39.50, provided that the
14 information submitted to the commission was complete and true.

15 (d) The commission may in issuing an opinion make
16 recommendations for action, including ~~liquidation~~ divestiture,
17 establishment of a blind trust, and forfeiture. The findings and the
18 recommendations made by the commission shall be reported to:

19 (1) the head of the appropriate department, if the person is
20 an employee of the executive branch of the state; or

21 (2) the appropriate legislative committee, if the person is
22 a legislator or an employee of an individual legislator or a
23 legislative committee; or

24 (3) the Commission on Judicial Conduct or other body
25 established by law or court rule, if the person is a judicial officer
26 or employee; or

27 (4) the governing body of a municipality, if the person is
28 a municipal officer or employee.

29 (e) Upon referral of the findings and recommendations of the

1 commission to the appropriate department or other agency under (d) of
2 this section, that department or agency shall take ~~appropriate~~
3 ~~action, as appropriate, based on the findings of the commission.~~

4 Sec. 39. ~~300~~. ATTORNEY GENERAL POWERS AND DUTIES. After the
5 ethics agency has determined that a conflict of interest or a
6 potential conflict of interest exists or if a public official has
7 violated ~~the~~ the attorney general may bring an action

8 (1) to recover the amount by which the value of the public
9 official's financial interest increased during his tenure, or, for a
10 former public official, within 12 months of leaving office;

11 (2) to void a contract ~~or~~
12 former public official has a financial interest; if a contract is
13 voided, the state is liable only for the fair market value of the
14 services rendered, and may recover any consideration in excess of fair
15 market value.

16 (3) to forfeit to the state any gifts, benefits or other
17 compensation of any kind that the public official or former public
18 official received during his tenure;

19 (4) to enjoin the use of confidential information and to
20 void any transaction in which that information was used; or

21 (5) to enjoin or to void any official action by a public
22 official which was affected or may have been affected by the conflict
23 of interest.

24 Sec. 39. ~~900~~. DEFINITIONS. In this chapter, unless the
25 context requires otherwise:

26 (1) "group" means an association, partnership, business,
27 corporation, or other entity made up of one or more persons or groups,
28 whether for profit or non-profit;

29 (2) "person in close economic association" means a person

1 who is a member, counsel, advisor, consultant, representative of, or
2 has an interest in, any group;

3 (3) "public official" means those persons set out in
4 AS 39.50.200(a)(1) and any other employee of the executive,
5 legislative or judicial branches of the State of Alaska, or of a
6 municipality of the state, in addition to their spouses or ex-spouses,
7 and parents, children, grandparents, grandchildren, aunts, uncles, and
8 siblings, either of the whole or half blood, adopted or step.

9 * Sec. 2. This act takes effect _____.

DRAFT

DRAFT
Law

1
3/29/83

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE _____

2 _____ BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the responsibilities of the
7 Alaska Public Offices Commission; establishing
8 standards of conduct for public officials; and
9 providing for an effective date."

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

11 AS 39.57.010. LEGISLATIVE FINDINGS. The legislature finds that it is
12 essential in the conduct of public business that public officials hold
13 the respect and confidence of the people. Public officials must avoid
14 conduct that violates the trust the people have placed in them or
15 creates a justifiable impression among the public that the public
16 trust is being violated. To ensure and preserve public confidence,
17 persons serving in state and municipal government should have the
18 benefit of specific standards to guide their conduct. In order to
19 strengthen faith and confidence that the governmental process reflects
20 the will of the people and that each public official considers and
21 makes decisions affecting the public according to the best interests
22 of the public, AS 39.49 is enacted in sec. 2 of this Act.

23 AS 39.57.020. CONFLICTS OF INTEREST. (a) A conflict of interest
24 exists if a public official is in a position to take or withhold
25 official action or exert influence which could benefit or harm any
26 matter in which the public official has a private interest.

27 (b) All conflicts of interest are prohibited, except that
28 potential conflicts of interest enumerated in AS 39.57.030 --
29 39.57.080 may exist if the ethics agency or a court determines that

1 there is no substantial appearance of impropriety because,

2 (1) the public official's interest is relatively
3 insignificant;

4 (2) the public official's authority is relatively far
5 removed from any official action that could reasonably affect the
6 matter; provided that however, the appearance of impropriety has not
7 necessarily removed by delegating responsibility for official action;
8 or

9 (3) the interest is of a type that is readily available to
10 the public or to a large class of persons to which the public official
11 belongs.

12 AS 39.57.030. CONTRACTS. (a) It is a potential conflict of interest
13 for a public official, or a person in close economic association with
14 the public official, to be a party to, or possess an interest in, a
15 contract with the state or a municipality of the state.

16 (b) In determining whether a public official is in a position to
17 influence the contracting agency, or whether any other appearance of
18 inpropriety exists, the inquiry must consider but need not be limited
19 to, the folowing factors, in addition to those set out in
20 AS 39.57.020(b):

21 (1) whether competitive bidding is used;

22 (2) whether there is adequate justification for awarding a
23 sole source contract; and

24 (3) whether existing administrative procedures for granting
25 contracts to public officials are sufficient to avoid the appearance
26 of impropriety.

27 (c) All records relating to a state or municipal contract
28 awarded to a public official, or a person in close association with a
29 public official, are public records and may not be made confidential.

1 (d) The state, or a municipality, may adopt policies to limit
2 the extent to which public officials, or a person in close economic
3 association with a public official, may be awarded contracts.

4 (e) As used in this section, "public official" means a person
5 who was a public official within 12 months of the potential conflict.

6 AS 39.57.040. STATE LOANS. (a) It is a potential conflict of
7 interest for a public official, or a person in a close economic
8 association with the public official, to receive a state or municipal
9 loan.

10 (b) There is no potential conflict of interest under this
11 section if the loan program is as generally available to members of
12 the public by regulation or ordinance under fixed eligibility
13 standards and if the exercise of discretion is minimal in determining
14 qualification for the loan.

15 (c) In determining whether a public official is in a position to
16 influence the agency granting or reviewing the loan, or whether any
17 other appearance of impropriety exists, the inquiry must consider, but
18 need not be limited to, in addition the factors set out in
19 AS 39.57.020(b), the adequacy of existing administrative procedures
20 for granting and reviewing loans to public officials.

21 (d) Except for loans described in (b) of this section, all
22 records relating to a state or municipal loan granted to a public
23 official, or a person in close association with a public official, are
24 public records and may not be made confidential.

25 AS 39.57.050. INTERESTS IN REGULATED ACTIVITIES. (a) It is a
26 potential conflict of interest for a state or municipal public
27 official, or any person in close economic association with the public
28 official, to possess or obtain any direct or indirect financial
29 interest in a business or industry regulated by the state or

1 municipality.

2 (b) In determining whether a public official is in a position to
3 influence the regulating agency, or whether any other appearance of
4 impropriety exists, the inquiry must consider, but need not be limited
5 to, in addition to the factors set out in AS 39.57.020(b), whether the
6 financial interest is one that is generally available to the public
7 and whether the public official is in a position to possess
8 confidential information that may affect the financial interest.

9 (c) Governmental agencies may adopt policies which limit the
10 extent to which public officials may possess or obtain interests in a
11 regulated industry.

12 AS 39.57.060. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a potential
13 conflict of interest for a close economic association involving a
14 substantial financial matter to be formed or maintained between

15 (1) a public official and any supervisor who has
16 responsibility or authority over the public official's employment,
17 including preparing or reviewing performance evaluations, or granting
18 or approving pay raises or promotions;

19 (2) legislators;

20 (3) public officials in different branches or levels of
21 government, if one of the public officials is required to file a
22 financial disclosure statement under AS 39.50; or

23 (4) public officials and lobbyists.

24 AS 39.57.070. GIFTS. (a) It is a potential conflict of interest for
25 a state or municipal public official to solicit or receive any gift,
26 property, good, service or other benefit, for less than its fair
27 market value, from any person or group that contracts with, is
28 regulated by, or stands to benefit from, any action or inaction by the
29 state or municipality.

1 (b) There is no potential conflict of interest under this
2 section if a public official accepts:

3 (1) hospitality at a person's principal place of residence,
4 including meals, lodging or ground transportation; or

5 (2) discounts that are generally available to the public or
6 a large class of persons to which the public official belongs.

7 (c) Government agencies may establish policies that limit the
8 extent to which public officials may accept the benefits set out in
9 (b)(2) of this section, or which require public officials to turn over
10 such benefits to the agency.

11 AS 39.57.080. NEPOTISM. (a) It is a potential conflict of interest
12 for a public official to be a supervisor of a relative where the
13 public official has responsibility or authority, over the relative's
14 employment, including preparing or reviewing performance evaluations,
15 or granting or approving pay raises or promotions.

16 (b) It is a potential conflict of interest for a government
17 agency to employ a relative of a public official who is required to
18 file a statement of financial disclosure under AS 39.50.

