

HB

150

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 150

H State Affairs

3/2/89

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 150 [REPRESENTATION OF OTHERS BY PUB OFFICIAL]
"An Act relating to representation of others by legislators and certain legislative employees before state agencies."

be replaced with CSHB 150(SA) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note LAA
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

David Dudley (NO REC)
Gene Healey (No Rec)
Jim Swadlow (No Rec)

[Signature]
 Chairman's signature



Official Business

Alaska State Legislature

Select Committee on Legislative Ethics

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

DATE: March 10, 1989

TO: All Persons Covered by Legislative Ethics Code

FROM: Senator Pat Pourchot, Chair *Pat*
Select Committee on Legislative Ethics

SUBJECT: Advisory Opinions

On March 8, 1989 the Select Committee on Legislative Ethics adopted two advisory opinions that will likely have wide application for legislators and other persons covered by the legislative ethics code.

Opinion 89-1 clarifies that persons covered by the code must disclose, under AS 24.60.080(d), gifts of travel and hospitality of \$100 or more for the purpose of obtaining information on matters of legislative concern, that are accepted from corporations, associations, local governments, etc., in addition to individuals.

Opinion 89-2 deals with the requirement in AS 24.60.100 that a person covered by the code who represents another person for compensation before an agency, board or commission of the state must disclose that representation. The opinion concludes that the requirement does not require disclosure of representations of partners or attorneys who work in the same law firm as a person covered by the code.

Copies of these two opinions are attached.

PP:jbg:jl

Attachments

MARCH 8, 1989

Advisory Opinion 89 - 2

RE: Reporting representation by other attorneys
in law firm

You have requested an advisory opinion, under AS 24.60.160, as to the scope of AS 24.60.100, requiring disclosure of representation for compensation by persons covered by the ethics code. Specifically you have asked whether you, as a member of a law firm with you and one other attorney as partners and one salaried associate, must disclose representations by your partner and by the associate. It is our opinion that you do not need to disclose these representations, provided that you are in no way involved in handling the cases.

We would first note that disclosure is not required if the representation is before a court. AS 24.60.100 requires disclosure only of representations "before an agency, board or commission of the state." Based on this plain language, we cannot construe the statute as applying to judicial bodies. Moreover, our construction is supported by the legislative history of ch. 36, SLA 1984, the chapter enacting the ethics code.

We also conclude, based on the plain language of AS 24.60.100, that disclosure of representation before agencies, boards and commissions by your partner and associate is not mandated. The statute speaks to "[a] person to whom this chapter applies," i.e., a legislator or legislative employee. We cannot read this language to expand it to other individuals associated with you in the practice of law but not associated with you in your legislative duties.

Moreover, practical considerations dictate this result. Some law firms have forty or fifty attorneys in the state, sometimes in several different cities, and any one attorney may have no idea what agencies, boards or commissions all of his or her colleagues are appearing before. It would not be reasonable to expect the attorney covered by the code to try to keep track of all of these other attorneys' activities.

We stress, however, in keeping to our commitment to maximize reasonable disclosure under AS 24.60, that if you have any role whatsoever in the representation (other than sharing in the profits derived therefrom), it must be disclosed.

Adopted by the Select Committee on Legislative Ethics on March 8, 1989. Members present and concurring in the opinion were: Sen. Pat Pourchot, Chairman; Sen. Jack Coghill; Sen. Dick Eliason; Rep. Mike Davis; Rep. C.E. Swackhammer; Margie MacNeille; Irene Peyton; and Judge Thomas Stewart.



Alaska State Legislature

Select Committee on Legislative Ethics

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

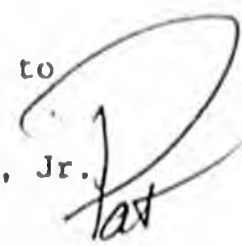
M E M O R A N D U M

March 9, 1989

SUBJECT: Advisory Opinion in response to
your request

TO: Representative Max Gruenberg, Jr.

FROM: Senator Pat Pourchot, Chair
Select Committee on Legislative Ethics



Enclosed please find Advisory Opinion 89-2, adopted unanimously by the Select Committee on Legislative Ethics on March 8, 1989 in response to your request of February 8. Because the committee believes that the opinion may affect many individuals covered by the ethics code, it has authorized the distribution of this opinion immediately to legislators and other covered persons.

JBG:PG:gc
WKG7/130

Enclosure

MARCH 8, 1989

Advisory Opinion 89 - 2

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in law firm

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STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 7, 1989

SUBJECT: Representation by legislators and certain employees (HB 150)

TO: Representative Peter Goll

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether a system could be established to permit legislators and employees covered by AS 24.60 to represent clients before an agency in adjudications or quasi-judicial hearings that avoids having the matter considered by the commissioner. It is my understanding that the proposal would involve having the matter heard by a court, a person appointed by the court, or by another independent (non-agency) person.

Under AS 44.62.450 and AS 44.62.500 of the Administrative Procedure Act, an issue that is the subject of an adjudicatory hearing is decided by the agency. I have been informed that, in some cases, the role of the agency in making an initial determination is filled by the commissioner. Apparently, there is some concern about having an attorney from the legislative branch represent a client before a commissioner.

The problem with having this role filled by the court or a person appointed by the court is that the agency role (and expertise) in making initial determinations is circumvented as to some, but not all, matters depending upon who is representing the person involved in the adjudication. In addition, AS 44.62.560 provides for judicial review of an agency decision on the record. If the court determines the matter in the first place, that independent judicial review process is disrupted. If someone else outside the agency makes the initial determination, the agency does not bring its expertise to the matter and it seems hard to justify the requirement of judicial review on the record rather than de

Representative Peter Goll
Page 2
March 7, 1989

novo. In addition, I believe that providing for two different administrative procedures, one for people represented by attorneys who are members of the legislative branch and another for everyone else, raises due process questions.

If it is the desire of the legislature to permit attorneys who are members of the legislative branch covered by AS 24.60 to represent clients before administrative agencies in adjudicatory matters, but not to permit them to represent clients before commissioners, I believe the Administrative Procedure Act should be amended to prevent commissioners from deciding any adjudications. Instead these matters could be decided by other agency members. In any case, people should be subject to the same procedures in administrative hearings regardless of who represents them.

TBC:kb
wkk2/110

HB 150

FILE CONTENTS

HB 150.

Fiscal Note.

Memorandum from Representative Goll to Committee Chairman Boucher.

Letter from Alaska Public Offices Commission.

Copies of the following Alaska Statutes:

- (1) AS 39.50.090 (c)
- (2) AS 24.45.171 (8)
- (3) AS 24.45.041
- (4) AS 24.45.051
- (5) AS 24.45.061.

Memorandum from Richard Bradley, Legislative Counsel, to Representative Pat Pourchot regarding representation before a board.

Copy of the relevant sections of the November, 1988, draft Model Ethics Law from the Council on Governmental Ethics Laws.

Copies of the relevant sections of the ethics laws of:

- (1) Connecticut
- (2) Massachusetts
- (3) New Jersey
- (4) New York.

1 IN THE HOUSE

BY GOLL AND KOPONEN

2

HOUSE BILL NO. 150

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to representation of others by
7 legislators and certain legislative employees before
8 state agencies."

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

10 * Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter
12 applies may not represent [WHO REPRESENTS] another person for compen-
13 sation before an agency, board, or commission of the state. However,
14 a person to whom this chapter applies who is an attorney may represent
15 a client before a court [SHALL DISCLOSE THE NAME OF THE PERSON REPRE-
16 SENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE
17 WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPRO-
18 PRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE.
19 THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND
20 FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE
21 JOURNAL BY THE FIFTH DAY OF THE SESSION].

FISCAL NOTE

REQUEST:

Revision Date: _____ Affect Agency Legislative Affairs Agency
 Title: An Act relating to representation BRU: Legislative Council
of others by legislators and certain legislative...
 Sponsor: Representative Goll Components Council and Subcommittees
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No Fiscal Impact

Prepared By: Pamela Stoops, Director Phone: 465-3850
 Division: Administrative Services Date: 2/27/89

Approved By: Warren Endicott, Executive Director
 Agency: Legislative Affairs Agency Date: 2/27/89

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT & BUDGET
 AGENCY (IES)

REPRESENTATIVE
PETER GOLL



P O BOX V
JUNEAU ALASKA 99811
(907) 465 4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Representative Peter Goll

RE: HB 150, "An Act relating to representation of
others by legislators and certain legislative
employees before state agencies."

DATE: February 28, 1989

HB 150 prohibits legislators and legislative employees covered under AS 24.60 (Legislative Ethics Act) from engaging in lobbying on behalf of a client for a fee before an agency, board or commission of the state.

This bill is an attempt to provide a reasonable solution to a conflict between two statutes, AS 24.60.100 and AS 39.50.090 (c).

The relevant portion of AS 39.50.090 (c) provides:

(c) A public official may not represent a client before a state agency for a fee. . . .

The term public official is defined in AS 39.50.200(a) (8) and provides in part:

(8) "public official" means . . . a member of the legislature . . .

AS 24.60.100, however, provides:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public

record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

Legislative Affairs Legal Services has provided one resolution to the conflict by stating that AS 24.60.100 takes precedence over AS 39.50.090(c) because AS 24.60 was passed subsequent to AS 39.50 and is thus a repeal by implication to the extent of a conflict between the two laws. (See attached memorandum from Richard Bradley to Pat Pourchot, dated December 22, 1988.)

I feel that that result, while it may be legally correct, is not in the public interest.

In fact, AS 39.50 is the public officer and employee conflict of interest law, and was initiated by the people in Initiative Proposal No. 2 in 1974. One of the stated purposes of the initiative, as codified in AS 39.50.010, was "to discourage public officials from acting upon a private or business interest in the performance of a public duty". In the same section the "people of the state declare that...public office is a public trust that should be free from the danger of conflict of interest..."

The position of a legislator is one of influence over state agencies, and it is inappropriate for that influence to be used, or even appear to be used, in the service of a private client for a fee.

The November, 1988, Model Ethics Law from the Council on Governmental Ethics Laws suggests a prohibition on public official lobbying or representation similar to HB 150. In the commentary on that section, the council states that the section prohibits:

"a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them."

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 24, 1989

Representative Peter Goll
P.O. Box V
Capitol Room 122
Juneau, Alaska 99811

Dear Representative Goll:

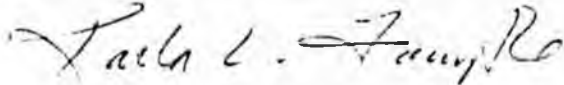
You asked the commission to indicate its position regarding HB 150, an act relating to representation of others by legislators and certain legislative employees before state agencies.

The commission discussed this measure at its February 22, 1989 commission meeting. The commission strongly endorses this bill. As you are aware, the current version of AS 24.60.100 is inconsistent with the conflict of interest law. Under AS 39.50.090(c), a public official may not represent a client before a state agency for a fee. The commission believes the two laws should be made consistent, and strongly favors the broad prohibition contained in the conflict of interest law.

I hope this information is helpful. If you have additional questions, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Dean Gottehrer, Special Assistant, Commissioner of
Administration

Sec. 39.50.090. Prohibited acts. (a) A public official may not use the official position or office for the primary purpose of obtaining personal financial gain or financial gain for a spouse, child, mother, father, or business with which the official is associated or in which the official owns stock.

(b) A person may not offer or pay to a public official, and a public official may not solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to the public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer if the subject matter of the legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes the person as a full-time state employee under AS 39.

(c) A public official may not represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before that commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes the person as a full-time state employee under this title.

(d) A municipal officer may not represent a client for a fee before the municipal body the officer serves.

(e) Violation of this section is a misdemeanor, punishable upon conviction by a fine of not less than \$500 nor more than \$2,000, by imprisonment up to one year, or by both.

(f) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state. (1974 Initiative Proposal No. 2, § 1; am § 12 ch 25 SLA 1975; am § 1 ch 40 SLA 1975; am §§ 2, 3 ch 211 SLA 1975)

Opinions of attorney general. — Subsection (f) of this section does not cover a municipal officer or employee who, as part of his official duties, represents his department before boards, committees, or the assembly of the same government. The rule which forbids the simultaneous holding of incompatible offices would, however, prohibit a person from being both an employee-advocate of a municipal department and a member of the municipal assembly evaluating the advocate's position. November 26, 1984 Op. Att'y Gen.

An official may be in violation of the

common law of conflict of interests even though he is not in violation of this section. November 26, 1984 Op. Att'y Gen.

The commission's power to investigate violations of this section derives from AS 39.50.050, which authorizes the commission to administer AS 39.50 and promulgate regulations to implement the chapter. In carrying out this responsibility, the commission staff should immediately notify the chief prosecutor whenever commission records, files, and inquiries reveal a possible criminal violation of this section. November 26, 1984 Op. Att'y Gen.

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(5) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(6) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

(7) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, and assistant to the governor, chairman or member of a state commission or board, and each appointed or elected municipal officer;

(9) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

(b) In this chapter "state commission or board" means the

- (1) Agricultural Revolving Loan Fund Board (AS 03.10.050);
- (2) Alaska State Council on the Arts (AS 44.27.040);
- (3) Alcoholic Beverage Control Board (AS 04.06.010);
- (4) State Assessment Review Board (AS 43.56.040);
- (5) [Repealed, § 1 ch 54 SLA 1981.]
- (6) Board of Education (AS 14.07.075);
- (7) Alaska Public Broadcasting Commission (AS 44.21.256);
- (8) Alaska Public Offices Commission (AS 15.13.020);
- (9) Employment Security Advisory Council (AS 23.20.025);
- (10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);
- (11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);
- (12) Alaska State Building Authority (AS 18.55.020);
- (13) State Commission for Human Rights (AS 18.80.010);

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seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

(7) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding or sustaining that veto and the action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; or

(B) a person who represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation or profession;

(9) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value;

(10) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

Article 3. Disclosure: Registration and Reports.

Section	Section
41. Registration	91. Publication of reports
51. Reports	101. Public records
61. Reports by employers of lobbyists	111. Preservation of records
71. Certification of reports	116. Disclosure of contributions
81. Reporting periods	

Sec. 24.45.040. (Repealed, § 1 ch 167 SLA 1976.)

Sec. 24.45.041. Registration. (a) Before engaging in lobbying, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person by whom the lobbyist is retained or employed;

(3) whether the person from whom the lobbyist receives compensation employs the person solely as a lobbyist or whether the person is a regular employee performing other services for the employer which include but are not limited to the influencing of legislative or administrative action;

(4) the nature or form of the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(5) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(6) the full name and complete address of the person, if other than the registrant, who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) At the option of the registrant, the registration form may be accompanied by four two and one-half inch by two and one-half inch black and white photographs of the lobbyist. The photographs may not be more than five years old. These photographs shall be included in the directory published under (e) of this section.

(d) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

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(e) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the information prescribed in (b) of this section for each lobbyist and the photograph, if any, furnished by a lobbyist under (c) of this section. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency and the commission's central office.

(f) Each lobbyist shall renew the registration annually by filing a new registration statement together with a new authorization to act as a lobbyist before engaging in lobbying. The lobbyist also shall file any reports or statements the lobbyist has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with. (§ 2 ch 167 SLA 1976)

Sec. 24.45.050. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.051. Reports. Each lobbyist registered under AS 24.45.041 shall file with the commission a report concerning the lobbyist's activities during each reporting period prescribed in AS 24.45.081, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with AS 24.45.071 and 24.45.081. The report also shall include any changes in the information required to be supplied under AS 24.45.041(b) and the following information for the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(a) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures made or incurred during the period in support of or in connection with influencing legislative or administrative action by the lobbyist, or on behalf of the lobbyist by the lobbyist's employer in the following categories:

- (A) food and beverages;
- (B) living accommodations;
- (C) travel;

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(3) the date and nature of any gift exceeding \$100 in value made to a public official and the full name and official position of that person;

(4) the name and official position of each public official, and the name of each member of the immediate family of any of these officials, with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than \$100 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official is a proprietor, partner, director, officer or manager, or has a controlling interest, and whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is \$100 or more in a calendar year; and

(6) a notice of termination if the lobbyist has ceased the lobbying activity which required registration under this chapter and if this report constitutes the final report of the lobbyist's activities. (§ 2 ch 167 SLA 1976)

Sec. 24.45.060. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.061. Reports by employers of lobbyists. (a) Within 15 days after employing, retaining or contracting for the employment or retention of a lobbyist, the person who employs, retains or who contracts for the services of a lobbyist shall file a statement with the commission authorizing or verifying that employment, retention or contract for lobbying services.