19 (c) In determining whether a public official is in a position to
20 influence the employing agency, or whether any other appearance of
21 impropriety exists, the inquiry must consider, but need not be limited
22 to, in addition to the factors set out in AS 39.57.020(b), whether
23 there has been any appearance of influence with respect to a relative
24 who has been employed for a substantial length of time.

25 (d) There is no potential conflict of interest under this section
26 if the relative works for no compensation.

27 (e) In this section "relative" means spouse or ex-spouse, and
28 parents, children, grandparents, grandchildren, siblings, aunts, and
29 uncles, either of the whole or half-blood, adopted or step.

1 AS 39.57.120. REPRESENTATION BY FORMER PUBLIC OFFICIALS. (a) It is
2 a conflict of interest for a former public official to render advice
3 or assistance to any person or group within 12 months of termination
4 on a case, contract, transaction or other matter upon which the person
5 took or withheld official action or exercised discretion while a
6 public official if

7 (1) the advice or assistance is for compensation; or

8 (2) the advice or assistance is without compensation and it
9 is rendered for the benefit of the former public official or for a
10 person in close economic association with the former public official.

11 (b) For purposes of this section, "official action" does not
12 include voting or otherwise considering legislation by a member of the
13 legislature or a municipal legislative body.

14 (c) Except as otherwise provided by law, a former public may
15 accept employment with or may contract with a governmental agency.

16 AS 39.57.110. REPRESENTATION BY PUBLIC OFFICIALS. (a) It is a
17 conflict of interest for a state or municipal public official to
18 advise or assist a client for compensation in a matter pending an
19 agency, board, or commission of the state or a municipality of the
20 state.

21 (b) There is no conflict of interest under this section if A
22 public official who is not an official in the judicial branch of
23 government, a client for compensation in a civil action before a court
24 if neither the state nor the municipality respectively, is a party to
25 the action.

26 (c) A public official can not avoid a conflict of interest by
27 waiving compensation for advising or assisting a present or former
28 client, under circumstances where compensation would ordinarily be
29 expected.

1 (d) As used in this section, "client" means an individual or
2 group.

3 AS 39.57.130. GOVERNMENTAL OPPORTUNITIES. (a) It is a conflict of
4 interest for a public official to take advantage, either on his own
5 behalf or on behalf of a person with whom he has a close economic
6 association, of an overture for the acquisition or use of property,
7 goods, service or other benefits that the state, or a municipality
8 which employs the official, has or may have an interest in acquiring
9 or using.

10 (b) There is no conflict of interest under this section if

11 (1) the property, goods, services or other benefit is a
12 fungible commodity or of a type that is readily available in
13 quantities appropriate for the state or municipality; or

14 (2) the public official first obtains written permission to
15 take advantage of the overture from an official, not subordinate to
16 him, who is authorized to act on the overture.

17 AS 39.57.140. MEMBERS OF BOARDS AND COMMISSIONS. (a) It is a
18 conflict of interest for a person who is a public members of a board,
19 commission, authority, council, committee, task force or other similar
20 governmental entity, to vote deliberate, testify, advocate or provide
21 information to another member on a matter in which he, or a person
22 with whom he has a close economic association, has a private interest.

23 (b) There is no conflict of interest under this section if a
24 member participates in the consideration of a matter if

25 (1) the law requires that the member be from a particular
26 profession, trade, business or industry;

27 (2) the member fully discloses the nature of his interest
28 to the body of which he sits; and

29 (3) the official action taken will only affect the member

1 to the same extent as others in the same profession, trade, business
2 or industry.

3 AS 39.57.200. ACTION ON A CONFLICT OF INTEREST. (a) A public
4 official who has a conflict of interest or a potential conflict of
5 interest must immediately

6 (1) resign his position;

7 (2) divest himself of the matter which has resulted in the
8 conflict or potential conflict; or

9 (3) disclose the matter in writing to his immediate
10 supervisor and refrain from taking any action of any type that may
11 affect the matter.

12 (b) The immediate supervisor of the public official must
13 immediately notify the ethics agency in writing that a conflict or
14 potential conflict may exist. The ethics agency must then undertake a
15 preliminary investigation, issue an advisory opinion or take other
16 appropriate action.

17 (c) Each governmental agency must establish rules or policies
18 that specify which public officials are "immediate supervisors" for
19 purposes of this section.

20 Sec. 39.57.210. ADMINISTRATION COMMISSION POWERS AND DUTIES. (a)
21 The Alaska Public Offices Commission under AS 15.13.020(a) shall
22 administer the provisions of this chapter and shall promulgate
23 regulations to implement and interpret the provisions of this chapter.

24 (b) The commissioner shall, in addition to its other duties:

25 (1) issue on its own motion, or upon request, opinions on
26 the interpretation of this chapter;

27 (2) investigate on its own motion, or upon request, alleged
28 violations of this chapter;

29 (3) prescribe forms for reports, statements and other

1 documents required by this chapter; and

2 (4) prepare and publish manuals and guides explaining the
3 provisions of this chapter.

4 (c) The commission may subpoena witnesses, compel their
5 attendance and testimony, administer oaths and affirmations, take
6 evidence and require by subpoena the production of books, papers,
7 records or other evidence relevant to the performance of the
8 commission's duties or exercise of powers, including powers of
9 investigation. A subpoena issued by the commission is enforceable in
10 superior court to the same extent as a subpoena issued by the court.

11 Sec. 39.57.220. COMPLAINTS; HEARINGS. (a) Upon the sworn complaint
12 of any person, or on its own initiative, the commission shall
13 investigate alleged violations of this chapter. Any investigation
14 conducted under this chapter is confidential unless a finding of
15 probable cause is made under (b) of this section.

16 (b) If the commission determines there is probable cause for
17 believing that a violation of this chapter has occurred, it may hold a
18 hearing. The hearing shall be conducted in accordance with the
19 provisions of AS 44.62.330 -- .630.

20 (c) If the commission determines by a preponderance of the
21 evidence that a violation of this chapter has occurred, it shall issue
22 an order to cease and desist violation of this chapter. A cease and
23 desist order is subject to judicial review under procedures set out in
24 AS 44.62.560 or applicable rules of court. The Judicial review on
25 appeal shall be limited to the question of whether there was a
26 prejudicial abuse of discretion in issuing the order.

27 (d) The commission may refer violations of this chapter to the
28 Attorney General if it believes that civil or criminal action is
29 warranted.

9

1 Sec. 39.57.230. ADVISORY OPINIONS. (a) The commission may, on its
2 own motion or upon request, issue an opinion on the duties of a person
3 under this chapter in a specific factual situation. The commission
4 shall publish its opinions at regular intervals. Opinions shall be
5 modified to maintain confidentiality, when appropriate.

6 (b) Within thirty (30) days of a request for an opinion, the
7 commission shall issue the opinion or advise the person who made the
8 request if or when an opinion will be issued.

9 (c) A person who acts in good faith in reliance on an opinion
10 issued to that person by the commission is not subject to civil
11 penalties under this chapter or AS 39.50, provided that the
12 information submitted to the commission is complete and true.

13 (d) The commission may in issuing an opinion make
14 recommendations for action, including divestiture, establishment of a
15 blind trust, and forfeiture. The findings and the recommendations
16 made by the commission shall be reported to:

17 (1) the head of the appropriate department, if the person is
18 an employee of the executive branch of the state; or

19 (2) the appropriate legislative committee, if the person is
20 a legislator, or an employee of an individual legislator or a
21 legislative committee; or

22 (3) the Commission on Judicial Qualifications Commission
23 Conduct or other body established by law or court rule, if the person
24 is a judicial officer or employee; or

25 (4) the governing body of a municipality, if the person is
26 a municipal officer or employee.

27 (e) Upon referral of the findings and recommendations of the
28 commission to the appropriate department or other agency under (d) of
29 this section, that department or agency shall take appropriate

1 disciplinary action, based on the findings of the commission.

2 Sec. 39.57.300. ATTORNEY GENERAL POWERS AND DUTIES. After the ethics
3 agency has determined that a conflict of interest or a potential
4 conflict of interest exists or if a public official has violated
5 AS 39.57.100-140, the attorney general may bring an action:

6 (1) to recover the amount by which the value of the public
7 official's financial interest increased during his tenure, or, for a
8 former public official, within 12 months of termination;

9 (2) to void a contract that the public official or former
0 public official has a financial interest in; if a contract is voided,
1 the state is liable only for the fair market value of the services
2 rendered, and may recover any consideration in excess of fair market
3 value.

4 (3) to forfeit to the state any gifts, benefits or other
5 compensation of any kind that the public official or former public
6 official received during his tenure;

7 (4) to enjoin the use of confidential information and to
8 void any transaction in which that information was used; or

9 (5) to enjoin or to void any official action by a public
0 official which was affected or may have been affected by a conflict of
1 interest.