(b) A person who employs, retains or who contracts for the services of one or more lobbyists, whether independently or jointly with other persons, and who directly or indirectly makes payments to influence legislative or administrative action shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments have been made during the period by the maker of the report, together with the date and amount;

(4) the date and nature of any gift exceeding \$100 in value made to any public official and the full name and official position of the recipient of each gift;

(5) a general description of the legislative or administrative action which the person making the report has attempted to influence;

(6) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses; and

(7) a notice of termination if the person filing a report has ceased employing or retaining a lobbyist registered under this chapter and if this report constitutes the final report of the lobbyist's activities on behalf of the maker of the report. (§ 2 ch 167 SLA 1976)

Legislative history reports. — For report on CSHB 522, 1976 House Journal, p. 470, explanation of legislative intent, see re-

Sec. 24.45.070. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.071. Certification of reports. Every statement or report required to be filed under this chapter shall identify the full name of the person preparing it, the person's complete address and telephone number, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed. (§ 2 ch 167 SLA 1976)

Sec. 24.45.080. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.081. Reporting periods. Reports required under this chapter shall be filed during the calendar month following each calendar month during any part of which the legislature was in session and during the month following each calendar quarter when the legislature was not in session. However, if a lobbyist registered under this chapter has declared that the lobbyist seeks only to influence administrative action and not legislative action the lobbyist need only file a report required under this chapter for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date. (§ 2 ch 167 SLA 1976)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AGENCY
STATE OF ALASKA
1988


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 22, 1988

SUBJECT: Representation before a board;
AS 39.50.090(c) vs. AS 24.60.100
(Work Order No. 6-0414)

TO: Representative Pat Pourchot

FROM: Richard A. Bradley 
Legislative Counsel

Theda Pittman has asked that we comment on the conflict between AS 39.50.090(c) and AS 24.60.100; a person covered by AS 24.60 receives instructions under AS 24.60.100 that directly conflict with AS 39.50.090(c).

The relevant portion of AS 39.50.090(c) provides:

(c) A public official may not represent a client before a state agency for a fee. * * *

The term "public official" is defined at AS 39.50.200(a)(8). It provides, in part:

(8) "public official" means * * * a member of the legislature * * *

Theda Pittman believes that AS 24.60.100 is inconsistent with AS 39.50.090(c); the former provision provides:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclo-

sure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

In our view, AS 24.60.100 takes precedence over AS 39.50.090(c) to the extent of the conflict; while AS 39.50.090(c) applies to public officials, AS 24.60.100 only applies to legislators and legislative employees. This occurs because we believe that AS 24.60.100 was carefully considered by the legislature and constitutes a subsequent inconsistent amendment of substantive law and thus a repeal by implication of the earlier law to the extent of the conflict. While repeals by implication are not favored, the legislative history is clear.

The early versions of SB 257 were consistent with AS 39.50.090(c); as introduced, SB 257 provided:

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature may represent a client in

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

(2) a matter which was pending at the time a person to whom this chapter applies assumed office or in employed.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

CSSB 257(SA) varied the provisions:

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board,

or commission of the state unless acting in an official capacity.

(b) A qualified member of the legislature may represent a client in a criminal action before a court of the state or in a civil action where the state is not a party.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would normally be expected.

(d) Disqualification under this section of an attorney who is a member of the legislature does not disqualify a law firm in which the legislator is a member.

(e) A person to whom this chapter applies may represent another person for compensation if the ethics commission determines that the representative will not involve improper influences.

The next version (CSSB 257(Jud)) was simpler:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose to the committee the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body

The next version in our files (CSSB 257(Jud)am) approximates the section that was eventually adopted:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in a journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for in-

clusion in the journal for the first day of the session.

In commenting on February 24, 1984 to the conference committee on the conference committee version of SB 257 as well as the Senate and House versions, Billy Berrier noted the conflict:

Sec. 24.60.100 (of the conference committee version) requires that a person who represents another person before an agency of the state for compensation shall disclose the representation in the journal if the legislature is in session and, if not, to the committee. The committee must maintain a record of the disclosures and send them to the house involved for inclusion in the journal for the first day of the session.

The Senate version is identical. The House version prohibits representation before an agency of the state for compensation except in court actions and actions which were pending at the time the person was elected or employed.

It was, of course, the Senate version that was adopted.

What seems uncontrovertably clear in the evolution of AS 24.60.100 is that, at least within the context of SB 257, the legislature considered the question carefully and the provision finally adopted is clear that it permits a legislator to represent a client for compensation before an agency of the state.

I am aware from earlier work on this conflict that Theda Pittman, when she was executive director of the Public Offices Commission, has stated that she or staff of the commission discussed the conflict between AS 24.60.100 and AS 39.50.090(c) with the drafters of SB 257. I am certain that her statement is accurate but I cannot explain the failure of SB 257, as enacted, to resolve the conflict.

But it is clear that AS 24.60.100 is in pari materia to AS 39.50.090(c). Each law deals with the concern of the legislature with "conflict of interest" as that concern affects legislators in a particular area: the representation by attorney-legislators of clients who have cases on matters involving executive agencies of the state.

Representative Pat Pourchot
Page 5
December 22, 1988

In my view, the subsequent enactment of AS 34.61.00 constitutes a pro tanto repeal by implication of the provisions of AS 39.50.090(c) as the latter section applies to legislators.

The matter could, of course, be addressed by legislation.

If I may be of further assistance, please advise.

RAB:gc
LRG5/033

230 Restraints on Public Official and Employee Representation of Clients
Before Government Entities

230.01 Appearance as an Advocate

(1) A public official or employee shall not appear as the advocate of another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

230.02 Appearance as an Attorney

(1) A public official or employee shall not appear as an attorney for another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing as an attorney before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

COMMENT:

The preceding two sections prohibit a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them.

Excerpt, Model Ethics Law, November 1966, Council on Governmental Ethics Laws

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345, 348; P.A. 83-249, S.6, 14; 83-270, S.3; 83-586, S.3, 14;
P.A. 84-21, S.1,5; 84-335, S.2, 4; 84-546, S.141, 173; P.A.
87-524, S.5, 7, amending subsection (b) effective July 7, 1987.)

Sec. 1-84. (Formerly Sec. 1-66). Prohibited activities.

(a) No public official or state employee shall, while serving as such, have any financial interest in, or engage in, any business, employment, transaction or professional activity, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-85.

(b) No public official or state employee shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(c) No public official or state employee shall wilfully and knowingly disclose, for financial gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment and no public official or state employee shall use his public office or position or any confidential information received through his holding such public office or position to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.

(d) No public official or his employee or state employee or his employee shall agree to accept, or be a member or employee of a partnership, association, or a professional corporation which partnership, association or professional corporation agrees to accept, any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before the banking department, the claims commissioner, the commission on hospitals and health care, the insurance department, the department of liquor control, the department of motor vehicles, the state insurance purchasing board, the department of environmental protection, the department of public utility control, the connecticut siting council, the division of special revenue within the department of revenue services, the gaming policy board within the department of revenue services or the Connecticut real estate commission; provided this shall not prohibit any such person from making

inquiry for information on behalf of another before any of said commissions or commissioners if no fee or reward is given or promised in consequence thereof. For the purpose of this section, partnerships, associations or professional corporations refer only to such partnerships, associations or professional corporations which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. Nothing in this subsection shall prohibit any employment, appearing, agreeing to appear or taking action before any municipal board, commission or council. Nothing in this subsection shall be construed as applying (1) to the actions of any TEACHING OR RESEARCH professional employee of a public institution of higher education if such actions are not in violation of any other provision of this chapter, (2) TO THE ACTIONS OF ANY OTHER PROFESSIONAL EMPLOYEE OF A PUBLIC INSTITUTION OF HIGHER EDUCATION IF SUCH ACTIONS ARE NOT COMPENSATED AND ARE NOT IN VIOLATION OF ANY OTHER PROVISION OF THIS CHAPTER OR (3) to any member of a board or commission who receives no compensation other than per diem payments or reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties.

(e) No legislative commissioner or his partners, employees or associates shall represent any person subject to the provisions of part II concerning the promotion of or opposition to legislation before the general assembly, or accept any employment which includes an agreement or understanding to influence, or which is inconsistent with, the performance of his official duties.

(f) No person shall offer or give to a public official or state employee or candidate for public office or his spouse, his parent, brother, sister or child or spouse of such child or a business with which he is associated, anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official, state employee or candidate for public office would be or had been influenced thereby.

(g) No public official or state employee or candidate for public office shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official or state employee or candidate for public office would be or had been influenced thereby.

(h) Nothing in subsection (f) or (g) of this section shall be construed (1) TO APPLY TO ANY PROMISE MADE IN VIOLATION OF

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involved is one:

1. in which he or she participated at any time as a state employee or special state employee;
2. which is or has been (within the preceding year) the subject of the employee's official responsibility; or
3. which is pending in the state agency in which the employee is serving -- if the employee serves more than 60 days in any 365 day period. To serve more than 60 days means to perform work on more than 60 days; work on any part of a day will be considered work for one full day. The employee is responsible for keeping accurate records in this regard.