2 AS 39.57.900. DEFINITIONS.

3 "group" means an association, partnership, business, corporation, or
4 other entity made up of one or more persons or groups, whether for
5 profit or non-profit;

6 "person in close economic association" means a person who is a member,
7 counsel, advisor, consultant, representative of, or has an interest
8 in, any group;

9 "public official" means those persons set out in AS 39.50.200(a)(1)

combines Fisher, Josephson, & A 6.

FAIKS
3/31/83

For an Act entitled: "An Act relating to the prohibition of conflict of interest among public employees; creating the Alaska State Ethics Commission and prescribing its responsibilities and providing for an effective date."

Section 1. AS 39 is amended by adding a new chapter to read:

Chapter 52. STANDARDS OF CONDUCT

Sec. 39.52.010 LEGISLATIVE FINDINGS AND PURPOSE The legislature finds that it is essential in the conduct of public business that public officials hold the respect and confidence of the people. Public officials must avoid conduct that ^{violates the trust} violates the trust the people have placed in them or creates a justifiable impression among the public that the public trust is being violated. To ensure and preserve public confidence, persons serving in state government should have the benefit of specific standards to guide their conduct. In order to strengthen faith and confidence that the governmental process reflects the will of the people and that each public official considers and makes decisions affecting the public according to the best interests of the public. It is therefore the purpose of the legislature that the Alaska State Ethics Commission will:

- 1) prescribe standards of conduct for state legislators, public officials and other exempt employees of the state;

add language of public trust

and of the institution

/

- 2) educate the citizens of the state on ethics in the legislature;
- 3) render advisory opinions ~~and enforce the provisions of the law~~ so that public confidence in the legislature will be preserved.

*specifically
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power*

Section 2 AS 39.52.020 CONFLICTS OF INTEREST. (a) A conflict of interest exists if a public official^(s) in a position to take or withhold official action or exert influence which could benefit or harm any matter in which the public official has a private interest.

*AG -
clarify
"potential"*

(b) All conflicts of interest are prohibited, except that potential conflicts of interest enumerated in AS 39.52.030 to _____ may exist if the ethics agency or a court determines that there is no substantial appearance of impropriety because:

(1) the public officials interest is relatively insignificant;

(2) the public official's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the public official belongs.

Section 3 AS 39.52.030 CONTRACTS. (a) A public official may not be a party to or have an interest in the profits or benefits of a state contract unless the contract is let by competitive bidding or the total

annual amount of the state contract equals \$1000 or less. A public official has an interest in the profits or benefits of a state contract under this subsection if the contract is awarded to:

(1) the public official,

* (2) a firm, corporation, or association in which the public official, owns 25% of the stock of the firm, corporation, or association;

(3) a partnership in which the public official is a partner;

(4) As used in this, "public official" includes legislators and other exempt employees of the state, members of their immediate family and former public officials within 12 months of their leaving office.

Section 4 AS 39.52.040 STATE LOANS. (a) There is no potential conflict of interest if the loan program is by regulation generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification for the loan.

2 (b) It is a potential conflict of interest for a public official, or a person in close association with the public official, to receive a commercial state loan or other discretionary state loan.

(c) In determining whether a public official is in a position to influence the agency granting or reviewing the loan, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to the adequacy of existing administrative procedures for granting and reviewing loans to public officials.

(d) All records relating to a state loan held by or granted to a public official, or a person in close economic association with the public official, are public records and may not be made confidential.

(1) Upon application for a commercial loan, the agency will notify the Alaska Public Offices Commission which will incorporate this information into the public official's financial disclosure statement;

(2) Every February 1st, each agency will publish a listing of all outstanding commercial loans to public officials. It should list the name of the public official, date of issuance and current status of the loan. *

Section 5 AS 39.52.050 CONFIDENTIAL INFORMATION It is a potential conflict of interest if a public official discloses or uses for personal gain or for the benefit of anyone else information that by law is not available to the public and that the public official acquires in the course of official duties.

? Section 6 AS 39.52.060 INTERESTS IN REGULATED ACTIVITIES. (a) It is a potential conflict of interest for a state public official, or a person in close economic association with the public official, to possess or obtain any direct or indirect financial interest in a business or industry regulated by the state or municipality.

(b) There is no potential conflict of interest under this section if the financial interest is one that is generally available to the public and the public official is not in a position to possess confidential information that may affect the financial interest.

Section 6 AS 39.52.070 INTERESTS BETWEEN PUBLIC OFFICIAL. It is a 4

potential conflict of interest for the following persons to form or maintain a close economic association involving a substantial financial matter:

(1) a public official and any supervisor who has responsibility or authority, either directly or indirectly, over the public official's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) public officials in different branches and levels of government, if one of the public officials is required to file a financial disclosure statement under AS 39.52.060; or

(4) public officials and lobbyists.

2
Section 7 AS 39.52.080 GIFTS (a) A public official may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or in any other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the legislator in the performance of the duties of the legislator or is intended as a reward for an official action on the part of the public official.

(b) There is no potential conflict of interest under this section if a public official accepts:

(1) hospitality at a person's principal place of residence, including meals, lodging or ground transportation; or

(2) discounts that are generally available to the public or a large class of persons to which the public official belongs.

(c) Government agencies may establish policies that limit the extent to which public officials may accept the benefits set out in (b) (2) of this section, or which require public officials to turn over such benefits to the agency.

3

Section 8 AS 39.52.090 NEPOTISM (a) It is a potential conflict of interest for a public official to be a supervisor of a relative where the public official has responsibility or authority, either directly or indirectly, over the relative's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions.

(b) In determining whether a public official is in a position to influence the employing agency, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to whether there has been any appearance of influence with respect to a relative who has been employed for a substantial length of time.

(c) There is no potential conflict of interest under this section if the relative does not receive compensation for any work performed.

(d) In this section, "relative" means spouse, parents and children.

Section 9 AS 39.52.100 REPRESENTATION BY PUBLIC OFFICIALS (a) It is a conflict of interest for a public official to advise or assist a client for compensation in a matter pending before an agency, board, or commission of the state or quasi-judicial agency of the state.

(b) There is no conflict of interest under this section if a public official who is not an official in the judicial branch of government represents a client for compensation in a civil action before a court if the state respectively, is a party to the action.

(c) A public official cannot avoid a conflict of interest under this section by waiving compensation for advising or assisting a present or former client, under circumstances where compensation would ordinarily be expected.

Section 10 AS 39.52.110 MEMBERS OF STATE BOARDS AND COMMISSIONS (a)

It is a conflict of interest for a person who is a public member of a

board, commission, authority, council, committee, task force or other similar state governmental entity to vote, deliberate, testify, advocate or provide information to another member on a matter in which he, or a person with whom he has a close economic association, has a private interest.

(b) There is no conflict of interest under this section if a member participates in the consideration of a matter if:

(1) the statutes concerning the body require that the member be from a particular profession, trade, business or industry;

(2) the member fully discloses the nature of his interest to the body on which he sits; and

(3) the official action taken will only affect the member to the same extent as others in the same profession, trade, business or industry.

Section 11 AS 39,52.120 ACTION ON A CONFLICT OF INTEREST. (a) A public official who has a conflict of interest or a potential conflict of interest shall immediately

(1) resign his position;

(2) divest himself of the matter which has resulted in the conflict or potential conflict; or

(3) disclose the matter in writing to his immediate supervisor and refrain from taking any action of any kind that may affect the matter.

(4) legislators may disclose the potential conflict of interest in the Daily Journal of the appropriate body.

(b) the immediate supervisor of the public official must immediately notify the ethics agency in writing that a conflict or potential conflict may exist. The ethics agency must then undertake a preliminary investigation, issue an advisory opinion or take other appropriate action.

(c) Each governmental agency shall establish rules or policies that specify which public officials are "immediate supervisors" for purposes of this section.

Section 12 AS 39.52.120
Alaska State

1 ~~SECTION 12.10.010. LEGISLATIVE ETHICS COMMISSION.~~ (a) There is
2 established within the legislative branch of the state government the
3 Legislative Ethics Commission.

4 (b) The commission consists of seven members selected as fol-
5 lows:

6 (1) the president of the senate shall appoint one member to
7 the commission from the senate;

8 (2) the speaker of the house of representatives shall
9 appoint one member to the commission from the house of representa-
10 tives;

11 (3) the president of the senate shall appoint to the com-
12 mission ~~two~~ ¹ persons who ^{is a} ~~are~~ citizens of the United States and resi-
13 dents of the state who ~~have~~ ^{has} not held an elected public office;

14 (4) the speaker of the house of representatives shall
15 appoint to the commission ~~two~~ ¹ persons who ^{is a} ~~are~~ citizens of the United
16 States and residents of the state who ~~have~~ ^{has} not held an elected public
17 office;

18 (5) one member of the commission shall be a former legisla-
19 tor of the state who is appointed by the other members of the commis-
20 sion. (6) Governor (1) Commissioner or designee and (1) citizen

21 (c) No more than four members of the commission may be members
22 of the same political party or residents of the same borough or of the
23 unorganized borough.

24 (d) The term of office of a member of the commission is four
25 years from the February 1 of the year of appointment and until a
26 successor is appointed and qualifies. A legislator appointed to the
27 commission may not serve beyond the expiration of the legislative term
28 of office. A commission member may not serve more than one full term.

29 (e) A member of the commission may not

- 1 (1) hold or seek elective office;
2 (2) be an officer of a political party, political commit-
3 tee, or group;
4 ~~(3) support or oppose a candidate, proposition, or question~~
5 ~~or make a contribution in support of or in opposition to a candidate~~
6 ~~for the legislature;~~
7 ~~(4) participate in an election campaign for a legislator or~~
8 ~~contribute to a political party, or~~
9 (3) lobby or employ a lobbyist.

10 (f) The provisions of (e) of this section do not apply to the
11 members of the commission appointed under (b)(1) and (2) of this
12 section.

13 (g) A vacancy on the commission shall be filled under (b) of
14 this section for the balance of the term.

15 (h) The commission may employ ~~an executive director and~~ staff as
16 it considers necessary. ~~A member of the commission may not serve as~~
17 ~~executive director or on the staff of the commission.~~

18 (i) A member of the commission receives no compensation for
19 service on the commission. Members of the commission are entitled to
20 travel expenses and per diem authorized by law for members of boards
21 and commissions under AS 39.20.180, but a member of the commission who
22 is a legislator is not entitled to travel expenses and per diem from
23 the commission if the legislator is receiving travel expenses and per
24 diem as a legislator.

25 *Section 13 AS 39.52.130*
Sec 24 60.070 DUTIES OF THE COMMISSION. The commission shall

26 (1) adopt regulations to facilitate the receipt of inquir-
27 ies and prompt rendition of its opinions;

28 ~~(2) adopt forms and procedures for the submission of state-~~
29 ~~ments of financial disclosure and maintain files of the statements of~~

1 ~~Financial disclosure, a statement of financial disclosure filed with~~
2 ~~the commission is public information.~~

3 (2) advise the attorney general and the legislature of
4 noncompliance with the financial disclosure requirement;

5 ~~(4) recommend to the legislature legislation as the commis-~~
6 ~~sion considers desirable or necessary to promote and maintain high~~
7 ~~standards of ethical conduct in government;~~

8 (3) subpoena witnesses, administer oaths, and take testi-
9 mony relating to matters before the commission, and may require the
10 production for examination of any books or papers relating to any
11 matter under investigation before the commission;

12 ~~(6) shall distribute its publications without cost to the~~
13 ~~public and shall initiate programs to educate the citizens of the~~
14 ~~state, legislators, and members of the staff of a legislator on ethics~~
15 ~~in government;~~

16 ~~(7) shall publish yearly summaries of decisions, advisory~~
17 ~~opinions and informal advisory opinions, with sufficient deletions in~~
18 ~~the summaries to prevent disclosing the identity of the persons~~
19 ~~involved in the decisions or opinions which have remained confiden-~~
20 ~~tial;~~

21 (4) may adopt regulations to implement, clarify, and inter-
22 pret this chapter. //

~~Attorney General if it believes that civil or criminal action is warranted.~~

Section 14¹⁴⁰
Sec. 39.52.~~50~~. ADVISORY OPINIONS. (a) The commission may, on its own motion or upon request, issue an opinion on the duties of a person under this chapter in a specific factual situation. The commission shall publish its opinions at regular intervals. Opinions shall be modified to maintain confidentiality, when appropriate.

(b) Within thirty (30) days of a request for an opinion, the commission shall issue the opinion or advise the person who made the request if or when an opinion will be issued.

(c) A person who acts in good faith in reliance on an opinion issued to that person by the commission is not subject to civil penalties under this chapter or AS 39.50, provided that the information submitted to the commission was complete and true.

(d) The commission may in issuing an opinion make recommendations for action, including discipline, divestiture, establishment of a blind trust, and forfeiture. The findings and the recommendations made by the commission shall be reported to:

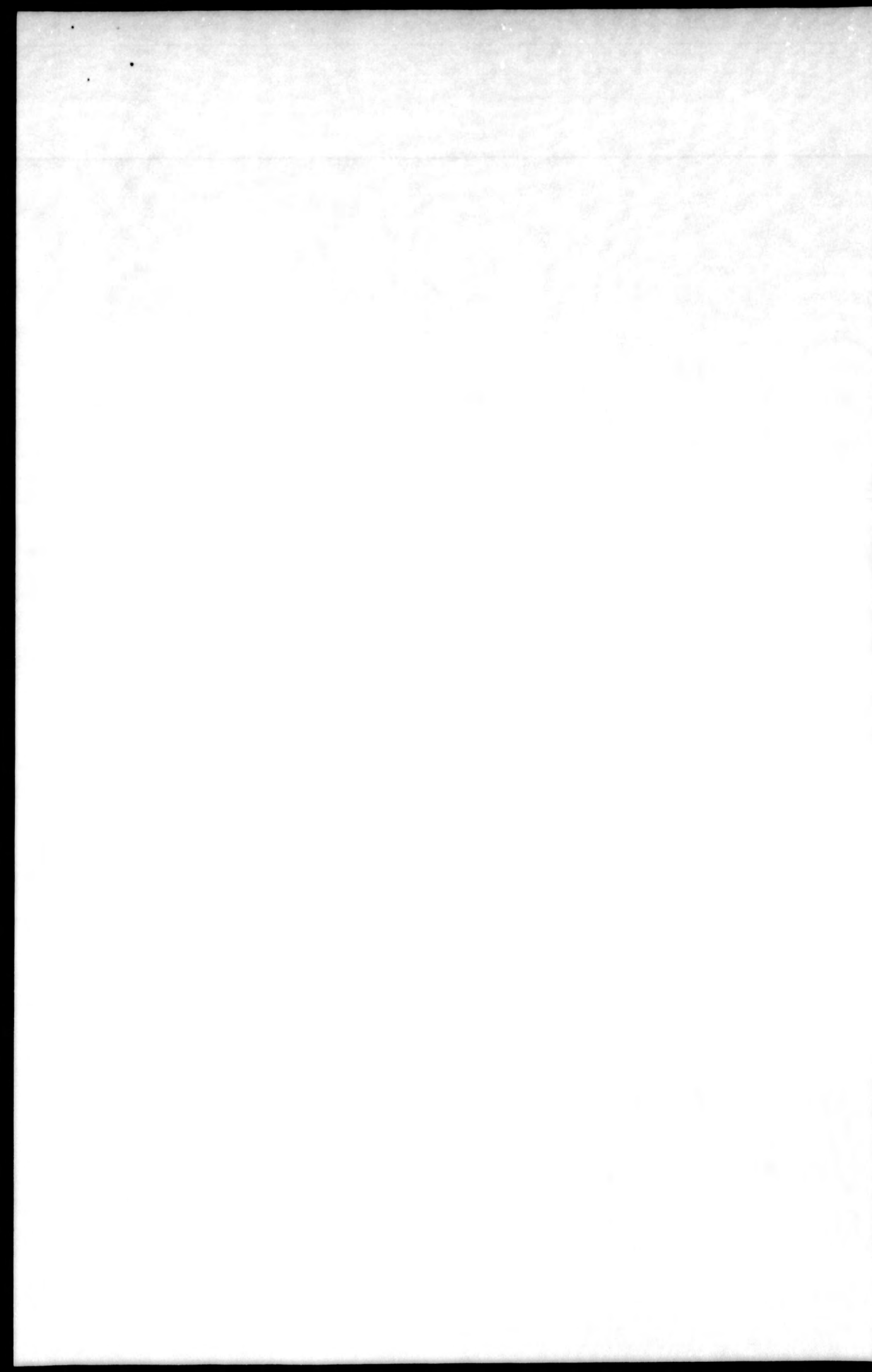
(1) the head of the appropriate department, if the person is an employee of the executive branch of the state; or

(2) the appropriate legislative committee; if the person is a legislator or an employee of an individual legislator or a legislative committee; or

(3) the Commission on Judicial Conduct or other body established by law or court rule, if the person is a judicial officer or employee; or

~~(4) the governing body of a municipality, if the person is a municipal officer or employee.~~

(e) Upon referral of the findings and recommendations of the



commission to the appropriate department or other agency under (d) of this section, that department or agency shall take disciplinary action, as appropriate, based on the findings of the commission.

Section 15 Sec. 39.52.¹⁵⁰~~300~~ ATTORNEY GENERAL POWERS AND DUTIES. After the ethics agency has determined that a conflict of interest or a potential conflict of interest exists or if a public official has violated this chapter, the attorney general may bring an action

(1) to recover the amount by which the value of the public official's financial interest increased during his tenure, or, for a former public official, within 12 months of leaving office;

(2) to void a contract in which the public official or former public official has a financial interest; if a contract is voided, the state is liable only for the fair market value of the services rendered, and may recover any consideration in excess of fair market value.