Example: A lawyer consults with the Department of Public Health (DPH) for 45 days spread out over a year; she is a special employee. Her work relates exclusively to the DPH lead-paint program. The lawyer could also represent a community health center in a funding application before DPH because she does not have official responsibility for or participate in DPH funding decisions and she worked less than 60 days for DPH during the previous year.

c. Application to Legislators

Like "special" state employees, Legislators have more leeway under the restrictions of Section 4. Since members of the state Legislature are expected to speak and act on behalf of their constituents, a member of the General Court may act as the unpaid representative of a constituent before any state agency.

In addition, a Legislator may receive compensation from, or act as the paid agent or attorney for, someone other than the commonwealth or a state agency if the particular matter involved is:

1. ministerial in nature (ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents); or
2. an appearance before a court of the commonwealth; or
3. an appearance in a quasi-judicial proceeding. A proceeding is considered quasi-judicial if the action of the state agency is adjudicatory in nature, is appealable to the courts and both sides are entitled to legal representation (Note: The Legislator's opposing counsel may neither be the attorney general

NEW JERSEY

P.L. 1987, c. 432,
s. 3, eff.
Feb. 14, 1988

52:13D-16. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or state agency

5. a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

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b. No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency; provided, however, this subsection shall not be deemed to prohibit a member of the Legislature from making an inquiry for information on behalf of a constituent, if no fee, reward, or other thing of value is promised to, given to or accepted by the member of the Legislature, whether directly or indirectly nor shall anything contained herein be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

c. Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State,

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),

(3) In connection with the determination or review of transfer inheritance or estate taxes,

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State,

(5) Before the Division on Civil Rights or any successor thereof,

(6) Before the New Jersey State Board of Mediation or any successor thereof,

(7) Before the New Jersey Public Employment Relations Commission or any successor thereof,

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P. L. 1952, c. 174, § 5 (C. 39:6-65), or

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

52:13D-17. Representation on matter in which directly involved during state service

P.L. 1987, c. 432,
s. 4, eff.
Feb. 14, 1988

6. No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for →, negotiate on behalf of, or provide information → not generally available to members of the public or services to, or agree to represent, appear for, → negotiate on behalf of, or provide information → not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered, any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

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ment. The measure prohibits legislators and their law partners and party chairs from representing clients before state agencies. It prohibits the New York City party chairs from representing clients before city agencies. The new law's postemployment provision restricts for 2 years an official's appearances before an agency with which the official was formerly associated. It prohibits a legislative employee from lobbying the Legislature during the same session for which the person had worked for the Legislature. The new law requires the City of New York to adopt disclosure reports and financial reporting for its officials. The law also establishes a temporary state committee on local government ethics to review standards of conduct for local governments.

For additional information consult Evan Davis, Counsel to the Governor of New York (212/587-2100 or 518/474-8343).

2. Legislation proposed: Early in 1987 New York's Legislature had passed a law that included these provisions:

a. Creation of ethics code: New York's Legislature passed a law that would have these results:

(1) Prohibited state officials and legislators from appearing before most state officials. Those who are attorneys could appear before some "quasi-judicial" proceedings, but would be required to disclose their appearances. Law partners of legislators, state officials, and legislative employees were required to disclose appearances before state agencies.

(2) Require state officials and legislators who earn more than \$30,000 to file lengthy financial disclosure statements detailing their own investments, as well as those held by their spouses and dependent children. Candidates for state office would be required to also file the statements.

(3) Establish two ethics commissions, one to oversee state employees and a second to oversee the legislature.

(4) Make all disclosure information and lists of appearances before state agencies available for public scrutiny.

(5) Bar legislators and state officials who are attorneys from sharing the profits earned by legal partners who represent cases before state agencies.

(6) Prohibit legislative employees who leave government service from lobbying the legislature until the next election.

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**Model State
Conflict of Interest
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47 East 68th Street
New York, New York 10021

are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

(c) Any violation of this Act by a member of the state legislature shall be subject to the sanctions of this Act to the fullest extent permissible under the provisions of the state constitution. Any violation not subject to the sanctions of this Act by reason of the state constitution shall be subject to such sanctions as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act by members of the state legislature are to be subject to the sanctions of the Act insofar as such sanctions may be applied consistent with the provisions of the state constitution. In a number of states the constitutional protection granted legislators for actions on the floor of the respective houses of the legislature extends beyond matters of voting and free speech and may be inconsistent with the enforcement of certain conflict of interest provisions under this law. To the extent that some of the conflict of interest provisions under this law may not be applicable to state legislators under the constitution, the Act relegates those violations to sanctions imposed by the legislature itself. Thus, for example, if the Commission may not penalize a legislator for failing to disclose a conflict of interest prior to voting as required by Section 17, the legislature is obligated to proceed against its members when the commission cannot by reason of constitutional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shall not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

- (i) The contract is let by competitive bidding or involves not more than \$150 (One Hundred and Fifty Dollars);
 - (ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.
- (b) In the absence of bribery or a purpose to defraud, a state official or

NEPOTISM. AS 24.60.090.

The section on nepotism refers to "an individual who is related to" (i.e., a relative) meaning a child, stepchild, husband, wife, mother, father, sister or brother.

During the session, a relative of a legislator may not be employed in the house in which the legislator is a member or by an agency of the legislature established by AS 24.20.

During the interim, a relative of a legislator may not be employed in either house or by an agency of the legislature.

A relative of a legislative employee may not be employed in a position supervised by the employee.

A relative may work, without compensation from the state, for a legislator or an employee.

REPRESENTATION BEFORE A STATE AGENCY. AS 24.60.100.

Legislators and employees must disclose their paid representation of another person before a state agency, board or commission. The disclosure must include the name of the client, the subject matter of the representation, and the name of the agency, board or commission before which the representation is to take place.

During the session, such a disclosure is made in the appropriate journal. In the interim, it is made to the committee.

A legislator who practices law is required to disclose the names of clients, the state agency before which the representation took place, and the subject matter of the representation unless disclosure would violate the state or federal constitution or unless federal law prohibits full disclosure. If full disclosure is contrary to federal law or constitutional requirements, partial disclosure must be made.
(88-1)

Representation for a fee before a state agency by a legislator or a legislative employee required to file a Conflict of Interest Statement

is prohibited by AS 39.50.090(c), one of the few portions of that statute which addresses conduct. In a memorandum dated December 22, 1988, legislative counsel concludes that the legislature carefully considered the differences between AS 39.50.090(c) and the language of AS 24.60.100 in the legislative process with the result that the ban against representation, before a state agency by a legislator, found in the Conflict of Interest statute is repealed by implication.

The names of all clients from whom more than \$100 is received are required to be disclosed on a Conflict of Interest Statement. Clients of most types of businesses are required to be disclosed. Under administrative regulation 2 AAC 50.100, the Alaska Public Offices Commission will consider requests for exemption from the requirement. Questions about the requirement should be directed to the Commission staff.

STATE CONTRACTS OR LEASES. AS 24.60.040.

Except for the kinds of leases or contracts listed below, a legislator or a legislative employee may not be a party to or have an interest in a state contract or lease. A person has an interest in a contract or lease if the person receives direct or indirect financial benefits from it, including the receipt of income, profits, a salary or fee, or any other financial benefit.

The allowable exceptions are:

- 1) the contract or lease is let through competitive sealed bid under the state procurement code; or
- 2) the total annual amount of the contract or lease is \$1,000 or less; or
- 3) the contract or lease is a standardized one developed under publicly established guidelines and is generally available to the public or to a group to which the legislator or employee belongs.

Income, profits or other financial benefits of a contract are covered by this provision regardless of whether they are the result of activity as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor.

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

(3) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm;

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

(5) gifts from the family of the person.

(d) A person to whom this chapter applies who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift; and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the appropriate body or, if the legislature is not in session, to the committee. The committee shall maintain a public record of the disclosure it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(Sec. 1 ch 36 SLA 1984; am sec. 3 ch 167 SLA 1988)

Sec. 24.60.090. NEPOTISM.

(a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.100. REPRESENTATION.

A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

A MODEL ETHICS LAW FOR STATE GOVERNMENT



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reports available to the public, the press and other watchdogs of the public interest serves three vital interests. First, the officials making disclosure pay more attention to complying fully and accurately with the law. Second, enforcement agencies are made more diligent in advising officials of potential conflicts of interest and in dealing with violations of ethical standards. Third, the officials guilty of intentional or unintentional violations may be brought by publicity to take corrective action. Public disclosure is an action-forcing mechanism for ethics officials and others to apply the law actively. In short, public disclosure forces the law to be taken seriously.

Finally, financial disclosure reports should be readily available to those requesting to see them. To facilitate these demands, it is vital that the ethics commission or other oversight authority be provided with adequate computer, copying and microfiche equipment.