(3) to forfeit to the state any gifts, benefits or other compensation of any kind that the public official or former public official received during his tenure;

(4) to enjoin the use of confidential information and to void any transaction in which that information was used; or

(5) to enjoin or to void any official action by a public official which was affected or may have been affected by the conflict of interest.

Section 16 ~~Sec.~~ 39.52.~~900~~. DEFINITIONS. In this chapter, unless the context requires otherwise:

(1) "group" means an association, partnership, business, corporation, or other entity made up of one or more persons or groups, whether for profit or non-profit;

(2) "person in close economic association" means a person

1 who is a member, counsel, advisor, consultant, representative of, or
2 *of 25% or more*
3 has an interest in, any group;

4 (3) "public official" means those persons set out in
5 AS 39.50.200(a)(1) and any other employee of the executive,
6 legislative or judicial branches of the State of Alaska, ~~or of a~~
7 *or who have to file a financial disclosure with APOC.*
8 ~~municipality of the state, in addition to their spouses or ex-spouses,~~
9 ~~and parents, children, grandparents, grandchildren, aunts, uncles, and~~
10 ~~siblings, either of the whole or half blood, adopted or step.~~

11 * Sec. 2. This Act takes effect July 1, 1983.

Introduced: 3/22/83
Referred: Special Committee on
Legislative Reform
and State Affairs

1 IN THE SENATE

BY JOSEPHSON

2 SENATE BILL NO. 198

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ethics in the legislature; and
7 providing for an effective date."

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

9 * Section 1. STATEMENT OF PURPOSE. (a) The legislature declares as
10 the public policy of the state that a public office is a public trust and
11 shall be held for the sole benefit of the people. To enhance the faith of
12 the people in the integrity and impartiality of public officers, adequate
13 guidelines are required to show the appropriate separation between the
14 roles of persons who are both public servants and private citizens.

15 (b) The purpose of AS 24.60 as enacted in sec. 2 of this Act is to

16 (1) prescribe standards of conduct for state legislators and for
17 the staff of legislators;

18 (2) educate the citizens of the state on ethics in the legisla-
19 ture; and

20 (3) establish an ethics commission to render advisory opinions
21 and enforce the provisions of the law so that public confidence in the
22 legislature will be preserved.

23 * Sec. 2. AS 24 is amended by adding a new chapter to read:

24 CHAPTER 60. LEGISLATIVE ETHICS.

25 Sec. 24.60.010. CONSTRUCTION. This chapter shall be liberally
26 construed to promote high standards of ethical conduct in the state
27 legislature.

28 Sec. 24.60.020. APPLICABILITY. This chapter applies to a legis-
29 lator, a former legislator, [REDACTED]

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[REDACTED]

Sec. 24.60.030. GIFTS. (a) A legislator and a person on the staff of a legislator may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or in any other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the legislator in the performance of the duties of the legislator or is intended as a reward for an official action on the part of the legislator.

(b) Acceptance by a legislator and by a person on the staff of a legislator of an [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sec. 24.60.040. CONFIDENTIAL INFORMATION. A legislator and a person on the staff of a legislator may not disclose or use for personal gain or for the benefit of anyone else information that by law is not available to the public and that the legislator and a person on the staff of a legislator acquires in the course of official duties.

Sec. 24.60.050. CONFLICT OF INTEREST. (a) A legislator and a person on the staff of a legislator may not appear on behalf of a person before a state department, agency, board, commission, institution, or instrumentality in any manner for which the legislator is being compensated by the person.

- (b) The provisions of (a) of this section do not apply to
 - (1) a judicial proceeding;
 - (2) an administrative hearing or proceeding
 - (A) which is adversary in character;

1 (B) on which a record is made by the agency involved;
2 or
3 (C) in which the appearance is a matter of public
4 record.

5 (c) A legislator may not participate in the consideration of
6 legislation in which the legislator or the immediate family of the
7 legislator has a substantial personal interest unless the legislator
8 has complied with this chapter, AS 39.50.020, and with the rules of
9 the commission. A legislator has a substantial personal interest in
10 legislation within the meaning of this subsection if the legislator or
11 the immediately family of the legislator has a direct personal pecun-
12 iary interest in the legislation in a manner or to a degree that is
13 different from the interest of a member of the public.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 (e) A legislator may not be a party to or have an interest in
18 the profits or benefits of a state contract unless the contract is let
19 by competitive bidding or the total annual amount of the state con-
20 tract equals [REDACTED]. A legislator has an interest in the
21 profits or benefits of a state contract under this subsection if the
22 contract is awarded to

- 23 (1) the legislator or a member of the family of the legis-
24 lator;
- 25 (2) a firm, corporation, or association in which the legis-
26 lator or a member of the family of the legislator owns 10 percent of
27 the stock of the firm, corporation, or association; or
- 28 (3) a partnership in which a legislator or a member of the
29 family of the legislator is a partner.

1 Sec. 24.60.060. LEGISLATIVE ETHICS COMMISSION. (a) There is
2 established within the legislative branch of the state government the
3 Legislative Ethics Commission.

4 (b) The commission consists of seven members selected as fol-
5 lows:

6 (1) the president of the senate shall appoint one member to
7 the commission from the senate;

8 (2) the speaker of the house of representatives shall
9 appoint one member to the commission from the house of representa-
10 tives;

11 (3) the president of the senate shall appoint to the com-
12 mission two persons who are citizens of the United States and resi-
13 dents of the state who have not held an elected public office;

14 (4) the speaker of the house of representatives shall
15 appoint to the commission two persons who are citizens of the United
16 States and residents of the state who have not held an elected public
17 office;

18 (5) one member of the commission shall be a former legisla-
19 tor of the state who is appointed by the other members of the commis-
20 sion.

21 (c) No more than four members of the commission may be members
22 of the same political party or residents of the same borough or of the
23 unorganized borough.

24 (d) The term of office of a member of the commission is four
25 years from the February 1 of the year of appointment and until a
26 successor is appointed and qualifies. A legislator appointed to the
27 commission may not serve beyond the expiration of the legislative term
28 of office. A commission member may not serve more than one full term.

29 (e) A member of the commission may not

- 1 (1) hold or seek elective office;
- 2 (2) be an officer of a political party, political commit-
- 3 tee, or group;
- 4 (3) support or oppose a candidate, proposition, or question
- 5 or make a contribution in support of or in opposition to a candidate
- 6 for the legislature;
- 7 (4) participate in an election campaign for a legislator or
- 8 contribute to a political party; or
- 9 (5) lobby or employ a lobbyist.

10 (f) The provisions of (e) of this section do not apply to the

11 members of the commission appointed under (b)(1) and (2) of this

12 section.

13 (g) A vacancy on the commission shall be filled under (b) of

14 this section for the balance of the term.

15 (h) The commission may employ an executive director and staff as

16 it considers necessary. A member of the commission may not serve as

17 executive director or on the staff of the commission.

18 (i) A member of the commission receives no compensation for

19 service on the commission. Members of the commission are entitled to

20 travel expenses and per diem authorized by law for members of boards

21 and commissions under AS 39.20.180, but a member of the commission who

22 is a legislator is not entitled to travel expenses and per diem from

23 the commission if the legislator is receiving travel expenses and per

24 diem as a legislator.

25 Sec. 24.60.070. DUTIES OF THE COMMISSION. The commission shall

26 (1) adopt regulations to facilitate the receipt of inquir-

27 ies and prompt rendition of its opinions;

28 (2) adopt forms and procedures for the submission of state-

29 ments of financial disclosure and maintain files of the statements of

1 financial disclosure; a statement of financial disclosure filed with
2 the commission is public information;

3 (3) advise the attorney general and the legislature of
4 noncompliance with the financial disclosure requirement;

5 (4) recommend to the legislature legislation as the commis-
6 sion considers desirable or necessary to promote and maintain high
7 standards of ethical conduct in government;

8 (5) subpoena witnesses, administer oaths, and take testi-
9 mony relating to matters before the commission, and may require the
10 production for examination of any books or papers relating to any
11 matter under investigation before the commission;

12 (6) shall distribute its publications without cost to the
13 public and shall initiate programs to educate the citizens of the
14 state, legislators, and members of the staff of a legislator on ethics
15 in government;

16 (7) shall publish yearly summaries of decisions, advisory
17 opinions and informal advisory opinions, with sufficient deletions in
18 the summaries to prevent disclosing the identity of the persons
19 involved in the decisions or opinions which have remained confiden-
20 tial;

21 (8) may adopt regulations to implement, clarify, and inter-
22 pret this chapter.

23 Sec. 24.60.080. ADVISORY OPINIONS. The commission shall issue
24 an advisory opinion on the request of a legislator, a former legis-
25 lator, a person on the staff of a legislator, or a person formerly on
26 the staff of a legislator as to whether the facts and circumstances of
27 a particular case constitute a violation of ethical standards. If an
28 advisory opinion is not issued within 30 days after the request is
29 filed with the commission, the facts and circumstances of the

1 particular case do not constitute a violation of the ethical stan-
2 dards. The opinion issued or considered issued is binding on the
3 commission and in any subsequent proceedings concerning the facts and
4 circumstances of the particular case unless material facts were omit-
5 ted or misstated in the request for the advisory opinion.

6 Sec. 24.60.090. COMPLAINTS. (a) The commission may initiate,
7 receive and consider complaints alleging a violation of this chapter.

8 (b) Before the commission may exercise power authorized in (c)
9 of this section, the commission shall by resolution, supported by a
10 vote of three members of the commission, define the nature and scope
11 of the inquiry.

12 (c) The commission may investigate a violation of this chapter
13 in a proceeding begun within one year after termination of state
14 service by a legislator or a member of the staff of a legislator.
15 Nothing in this subsection bars proceedings against a person who by
16 fraud prevents discovery of a violation of this chapter. A proceeding
17 is commenced by the signing of a complaint by three members of the
18 commission.

19 (d) A complaint concerning a legislator or a former legislator,
20 or a member or a former member of the staff of a legislator, must be
21 in writing, signed by the person making the complaint and under oath.
22 A complaint may also be initiated by three or more members of the
23 commission. The commission shall notify in writing each legislator,
24 each former legislator, and each member or former member of a staff of
25 a legislator against whom a complaint is received and afford the
26 person an opportunity to explain the conduct alleged to be a violation
27 of this chapter.

28 (e) The commission shall investigate the charges filed under
29 this section and issue an advisory opinion to the person alleged to

1 have violated a provision of this chapter. The commission shall
2 investigate all complaints on a confidential basis. If the advisory
3 opinion indicates a probable violation, the legislator, former legis-
4 lator, member or former member of the staff of a legislator may re-
5 quest a formal opinion or comply with the advisory opinion. If the
6 legislator, former legislator, member or former member of the staff of
7 a legislator fails to comply with the advisory opinion or if a major-
8 ity of the members of the commission determine that there is probable
9 cause for belief that a violation of this chapter has occurred, the
10 commission shall file a complaint against the person charged with a
11 violation of this chapter and the complaint and statement of the
12 alleged violation shall be personally served on the person charged.
13 The alleged violator has 20 days after service of the complaint and
14 statement to respond in writing to the commission.

15 (f) The commission may set a time and place for a hearing with
16 notice to the complainant, if any, and to the person charged with a
17 violation of this chapter. The executive director of the commission
18 and the person charged with a violation of this chapter shall have an
19 opportunity to be heard, to subpoena witnesses and require the produc-
20 tion of books or papers relating to the proceedings, to be represented
21 by counsel, and to have the right of cross-examination. Each witness
22 shall testify under oath and the hearings are closed to the public
23 unless the person charged with a violation of this chapter requests an
24 open hearing. The commission is not bound by the rules of evidence
25 but the commission's findings must be based upon competent and sub-
26 stantial evidence. The testimony taken at the hearing shall be re-
27 corded and evidence shall be maintained. A copy of transcripts of the
28 testimony is available only to the staff of the commission and to the
29 person charged with a violation of this chapter. If the person

1 charged with the violation of a provision of this chapter requests a
2 copy of the transcript of testimony, the commission may assess one
3 half of the cost of the preparation of the transcript of testimony
4 against the person charged.

5 (g) A decision of the commission shall be in writing and signed
6 by three or more members of the commission.

7 (h) If the commission issues a decision that a member of the
8 legislature has violated a provision of this chapter, it shall refer
9 the decision to the presiding officers of the legislature. The deci-
10 sion shall contain a statement of the facts determined to constitute
11 the violation. If within 30 days after the referral, a committee of
12 the legislature has not reported action on the decision, the commis-
13 sion shall make the decision public. Days during which the
14 legislature is not in session may not be counted in determining the
15 30-day period.

16 (i) If the four members of the commission agree to a decision
17 that a former member of the legislature or a member or a former member
18 of the staff of a legislator has violated a provision of this chapter,
19 the commission may issue a public statement of its decision. The
20 attorney general may exercise whatever remedies may be available to
21 the state.

22 (j) If a legislator is determined by the commission to have
23 violated this chapter or if a legislator declines or refuses to coop-
24 erate with the commission, it may refer its determinations and its
25 records to the presiding officers of the legislature for action the
26 legislature considers appropriate.

27 (k) A commission member or individual who divulges information
28 concerning the charge before the filing of a complaint by the
29 commission, except as permitted by this chapter, is guilty of a class

1 C felony.

2 Sec. 24.60.900. DEFINITIONS. In this chapter, "commission"
3 means the Legislative Ethics Commission.

4 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
5 10.070(c).

1 IN THE SENATE

BY V. FISCHER

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to legislative standards of con-
7 duct."

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

9 * Section 1. LEGISLATIVE DETERMINATION. The Constitution of the State
10 of Alaska in Art. II, sec. 12 grants to each house of the legislature the
11 power to judge the qualifications of its members. The legislature deter-
12 mines that the maintenance of the highest standards of conduct constitutes
13 an important qualification for membership in the legislature.

14 * Sec. 2. AS 24 is amended by adding a new chapter to read:

15 CHAPTER 60. LEGISLATIVE STANDARDS OF CONDUCT.

16 ARTICLE 1. STANDARDS OF CONDUCT GENERALLY.

17 Sec. 24.60.010. APPLICABILITY. (a) This chapter applies to a
18 member of the legislature and to a person employed by a member of the
19 legislature. This chapter does not apply to a former member of the
20 legislature or to a person formerly employed by a member of the legis-
21 lature unless the provision affirmatively states its application to a
22 former member of the legislature or to a person formerly employed by a
23 member of the legislature. This chapter does not apply to a person
24 elected to the legislature who at the time of election is not a member
25 of the legislature.

26 (b) The provisions of this chapter specifically repeal the
27 provisions of the common law relating to legislative conflict of
28 interest insofar as it applies to a member of the legislature or to a
29 person employed by a member of the legislature.

1 (c) Nothing in this chapter precludes the application of other
2 law.

3 Sec. 24.60.020. GENERAL STANDARDS. (a) A member of the legis-
4 lature and a person employed by a member of the legislature may not
5 accept a benefit directly or indirectly resulting from improperly
6 exerted influence.

7 (b) A member of the legislature and a person employed by a
8 member of the legislature may not engage in a business or professional
9 activity that is inconsistent with the conscientious performance of
10 official duties.

11 (c) A member of the legislature and a person employed by a
12 member of the legislature may not misuse state property or funds.

13 Sec. 24.60.030. ADOPTION OF GUIDELINES BY ETHICS COMMITTEE. The
14 absence of a specific statement in this chapter permitting or pre-
15 scribing conduct for a member of the legislature or a person employed
16 by a member of the legislature does not prevent an ethics committee
17 from adopting a guideline regulating the conduct that is consistent
18 with the general principles stated in this chapter.

19 Sec. 24.60.040. CONFLICT OF INTEREST. (a) A conflict of inter-
20 est does not exist under this chapter and there is no duty to disclose
21 a conflict of interest if the benefit or detriment received by a
22 member of the legislature or by a person employed by a member of the
23 legislature is not different from that shared by all residents of the
24 state or by all members of a large group or class of residents of the
25 state.

26 (b) If the benefit or detriment received by a member of the
27 legislature or by a person employed by a member of the legislature is
28 shared only by a small group or class of residents of the state, then
29 a conflict of interest may exist.

1 (c) A personal interest of a member of the legislature or a
2 person employed by a member of the legislature conflicts with the
3 public interest if it tends to impair the independence of judgment of
4 the member of the legislature or the person employed by a member of
5 the legislature.

6 (d) If a member of the legislature or a person employed by a
7 member of the legislature acts on a legislative matter in which a
8 personal interest may exist, the member of the legislature or a person
9 employed by a member of the legislature shall consider whether the
10 personal interest will tend to impair the independence of judgment of
11 the member of the legislature or a person employed by a member of the
12 legislature.

13 (e) If the member of the legislature determines that an actual
14 conflict of interest exists, the member of the legislature shall
15 declare the interest on the floor or in committee, ask to be permitted
16 not to vote, and file a written statement of the conflict of interest
17 with the ethics committee within 48 hours of the determination that a
18 conflict of interest exists. If a person employed by a member of the
19 legislature determines that an actual conflict of interest exists, the
20 person shall file a written statement with the ethics committee within
21 48 hours of the determination that a conflict of interest exists and
22 may not participate further in the matter.