PROSCRIBED ACTIVITIES

Conflict-of-interest statutes must be more than merely recommended codes of conduct. They should contain clear directives for public officials and employees in the form of enforceable statutes. The law must prohibit any use of official powers for personal financial gain and provide mechanisms to disqualify government officials and employees from specific actions which may enable them to do so.

The law must clearly prohibit giving and solicitation of gifts or other things of value in relation to an official's

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actions. The prohibition should include, for example, exchanges of gifts or other items of value as a reward or display of gratitude in relation to any official's actions, regardless of any intent to influence those actions. This is an important way to address the potential for apparent, as well as real, conflicts of interest.

To help prevent violations of the conflict-of-interest statutes, public officials and employees should be actively encouraged to seek legally binding advisory and interpretive decisions from the ethics commission on potential conflict-of-interest situations before they occur. Ideally, a sound conflict-of-interest statute backed up by an effective ethics commission or other enforcement mechanisms should provide any public official facing a potential conflict-of-interest situation with a set of procedures to avoid it. The procedures should guarantee that the official will not be charged with violating the law after acting in good faith in accordance with those procedures.

Public officials and employees should also be prevented from officially acting on any specific matter that would directly affect their personal financial standing. A series of guidelines should be established which provide a set of options and courses of action for the official or employee facing a conflict of interest. These should include methods for full disclosure of the financial interest and, when necessary, recusal or abstention from the action.

Outside employment

In addition to prohibitions on the use of public office for personal financial gain, public officials and employees must be

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prevented from engaging in compensated work outside of their official employment which might conflict with the public interest. Whenever an elected official or employee works for private interests in matters in which the state also has an interest, there is a potential for divided loyalties, influence peddling, and the use of insider information and favoritism.

Whether for compensation or for free, public officials and employees should also be prevented from representing interests other than the state's before the state or any state agency in relation to a matter in which the state is a party or has an interest. In other words, public officials and employees must be prevented from "serving two masters" in their official capacity, whether or not they personally gain from such activity.

For example, a state employee who, during off-duty hours, acts as voluntary director of a non-profit corporation which runs a program providing shelter for the homeless should not be able to represent the corporation before a state agency awarding grants for the development of such shelters. The employee's status and possible inside information gives that person an unfair advantage over other individuals and organizations which may come before the same agency.

Legislators :

State legislators can range from full-time/professional to part-time/citizen officials. In most states, legislators routinely maintain jobs outside the legislature. Legislators in some states receive full salaries; others do not. Some legislatures meet for short periods of time every other year; some meet for longer, annual sessions.

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Legislators may have not only personal financial interests, but also sources of personal income which relate to state government or otherwise overlap with the interests of state government. Legislators also may have investments or property holdings which could be affected by government policies. The objective of the model law is to prevent the legislator from using his/her status and official prerogatives in state government for personal benefit and to prevent conflicts of interest.

The model law attempts to address these issues by allowing legislators to represent the interests of their constituents while at the same time preventing them from using public office for personal gain. In this sense, narrowly defined personal interests, regardless of the kind of legislative system one is considering, should never be a motivation for action by an elected representative.

The model law allows legislators to appear before state agencies as unpaid representatives. But, because legislators authorize the budgets and control legislation concerning state agencies, they should be prohibited from paid representation of particular groups or individuals before those agencies, excluding the courts. The model also requires legislators to abstain from voting on special legislation which affects their financial interests.

TABLE 20
 SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
 (As of January 1, 1960)

Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:

Council on Governmental Ethics Laws / The Council of State Governments ISS

Jurisdiction	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Representation of Private Clients by Public Officials or Employees before Public Bodies	Receipt of Fees or Honoraria by Public Officials or Employees	Hypothetical	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
Alabama	S	S	S	S	S	S	S	S	-	S
Alaska	S	S	-	-	A	S	-	-	-	-
Arizona	S	S	S	-	S	S	S	S	S	S
Arkansas	S	S	S	-	-	-	-	-	-	-
California	S	S	-	S	S	S	S	-	-	S
Colorado	-	-	-	-	-	-	-	-	-	-
Connecticut	S	S	S	SA	SA	S	S	S	S	S
Delaware	S	S	-	-	-	-	•	R	S	•
Florida	S	S	S	S	S	S	-	S	S	S
Georgia	-	-	-	-	-	-	-	-	-	-
Hawaii	S	S	S	S	S	S	S	-	S	S
Idaho	-	-	-	-	-	-	-	-	-	-
Illinois	S	S	AS	S	AS	S	A	AS	AS	AS
Indiana	AS	AS	AS	S	A	AS	A	S	S	A
Iowa	(S)	(S)	(S)	S	S	•	•	S	S	R
Kansas	S	S	S	S	S	S	S	A	S	S
Kentucky	S	S	S	-	S	S	S	R	R	R
Louisiana	S	S	S	S	S	S	S	S	S	S
Maine	S	SL	S	S	S	SA	-	S	S	-
Maryland	S	S	S	S	S	S	S	•	•	S
Massachusetts	S	S	S	S	S	S	S	S	-	S
Michigan	S	S	S	-	S	S	S	I	AFIRS	S
Minnesota	-	-	-	-	-	-	-	-	-	-
Mississippi	SR	SL	S	SR	-	S	-	SL	SL	SLR
Missouri	-	S	S	S	S	E	-	C	•	-
Montana	S	S	-	S	S	-	-	S	S	(S)
Nebraska	S	S	S	-	S	S	-	S	S	-
Nevada	S	S	S	-	S	A	-	S	S	S
New Hampshire	S	S	S	-	S	S	S	-	AS	S
New Jersey	S	S	S	S	S	S	A	-	R	R

TABLE 28 (continued)
 SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
 (As of January 1, 1968)

Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:

Jurisdiction	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Representation of Private Clients by Public Officials or Employees before Public Entities	Receipt of Fees or Honoraria by Public Officials or Employees	Map sales	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
New Mexico	S	S	S	-	S	-	-	-	S	S
New York	-	-	-	-	-	-	-	-	-	-
North Carolina	E	S	-	-	R	-	R	R	S	R
North Dakota	-	-	-	-	-	-	-	-	-	-
Ohio	S	S	S	S	S(E)	S	(E)	(E)	S	(E)
Oklahoma	S	S	-	-	S	S	S	S	S	S
Oregon	S	S	S	S	S	S	S	S	S	S
Pennsylvania	S	S	S	S	R	R	R	S,R	S	-
Puerto Rico, PR	S	S	S	S	S	S	S	-	S	S
Rhode Island	S	S	S	-	S	S	-	-	S	S
South Carolina	S	S	S	S	S	-	SA	R	S	SA
South Dakota	-	-	-	-	-	-	-	-	S	S
Tennessee	S	S	S	S	S	S	S	S	S	S
Texas	S	S	S	-	S	S	S	S	S	S
Utah	-	-	-	-	-	-	-	-	-	-
Vermont	S(E)	S	-	-	S	-	R(E)	-	S	A
Virginia	S	S	S	-	S	S	RS	S	S	S
Washington	S	S	S	S	S	S	SA	A	S	S
West Virginia	I,RS	E,RS	S	S	E,RS	-	E	-	A,RS	A,RS
Wisconsin	S	S	S	S	S	S	S	S	S	S
Wyoming	-	-	-	-	-	-	-	-	-	-
District of Columbia	S	S	S	S	S	S	S	S	S	S
U.S.A. (Federal)	S,R	S,R	S,R	S,R	R	S,R	S	R	S	R
Virgin Islands	S	-	S	-	-	-	-	-	-	S
Alberta	-	-	-	-	-	-	-	-	-	-
British Columbia	-	-	-	-	-	-	-	-	-	-
Newfoundland	-	-	-	-	-	-	-	-	-	-
Ontario	-	-	-	-	-	-	-	-	-	-
Quebec	-	-	-	-	-	-	-	-	-	-
Saskatchewan	-	-	-	-	-	-	-	-	-	-
Canada (Federal)	-	-	-	-	-	-	-	-	-	-

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TABLE 20 (continued)
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Key:

— No restraints/Not applicable

A Administrative regulation

C Constitutional

E Executive order

L Case law

R Agency ruling

S Statutory

* Restricted activity; source of restriction unavailable.

(a) The majority of the several hundred citations in the Illinois Revised Statutes which might be described as "conflict of interest" in character apply to specific agencies, offices or programs and are sometimes further implemented by agency rule or administrative regulation. A number carry civil penalties for violation, although a number encompass criminal sanctions. There are also a number of criminal statutes pertaining to bribery and official misconduct which are of generic application to officers and employees in state and local government. However, there is no separate statutory code of conduct applying evenly throughout Illinois state government.