23 Sec. 24.60.050. PRESUMED CONFLICTS OF INTEREST. (a) Except as
24 provided in (b) and (c) of this section a member of the legislature
25 shall request permission to abstain from voting and a member of the
26 legislature or a person employed by a member of the legislature may
27 not undertake other official duties where the member of the legisla-
28 ture or a person employed by a member of the legislature

29 (1) has an interest that is direct and different from the

1 interest of a member of the public in an activity that would receive a
2 benefit or detriment from proposed legislation or official duties;

3 (2) is a participant in a close economic association with
4 an individual or person who the member of the legislature or an
5 employee of the legislature knows

6 (A) has a direct interest in a business activity that
7 will receive a benefit or detriment directly by the proposed
8 legislation or official duties;

9 (B) is a lobbyist or has employed a lobbyist;

10 (3) solicits, accepts, or agrees to accept a gift, loan, or
11 payment in an aggregate amount during a single calendar year of more
12 than \$100 from an individual or person with an interest in a business
13 activity that would receive a benefit by or share a detriment from
14 proposed legislation or official duties.

15 (b) Notwithstanding (a) of this section, a member of the legis-
16 lature may vote for proposed legislation or engage in other official
17 duties prescribed in (a) of this section if the legislator files a
18 sworn statement with an ethics committee. The statement shall de-
19 scribe the circumstances of the apparent conflict and shall state that
20 the apparent conflict will not prevent a fair and objective consid-
21 eration of the proposed legislation or official duties by the member
22 of the legislature.

23 (c) If the member of the legislature files a statement under (b)
24 of this section or if the member of the legislature requests an opin-
25 ion on an apparent or presumed conflict, the ethics committee may
26 issue an opinion concerning the propriety of the proposed action by
27 the member of the legislature.

28 (d) A disclosure to the Public Offices Commission under AS 39.-
29 50.020 does not constitute compliance with the requirements of

1 disclosure of a conflict of interest under this section or AS 24.60.-
2 300.

3 (e) The acceptance by a member of the legislature of campaign
4 contributions that are reported under AS 15.13 does not create a
5 conflict of interest.

6 (f) As used in this section, "close economic association" means,
7 as related to a member of the legislature or a person employed by a
8 member of the legislature, partners, associates, employers and em-
9 ployees in business and professional enterprises, corporations in
10 which the member of the legislature or a person employed by a member
11 of the legislature owns capital stock in excess of \$1,000, and a
12 corporation of which a member of the legislature or a person employed
13 by a member of the legislature is an officer, director, or agent.

14 Sec. 24.60.060. CONTRACTS. (a) A member of the legislature and
15 a person employed by a member of the legislature may not be a party to
16 a contract with the state or a municipality of the state and may not
17 have an interest in the investment of state funds or municipal funds
18 unless the contract or the investment is obtained through competitive
19 bidding.

20 (b) An ethics committee may grant a member of the legislature
21 and an employee of the legislature permission to engage in a contract
22 or in the investment of state or municipal funds not obtained through
23 competitive bidding if the ethics committee determines that the member
24 of the legislature or the person employed by a member of the legisla-
25 ture would not improperly exercise influence in obtaining the con-
26 tract.

27 (c) An employee of an agency of the legislature established
28 under AS 24.20 may not be a party to a contract with the state or a
29 municipality of the state.

1 Sec. 24.60.070. REPRESENTATIONS. (a) Except as provided in
2 this section, a member of the legislature and a person employed by a
3 member of the legislature may not represent a person for compensation
4 before an agency, board, or commission of the state or a municipality
5 of the state.

6 (b) A member of the legislature and a person employed by a
7 member of the legislature may represent a client in

8 (1) a criminal action before a court of the state; or

9 (2) a civil action before a court of the state if the state
10 is not a party to the action.

11 Sec. 24.60.080. STATE PROPERTY AND FUNDS. A member of the
12 legislature and a person employed by a member of the legislature may
13 not use state property or funds of the state for personal or campaign
14 purposes.

15 Sec. 24.60.090. ELIGIBILITY FOR STATE BENEFITS. (a) Except as
16 provided in this section, a member of the legislature and a person
17 employed by a member of the legislature may not accept a benefit from
18 the state not available generally to a member of the public on the
19 same terms. Acceptance of compensation, travel, per diem and other
20 benefits provided by law and consistent with law does not constitute a
21 violation of this subsection.

22 (b) A member of the legislature and a person employed by a
23 member of the legislature may be granted a loan from the state if the
24 qualifications for the loan are established in law or by regulation
25 and the exercise of discretion is not required to determine eligibil-
26 ity for the loan.

27 (c) A member of the legislature and a person employed by a
28 member of the legislature may obtain land from the state if the quali-
29 fications for participation in the state land disposal are established

1 in law or by regulation and the exercise of discretion is not required
2 to determine eligibility for the land disposal.

3 Sec. 24.60.100. NEPOTISM. (a) A member of the legislature may
4 not approve the employment of an individual who is related to the
5 member of the legislature and an employee of the legislature may not
6 approve the employment of an individual who is related to the employee
7 of the legislature. For the purposes of this section, a husband,
8 wife, mother, father, grandparent, grandchild, sister, brother, uncle,
9 aunt, nephew, or niece is related to the approving officer.

10 (b) An individual is not employed if no compensation is received
11 from the state for the services provided.

12 Sec. 24.60.110. BLIND TRUSTS AND DIVESTITURE. A member of the
13 legislature and a person employed by a member of the legislature may
14 establish a blind trust or seek divestiture of assets that create or
15 appear to create a conflict of interest. If circumstances make the
16 establishment of a blind trust or divestiture difficult or impossible,
17 the circumstances shall be reported to the ethics committee and its
18 determinations followed.

19 Sec. 24.60.120. RETALIATION. Retaliation for filing an ethics
20 complaint with or for providing truthful testimony to an ethics com-
21 mittee or to publicly constituted investigatory body constitutes a
22 violation of legislative ethics and shall be dealt with by an ethics
23 committee appropriately.

24 Sec. 24.60.130. EMPLOYMENT OF FORMER MEMBERS AND EMPLOYEES. A
25 former member of the legislature and a former employee of the legisla-
26 ture may accept employment with an agency of the state or with a
27 municipality of the state and may engage in lobbying immediately on
28 the termination of service as a member of the legislature or as a
29 person employed by a member of the legislature. A former member of

1 the legislature and a former employee of the legislature may not use
2 confidential information obtained from the earlier service except for
3 the benefit of the state.

4 Sec. 24.60.140. CONFIDENTIAL INFORMATION. Information obtained
5 by a member of the legislature or a person employed by a member of the
6 legislature in the course of official duties that is not available to
7 the general public by law, regulation, or practice may not be used for
8 personal gain.

9 ARTICLE 2. ETHICS COMMITTEES.

10 Sec. 24.60.200. ETHICS COMMITTEES ESTABLISHED. (a) An ethics
11 committee of the senate and an ethics committee of the house of rep-
12 resentatives are established as permanent committees of the legisla-
13 ture.

14 (b) Each ethics committee shall provide the particular house of
15 the legislature and its members with guidance on legislative standards
16 of conduct through the establishment of substantive and procedural
17 guidelines, the issuance of advisory opinions, and the investigation
18 of complaints of violations of legislative standards of conduct by
19 members of the legislature and by persons employed by a member of the
20 legislature.

21 (c) Nothing in this chapter authorizes the referral by the
22 presiding officer of legislation to an ethics committee at a regular
23 or special session of the legislature.

24 Sec. 24.60.210. MEMBERSHIP. The ethics committee of the senate
25 is composed of five members of the senate appointed by the president
26 of the senate and the ethics committee of the house of representatives
27 is composed of five members of the house of representatives appointed
28 by the speaker of the house. The membership of each committee shall
29 include at least one member from each of the two major political

1 parties represented in that house. The appointing authority in each
2 house shall announce the appointment of members of each committee
3 within 15 days after the convening of the first regular session of
4 each legislature.

5 Sec. 24.60.220. TERM OF MEMBERSHIP. A member serves for the
6 duration of the legislature in which the member is appointed and a
7 member reelected to office or serving a term of office extending into
8 the next succeeding legislature may continue to serve until a succes-
9 sor is appointed.

10 Sec. 24.60.230. VACANCIES. If a vacancy occurs in the member-
11 ship of an ethics committee the presiding officer shall fill the
12 vacancy within 30 days. If the office of the president of the senate
13 or speaker of the house of representatives becomes vacant and a va-
14 cancy occurs among the appointed member of a committee, the remaining
15 committee members shall appoint a new member. A member of the legis-
16 lature appointed to fill a vacancy shall be a member of the same
17 political party as the member vacating the seat, if possible.

18 Sec. 24.60.240. STAFF. (a) Each ethics committee may hire and
19 determine the compensation of staff of the committee. Staff members
20 serve at the direction and at the pleasure of the ethics committee.