(b) House and senate rules.

(c) No substantive restraints fall within the jurisdiction of the Ethical Practices Board.

(d) Judges only.

(e) Agency opinions.

(f) Not encompassed within the State Ethics Act.

(g) State employee contract also prohibits it.

(h) Statutory restraints for a few.

TABLE 28 (continued)
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Key:

— No restraints/Not applicable

A Administrative regulation

C Constitutional

E Executive order

L Case law

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(*) No substantive restraints fall within the jurisdiction of the Ethical Practices Board.

(*) Judges only.

(*) Agency opinions.

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(*) Statutory restraints for a few.

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NEW YORK'S NEW ETHICS LAW: TURNING
THE TIDE ON CORRUPTION

Robert C. Newman*

Earl Long, scion of the famous Longs of Louisiana, once was asked if he believed in using "ethics" in government. "Hell, yes," he replied. "I believe in using anything I can get my hands on."¹

Revelations of recent years have made it appear that "anything goes" is the motto of a number of New York's public figures as well. From Hempstead² to Syracuse,³ one official after another has been convicted of betraying the public trust. Most of these convictions occurred in the federal courts, where anti-racketeering laws facilitate the prosecution of systemic corruption. As a result, many observers questioned the state government's ability to maintain and uphold standards of official conduct.

In 1987, responding to intense pressure from the public, the news media, and Governor Cuomo, New York's legislature adopted the Ethics in Government Act.⁴ This landmark law, the first overhaul of the state's ethics codes in two decades, will prohibit state officials, employees, and lawmakers from representing private parties in state agency proceedings, and will require them to make detailed

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1. Address by Ann McBride, Senior Vice-President, Common Cause, Common Cause State Leadership Conference (Sept. 20, 1986).

2. Nassau Republican leader Joseph Margiotta was convicted of extortion relating to a kickback scheme involving the County's insurance business. Lubasch, *Jury, in 2d Trial, Finds Margiotta Guilty of Fraud*, N.Y. Times, Dec. 10, 1981, at A1, col. 5; see *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983). He was also found civilly liable for requiring Nassau County workers to contribute a portion of their salaries to the Republican Party. *Cullen v. Margiotta*, 811 F.2d 698 (2d Cir.), cert. denied, 107 S. Ct. 3266 (1987).

3. Lee Alexander, former Democratic mayor of Syracuse, admitted being a central figure in a plot to collect millions of dollars in kickbacks from City contractors. Lynn, *Ex-Syracuse Mayor's Schemes Detailed in Memo*, N.Y. Times, Feb. 7, 1988, § 1, at 38, col. 1.

4. Ch. 813, 1987 N.Y. Laws 1404 (codified as amended in scattered sections of N.Y. EXEC. LAW; N.Y. GEN. MUN. LAW; N.Y. JUD. LAW; N.Y. LEGIS. LAW; N.Y. PUB. OFF. LAW).

annual disclosures of their financial interests.⁶

While recognizing that no statute can instantly and permanently cleanse the body politic of corrupt behavior, sponsors and supporters of the Ethics Act hope that it will encourage a moral climate in which integrity is expected and demanded by the voting public.⁹ At the same time, the Ethics Act greatly strengthens the mechanisms by which the State can deter, detect and punish those officials who prove unable, or unwilling, to draw the line between their private interests and their public responsibilities.⁷

This Article sets forth the basic principles at stake in the drafting of government ethics laws, and will sketch how these laws have emerged at the federal level and in other jurisdictions. It then presents the major features of the 1987 Ethics Act, including its scope and coverage, its substantive restrictions on officials' behavior, its disclosure requirements, and its enforcement provisions. Finally, this Article comments on proposed amendments to the Act, intended to extend the Ethics Act's reach and strengthen its regulatory weave.

I. BASIC PURPOSES OF CONFLICT OF INTEREST LEGISLATION

As government has grown larger and its regulations more pervasive, laws governing the conduct of public officials have also become much more elaborate than the simple anti-bribery statutes of earlier eras. The goals of such laws have generally been described as: (1) avoiding favoritism in government's consideration of citizens' claims; (2) preserving the integrity of the policy-making process; (3) enhancing public confidence in government; (4) improving government efficiency; and (5) preventing the use of public office for private gain.⁸ Instead of relying solely on ad hoc determinations of propriety, reformers have preferred to prohibit officials from engaging in certain relationships that pose the potential for breaches of trust, on the theory that "situations of temptation should not be put in the way of human beings in high authority."⁹ Typical of such relation-

ships are a government that employs him; an employer that employs him to use "inside" information for his employer and to receive gifts, other benefits, or to have an interest in his employer.

Another aspect of the problem is the cue from Justice Brandeis: "It is the best of disinfectants to be the best of disinfectants." By requiring disclosure of sources of income and assets, and the information necessary to judge the public interest rather than the private fears that government is hampered,¹¹ financial jurisdictions.¹²

Disclosure laws work best when they are against interest each work best when they are against impropriety and are deterred when financial interests draw back from ethical behavior. Truthful disclosures and the discovery and prosecution of wrongdoing become "a symbolic act" unless it stimulates the further development of ethical standards.¹³

Crucial to any success of laws work best when they are designated agency the case of ethics laws, independent, beyond the conduct is being monitored.

5. *Id.* at 1406-08.

6. See, e.g., Sponsor's Memorandum in Support of N.Y.A. 1202 (Jan. 14, 1987); Governor's Program Bill No. 220 (1986).

7. See ch. 513, 1987 N.Y. Laws 1404.

8. Perkins, *Conflict of Interest in the Executive Branch*, in CONFERENCE ON CONFLICT OF INTEREST, UNIVERSITY OF CHICAGO LAW SCHOOL 69 (1961); see also *Report and Recommendations on Conflict of Interest and Financial Disclosure Requirements*, in 1 THE STATE-CITY COMMISSION ON INTEGRITY IN GOVERNMENT REPORTS AND RECOMMENDATIONS (1987) [hereinafter SOVERN COMMISSION RECOMMENDATIONS] (chaired by Michael E. Sovern).

9. Rauh, *Conflict of Interest in Congress*, in CONFERENCE ON CONFLICT OF INTEREST,

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10. L. BRANDIS, *OTHER*

11. See Jacobs, *Ethics* (1988) stating that "[t]he section . . . which prohibits legislation after they have left the govern-

12. See *infra* notes 24-

13. R. VAUGHAN, *CON* BRANCH 53 (1979).

ships are a government official selling goods or services to the agency that employs him; an official taking employment that would permit him to use "inside" knowledge and connections to the advantage of his employer and to the disadvantage of competitors; and an official receiving gifts, other income, or property from outside entities that have an interest in his official actions.

Another aspect of current legal thinking in the ethics area takes its cue from Justice Brandeis' admonition that "Sunlight is said to be the best of disinfectants; electric light the most effective policeman."¹⁰ By requiring public disclosure of officials' financial holdings and sources of income, it is argued that citizens will have the information necessary to judge whether their representatives are acting in the public interest rather than for private gain. In spite of opponents' fears that government recruitment of talented professionals will be hampered,¹¹ financial disclosure laws have been enacted in numerous jurisdictions.¹²

Disclosure laws and "prophylactic" measures against conflict of interest each work best when applied in combination. Injunctions against impropriety are more easily enforced, and impropriety itself is deterred when financial disclosure is required. Most officials will draw back from ethically ambiguous conduct when they realize that truthful disclosures might generate scandal, while concealment risks discovery and prosecution. On the other hand, disclosure alone risks becoming "a symbolic act that increasingly becomes devoid of meaning" unless it stimulates public debate and provides the impetus for the further development of substantive conflict of interest standards.¹³

Crucial to any set of ethics laws is the enforcement mechanism. Laws work best when their implementation is entrusted to a specially designated agency that is committed to the laws' purposes. In the case of ethics laws, such an agency should be bipartisan and independent, beyond the direct control of any of the officials whose conduct is being monitored. As will be shown, the failure to create one

UNIVERSITY OF CHICAGO LAW SCHOOL 4 (1961).

10. L. BRANDEIS, *OTHER PEOPLE'S MONEY* 92 (1932).

11. See Jacobs, *Ethics Act Prompts AG Staff Defections*, 39 *MANHATTAN LAW J.* 1 (1988) (stating that "[t]he impetus for the departures is the law's so-called revolving-door section . . . which prohibits lawyers from appearing before their former agencies for two years after they have left the government").

12. See *infra* notes 24-34 and accompanying text.

13. R. VAUGHAN, *CONFLICT-OF-INTEREST REGULATION IN THE FEDERAL EXECUTIVE BRANCH* 53 (1979).

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d in 1978, is in disclosures are government.²² Ex- restrictions against²³ these restric- sts in the Lyn fts from lobby- secutor law" is

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1986, Sept.-Oct. 1986.

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that fall under the jurisdiction of their committees.²² Nevertheless, Congress has gone further than most state legislatures by treating its members as "full-time" public servants and placing some limits on the amount of outside honoraria that may be earned.²³

B. Other States

Virtually every state has anti-bribery statutes and laws restrict- ing public officials and employees from certain activities.²⁴ New York was an early leader in the enactment of ethics legislation in 1954,²⁵ but many other states and municipalities adopted more com- prehensive provisions in the 1970's²⁶ while calls to reform the New York statute went unheeded.²⁷ Many states have enacted language restricting officials from representing clients before public agencies, for example.²⁸

In 1978, Massachusetts strengthened existing ethics statutes in response to a citizens' initiative petition.²⁹ Officials are prohibited

Congress Faces an Ethics Gap, NEWSWEEK, July 4, 1988, at 16-17.

22. See Kaplan, *Taking Stock*, COMMON CAUSE MAG., Nov.-Dec. 1987, at 29.

23. Both houses, by statute, have placed limits on members' speaking fees and other honoraria. See 2 U.S.C.A. § 31-1 (West Supp. 1988) (amending 2 U.S.C. § 31-1 (1982)). Only the House, however, has limited members' permissible outside earned income of all types. See House Rule 47, in U.S. HOUSE OF REPRESENTATIVES, ETHICS MANUAL FOR MEMBERS, OFFICERS AND EMPLOYEES (1987).

24. See, e.g., CAL. PENAL CODE §§ 67-68 (Deering 1988) (bribery of administrative officers and asking for or receiving bribes by public officers or employees); DEL. CONST. art. II, § 22 (dealing with bribery of executive, judicial, or legislative officers); FLA. STAT. § 110.122 (1986) (discussing bribery of employees); MD. ANN. CODE art. 27, § 562C (1987) (extortion by state or local officer or employees).

25. See *Staff Report on Conflict of Interest and Financial Disclosure Law in Govern- ment*, in 2 THE STATE-CITY COMMISSION ON INTEGRITY IN GOVERNMENT: STAFF MEMORANDA 47 (1987) [hereinafter SOVERN COMMISSION STAFF REPORT]; NEW YORK SPECIAL LEGISLA- TIVE COMMITTEE ON INTEGRITY AND ETHICAL STANDARDS IN GOVERNMENT, REPORT (1954).

26. See SOVERN COMMISSION STAFF REPORT, *supra* note 25, at 47-48; see, e.g., MASS. GEN. LAWS ANN. ch. 268A (West Supp. 1987) (ethics and financial disclosure); PA. STAT. ANN. tit. 65, §§ 401-413 (conflicts of interest).

27. See SOVERN COMMISSION STAFF REPORT, *supra* note 25, at 2, 47-54; *Ethics, and Anger*, in *New York*, N.Y. Times, Oct. 10, 1986, at B6, col. 1.

28. COMMON CAUSE, CONFLICT OF INTEREST LEGISLATION IN THE STATES 6 (1987) [hereinafter CONFLICT OF INTEREST LEGISLATION]; see also NATIONAL CIVIC LEAGUE, MODEL STATE CONFLICT-OF-INTEREST AND FINANCIAL DISCLOSURE LAW (1979); S. SCHNEI- DER, CAMPAIGN FINANCE, ETHICS AND LOBBY LAW BLUE BOOK 51-59 (1986).

29. See MASS. GEN. LAW ANN. ch. 268A (West Supp. 1988) (Code of Ethics); *id.* at 268B (Financial Disclosure). Although Massachusetts has strengthened the ethical guidelines for public officials and established an independent commission, difficulties persist in achieving the desired goals. See *Craven v. State Ethics Comm'n*, 390 Mass. 191, 454 N.E.2d 471 (1983) (holding that the State Ethics Comm'n had statutory authority to act as the primary investigatory body in cases of alleged violations of the conflict-of-interest law and financial

from acting as agents for any private person whose interests are adverse to the State's.³⁰ They are forbidden from having any substantial financial interest in any business dealings with the State.³¹ Gifts are restricted³² and so are appearances before state agencies,³³ although only to a limited extent. Post-employment restrictions are in place,³⁴ as are financial disclosure rules for officials and their spouses.³⁵ Local officials are also covered.³⁶ Somewhat unusual among ethics statutes is language restricting an official's business partner from engaging in representational activity that the official himself could not engage in,³⁷ and language prohibiting the "steering" of government insurance business arising from construction contracts to particular brokers.³⁸ Most importantly, the law is enforced by an independent Ethics Commission of five members, three appointed by the Governor, one by the Secretary of State and one by the Attorney General, all for five-year non-renewable terms.³⁹ The Commission has jurisdiction over ethics matters in all branches of government, and its adjudicatory proceedings are normally public.⁴⁰

The constitutionality of the financial disclosure component of state laws has been tested in a number of states. Most courts have held that where the laws are carefully drafted they are valid, on the ground that the privacy interests of officials are outweighed by the more compelling public interest in preventing corruption and the appearance of corruption.⁴¹

disclosure law); *Saccoccia v. State Ethics Comm'n*, 395 Mass. 326, 480 N.E.2d 13 (1985) (holding that the State Ethics Comm'n lacked the power to enforce a provision which prohibits an officer or employee of a state, county, or municipal agency from using or attempting to use his official position to secure unwarranted privileges).

30. MASS. GEN. LAW ANN. ch. 268A, § 4(c) (West Supp. 1987).

31. *Id.* § 7 (restricting state employees from having financial interests in contracts of state agencies).

32. *Id.* § 4 (establishing criminal penalties for receiving compensation or gifts, directly or indirectly in relation to any particular state matter).

33. *Id.* § 5.

34. *Id.*

35. *Id.* ch. 268B.

36. *Id.* ch. 268A, §§ 17-18.

37. *Id.* § 5(c)(1).

38. *Id.* § 8.

39. MASS. GEN. LAW ANN. ch. 268B, § 2 (West Supp. 1987).

40. *Id.* § 3.

41. See, e.g., *County of Nevada v. MacMillan*, 11 Cal. 3d 662, 522 P.2d 1345, 114 Cal. Rptr. 345 (1974); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974); see generally Note, *The Constitutionality of Financial Disclosure Laws*, 59 CORNELL L. REV. 345 (1974); Annotation, *Validity and Construction of Orders and Enactments Requiring Public Officers and Employees, or Candidates for Office, to Disclose Financial Condition, Interests, or Relations*,

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43. CHICAGO, IL
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44. See *Belle v*
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According to its Assembly sponsors, the Act was intended to maintain public trust and confidence by strengthening "prohibitions against behavior which may permit or appear to permit undue influence and broadening financial disclosure requirements to assure that the public is aware of all private and business interests which may influence public officials in their official acts."⁶¹ The Ethics Act significantly improved upon existing law in the areas of (1) appearances before state agencies;⁶² (2) post-employment restrictions;⁶³ (3) financial disclosure;⁶⁴ (4) coverage of certain political party leaders;⁶⁵ and (5) administration and enforcement.⁶⁶

C. Provisions of the Act

1. **Appearances Before State Agencies.**— Many government officials, particularly legislators who are also lawyers, have engaged extensively in practices involving the receipt of compensation for the rendition of services or appearance on behalf of private parties in various types of proceedings before state agencies. This practice is disturbing for at least two reasons. First, it places officials who draft statutes and administrative rules in the position of being able to look out for their own interests and their clients' interests while they are ostensibly concerned only with serving the public. This conflict is especially apparent when a legislator plays a key role on a committee with jurisdiction over a particular area of regulation. Second, the appearances of legislators before state agencies give rise to a perception that favoritism may come into play because the legislators control the agency officials' livelihoods, i.e., their budgets. Beyond this, there has been general discomfort with the intuitive but widely shared belief that it is the lure of special access and the desire to curry favor, and not professional competence, that attracts clients to retain public officials as their personal representatives.

Fight on Ethics Code, N.Y. Times, Apr. 16, 1987, at B2, col. 1; Schmalz, *New York's Legislature Tightens Ethics Rules in an Air of Tension*, N.Y. Times, Apr. 8, 1987, at A1, col. 1.

61. Sponsor's Memorandum in Support of N.Y.A. 1202 (Jan. 14, 1987); cf. Salant, *The Company They Keep*, CAPITAL REGION, Apr. 1987, at 24 (detailing potential conflicts of interest by state legislators who sit on numerous corporate and health care institution boards, or retain financial interests in partnerships and investments which might be affected by decisions by lawmakers).