21 (b) Staff shall maintain the integrity of the functions and
22 services of each ethics committee by refraining from joining or sup-
23 porting any partisan political organization, faction or activity that
24 would tend to undermine the essential nonpartisan nature of their
25 functions and services. The provisions of this section do not re-
26 strict staff from expressing private opinion, registering or voting.

27 Sec. 24.60.250. MEETING OF THE ETHICS COMMITTEE. Each ethics
28 committee shall meet as necessary during a legislative session and
29 during the interim and it may meet at the request of its chair or of

1 three members of the committee.

2 Sec. 24.60.260. QUORUM. A quorum of the ethics committee con-
3 sists of three members and the vote of three members is required to
4 adopt a motion, determination, or advisory opinion of the ethics
5 committee.

6 ARTICLE 3. RESPONSIBILITIES OF THE ETHICS COMMITTEE.

7 Sec. 24.60.300. DISCLOSURES TO THE COMMITTEE. (a) A member of
8 the legislature and an employee of the legislature shall file with the
9 ethics committee a report disclosing the information required by this
10 section.

11 (b) The statement required by (c) of this section shall be filed
12 with the ethics committee within 72 hours after the event described
13 occurs if either house of the legislature is in session and within 30
14 days of the occurrence of the event if neither house of the legisla-
15 ture is in session; in no case may the information required by (c) of
16 this section be filed more than 72 hours after the event occurred if a
17 house of the legislature is in or comes into session during the 72
18 hour period.

19 (c) Each member of the legislature and each person employed by a
20 member of the legislature shall file a statement with the ethics
21 committee listing the information required by this subsection:

22 (1) a description of each contract with the state or an
23 agency of the state or with a municipality of the state in which the
24 member of the legislature or a person employed by a member of the
25 legislature has acquired an interest;

26 (2) a description of each gift with an aggregate value in
27 excess of \$100 in each calendar year to the member of the legislature
28 or to a person employed by a member of the legislature; as used in
29 this paragraph;

1 (A) one or more gifts shall be cumulated from the
2 particular donor during the calendar year to determine aggregate
3 value; and

4 (B) hospitality in a restaurant or other place of
5 public accommodation or in a home, not associated with overnight
6 accommodations, is not a gift;

7 (C) a gift from a husband, wife, mother, father,
8 grandparent, grandchild, sister, brother, uncle, aunt, nephew,
9 niece and similar step-relatives need not be disclosed;

10 (3) a description of transportation not involving common
11 carriers accepted in the course of official business;

12 (4) a description of each fee or honorarium and, when in
13 excess of \$100, compensation or reimbursement not paid by an agency of
14 the legislature or a committee of the legislature for travel or
15 expenses received for attending or participating in a meeting;

16 (5) a description of each financial transaction involving
17 more than \$500 between two or more members of the legislature, two or
18 more persons employed by a member of the legislature, or between a
19 member of the legislature and a person employed by a member of the
20 legislature.

21 Sec. 24.60.310. COMPLAINTS. (a) A person who believes a viola-
22 tion of this chapter has occurred may file a sworn, confidential
23 complaint with the appropriate ethics committee. The staff of an
24 ethics committee may recommend that the ethics committee initiate a
25 confidential investigation.

26 (b) If an ethics committee determines there is an adequate basis
27 for believing that a violation has occurred, it shall order the staff
28 to undertake a confidential investigation.

29 (c) The staff of an ethics committee shall complete a

1 confidential investigation expeditiously considering the complexity of
2 the underlying facts, the workload of the ethics committee, the rea-
3 sonable and proper protection of reputations, and the public interest.

4 (d) If the staff of an ethics committee concludes after afford-
5 ing notice and an opportunity for a private hearing to the individual
6 against whom the complaint was filed that the acts or practices
7 charged have occurred and that the acts or practices may constitute a
8 violation of this chapter, the staff shall report its confidential
9 findings and recommendations to the ethics committee.

10 (e) The ethics committee shall offer the individual in relation
11 to whom the confidential findings and recommendations have been
12 reported by the staff an opportunity to respond to the findings and
13 recommendations and a hearing. The ethics committee may adopt the
14 findings and recommendations of its staff as its own findings or may
15 modify or reject the findings or recommendations.

16 (f) If the ethics committee finds that the complaint and the
17 investigation of staff do not state a violation of legislative ethics,
18 the findings of the ethics committee remain confidential. An indivi-
19 dual against whom a complaint was filed may request the ethics commit-
20 tee to publish its findings.

21 (g) If an ethics committee finds that the complaint and inves-
22 tigation of the staff as modified by the ethics committee under (e) of
23 this section state a violation of legislative standards of conduct,
24 the commission shall publish its determination. If requested by the
25 attorney general, the ethics committee shall make available to the
26 attorney general the results of its investigation in the case of
27 published findings.

28 Sec. 24.60.320. ACTION ON DETERMINATION OF A VIOLATION OF LEGIS-
29 LATIVE ETHICS. (a) If an ethics committee determines under

1 AS 24.60.310 that a violation of legislative ethics has occurred, the
2 ethics committee may by a majority vote of the ethics committee

3 (1) issue a private reprimand; or

4 (2) recommend

5 (A) revocation of committee assignments;

6 (B) censure by the appropriate house of the legisla-
7 ture;

8 (C) expulsion by the appropriate house of the legisla-
9 ture;

10 (D) suspension or termination of the employment of a
11 person employed by a member of the legislature.

12 (3) refer the matter to the attorney general for action
13 considered appropriate by the attorney general.

14 (b) The attorney general may bring an action in the name of the
15 state for the recovery of improper compensation, gift, or profit
16 received by a member of the legislature or a person employed by a
17 member of the legislature. The attorney general may also bring an
18 action for the cancellation of a contract improperly entered into by a
19 member of the legislature or a person employed by a member of the
20 legislature; in any action brought under this subsection, the attorney
21 general and the court shall consider the interests of an innocent
22 party to a contract. An action to cancel a contract must be brought
23 within 60 days of the publication of the finding that a violation of
24 legislative ethics has occurred.

25 Sec. 24.60.330. ADVISORY OPINION. (a) On the written request
26 of a member of the legislature or a person employed by a member of the
27 legislature, the ethics commission may issue an advisory opinion
28 concerning the propriety under legislative ethics of a matter concern-
29 ing the member of the legislature or a person employed by a member of

1 the legislature.

2 (b) An advisory opinion shall be issued as soon as is practi-
3 cable considering the complexity of the underlying facts, the workload
4 of the ethics committee, the reasonable and proper protection of
5 reputations, and the public interest.

6 (c) If an advisory opinion is not issued by the ethics committee
7 within 21 days of the receipt of the request filed while the legis'a-
8 ture is in session or within 42 days of the receipt of the request
9 filed while the legislature is not in session, the individual request-
10 ing the advisory opinion may consider that the facts and circumstances
11 stated in the request do not constitute a violation of legislative
12 ethics.

13 (d) If the workload of the ethics committee prevents a response
14 within the times stated in (c) this section, the staff may issue an
15 interim opinion indicating that the facts and circumstances stated in
16 the request for an advisory opinion may constitute a violation of
17 legislative ethics.

18 (e) An interim opinion of staff and an advisory opinion of the
19 ethics committee under this section are confidential although the
20 individual requesting the advisory opinion may request the ethics
21 committee to release the advisory opinion.

22 (f) A member of the legislature and a person employed by a
23 member of the legislature may rely on an advisory opinion of an ethics
24 committee received in response to a request filed by the member of the
25 legislature or the person employed by a member of the legislature to
26 the extent that the request included a complete and accurate statement
27 of the matter and the person relying on the opinions follows the terms
28 of the advisory opinion in good faith.

29 Sec. 24.60.340. PUBLICATION. (a) Notwithstanding a provision

1 of this chapter regarding the confidentiality of complaints, findings,
2 and advisory opinions, each ethics committee shall publish weekly a
3 report of the ethics committee in the particular journal. A summary
4 of the information filed the preceding week under AS 24.60.300 shall
5 be included in the weekly report in the journal. The report shall
6 also indicate the conclusions of each ethics committee on generalized
7 fact situations as may be of use as future guidelines for members of
8 the legislature, employees of the legislature, and members of the
9 public.

10 (b) The staff of the committee shall prepare a weekly summary of
11 the activity of the ethics committee for inclusion in the journal,
12 preserving as necessary the confidentiality of matters pending before
13 the ethics committee.

14 ARTICLE 4. DEFINITIONS.

15 Sec. 24.60.900. DEFINITIONS. In this chapter,

16 (1) "person employed by a member of the legislature"

17 (A) means a person who is on the permanent or tempo-
18 rary staff of a member of the legislature or of a standing,
19 joint, or special committee of the legislature;

20 (B) does not mean a permanent or temporary employee of
21 an agency of the legislature established under AS 24.20 or this
22 chapt.

23 (2) "ethics committee" means the ethics committee of the
24 house of the legislature to which the member of the legislature or the
25 member employing a person belongs.
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