62. See *infra* notes 67-78 and accompanying text.

63. See *infra* notes 79-89 and accompanying text.

64. See *infra* notes 90-107 and accompanying text.

65. See *infra* notes 108-21 and accompanying text.

66. See *infra* notes 122-48 and accompanying text.

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67. N.Y.S. 644 in Government Act.

68. "Appearance of services

OFF. LAW § 207(1)

69. *Id.*

70. See Attorn Attorney General R.

71. Model C Committee on Profe proper to waive the

s intended to "prohibitions t undue influ- to assure that ts which may thics Act sig-) appearances is;"⁶⁷ (3) finan- leaders;"⁶⁸ and

overnment of- have engaged isation for the ate parties in his practice is ials who draft g able to look hile they are conflict is es- a committee . Second, the e to a percep- gislators con- . Beyond this, e but widely the desire to acts clients to

The final version of the Ethics Act⁶⁷ addressed this problem by preventing appearances⁶⁸ before state agencies in connection with: (i) the purchase, sale, rental or lease of real property, goods or services; (ii) rate-making; (iii) adoption or repeal of regulations; (iv) obtaining of grants or loans; (v) licensing; or (vi) franchises.⁶⁹ Appearances before administrative hearing officers in "quasi-judicial" proceedings, excluded from an earlier version of the Act, are now encompassed within the prohibition. What the Act does *not* prohibit, aside from the expected exclusions for appearances in "ministerial matters" and public advocacy on behalf of constituents, are appearances before courts, and appearances before (or negotiations with) the Attorney General in his prosecutorial and investigatory functions; indeed, civil and criminal prosecutions generally appear to be the major area in which the restrictions do not apply.⁷⁰

Once the decision was made to prevent officials from practicing before state agencies, the question naturally arose as to whether it was proper for the officials' partners and associates to practice before the state agencies. According to the American Bar Association's Code of Professional Responsibility, representation by any member of a firm is equivalent to representation by the entire firm;⁷¹ thus, the Code on its face would seem to require that the statutory ban apply to the official's partner. To a member of the public concerned about the appearance of undue influence, this seems eminently logical. However, a far greater number of lawmakers are associated with firms that appear before state agencies than the number who have commonly appeared before state agencies themselves. Indeed, state regulation is so extensive that it would be difficult for any firm with a large, business-oriented practice to avoid involvement in state agency matters. Placing a ban on partners' practice before agencies would, in effect, require many covered officials to resign from their firms, and would in all likelihood be a prelude to a declaration that

New York's Legis-
1987, at A1, col. 1.
(7); cf. Salant, *The*
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67. N.Y.S. 6441, N.Y.A. 8528, 210th Sess. (1987) (subsequently enacted as the Ethics in Government Act, ch. 813, 1987 N.Y. Laws 1404).

68. "Appearance" is broadly defined by the statute to include any "appearance or rendition of services . . . in relation to [a] case, proceeding, application or other matter." N.Y. Pub. Off. Law § 73(7)(a) (McKinney 1985).

69. *Id.*

70. See Attorney General's Legislative Program No. 164 at 4 (1988) (memorandum of Attorney General Robert Abrams in support of Program Bill 149).

71. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-1.5(D) (1982). The ABA's Committee on Professional Ethics, foreseeing this problem, has suggested that it would be proper to waive the rule in certain circumstances. See R. VALLETTA, *supra* note 13, at 80.

legislators are to be considered "full-time", with higher government salaries but strict limits on the amount of outside earned income they may receive. The Legislature is not yet willing to take this step.⁷² Accordingly, a compromise was developed which permits officials' firms to appear before and transact business with state agencies so long as the official himself does not share in the "net revenues" resulting from such business.⁷³ As an added precaution, the official whose firm is "appearing" before an agency may not "orally communicate" with the agency, even without compensation, about the merits of the case.⁷⁴ The Legislative Ethics Committee is charged with developing guidelines regarding the calculation of the portion of a firm's profits that are attributable to practice before state agencies;⁷⁵ in the meantime, a legislator is safe from disciplinary action if he "reasonably believes, in good faith" that he is not sharing in the "net revenues" from state agency practice.⁷⁶ Finally, any official complying with these rules is immune from any disciplinary actions under the lawyers' Code of Professional Responsibility or similar professional disciplinary rules.⁷⁷

It remains to be seen whether this highly complex, reined scheme designed to reconcile conflicting interests will succeed in building public confidence that officials are not trading their influence and reputations for private gain. Courts tamper with the scheme at their peril, however, for the lawmakers have declared that if the provisions permitting partners to practice are struck down by court action, then the entire package of changes in the conflict-of-interest rules is nullified as well.⁷⁸

2. Post-employment Restrictions.— The need to slow down the "revolving door" between government service and private industry first became apparent at the federal level. Concern developed that regulatory agencies were becoming "captives" of those they regulated, and that large government contractors, especially defense con-

72. See Chastka, *Pay Hike Should Beet Full-time Legislators*, *Legislative Gazette*, June 1, 1987, at 25, col. 1; Miles, *In Albany: Part-Time, Ethical Legislators*, *N.Y. Times*, May 23, 1987, at A29, col. 1.

73. N.Y. Pub. Off. Law § 73(10) (McKinney 1988).

74. *Id.* § 73(10)(12).

75. N.Y. Legis. Law § 90(A)(d) (McKinney Supp. 1988).

76. N.Y. Pub. Off. Law § 73(10) (McKinney 1988).

77. *Id.* § 73(11)(c); see also N.Y. Pub. Off. Law § 73(13) (McKinney 1988) providing that a submission to a state agency on a firm's letterhead shall not become an "appearance" by a public official merely by reason of the fact that the official's name appears on the letterhead.

78. See Ethics In Government Act, ch. 311, § 19, 1987 N.Y. Laws 114.

tractors, were by routinely agents.⁷⁹ Cons level are alrea

States and the need to str peddling and t individuals wit entering gover Ethics Act b. before their fo spect to matter in which he "p the realities of pearances befo matter at all."⁸⁰ two-year ban. ex-official pers

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79. R. VACON, *Steps in Controlling the Defense Industry by Said to Include J.C.*

80. See 18 U.S.C. § 208 (1982) (Ethics in Government Act, presently in effect).

81. See, e.g., 5 U.S.C. § 208 (1982) (three-year post-employment restrictions on which have been applied with respect to what is known as "whistleblowers" replacing an ethics charter revision in the N.Y.C. Charter Revision Commission's proposed appearance restrictions on city employees.

82. N.Y. Pub. Off. Law § 73(10)(12).

83. N.Y. Pub. Off. Law § 73(10)(12).

84. *Id.*

85. N.Y. Pub. Off. Law § 73(10)(12).

ALASKA STATE SENATE

JOE P. JOSEPHSON
 DISTRICT 14 ANCHORAGE
 3111 C STREET, SUITE 306
 ANCHORAGE, ALASKA 99503
 (907) 561-7811



WHILE IN JUNEAU
 P.O. BOX 5
 JUNEAU, ALASKA 99801
 (907) 489-4829

November 10, 1988

The Honorable Pat Pourchot
 Chairman
 Legislative Ethics Committee
 Alaska State Legislature
 3111 C Street
 Suite 306
 Anchorage, Alaska 99503

Dear Representative Pourchot:

I am submitting the following list of clients whose matters involve controversies with agencies of the State of Alaska. Please incorporate this letter in the Journal for the purposes of public disclosure.

I represent the following individuals who are in litigation with the State of Alaska, Department of Natural Resources, Division of Agriculture.

Mr. Al Bannon, Sutton, Alaska;
 Mr. Ed Zimmerman, Seward, Alaska;
 Mr. & Mrs. Jerry Brehmer, Delta Junction, Alaska;
 Mr. & Mrs. Glenn Helkenn, Delta Junction, Alaska;
 Mr. & Mrs. Larrie Rule, Delta Junction, Alaska;
 Mr. & Mrs. John Rutt, Delta Junction, Alaska;
 Mr. Jesse Bannon and Mr. Wesley Bannon, Delta Junction, Alaska.

In addition, I have provided counsel to Mr. Paul Mertz, Mr. Richard Jansen, and Mr. Tom Kraus, although at this writing there is no litigation involving the State of Alaska. These individuals have also had disputes with the Department of Natural Resources, Division of Agriculture.

Very truly yours,

Joe P. Josephson
 Joe P. Josephson
 State Senator

ate Legislature Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

ALASKA STATE LEGISLATURE

While in Ketchikan
152 First Street
Ketchikan, AK 99901
907 225 9675



While in Juneau
PO Box V
Juneau, AK 99811
907 463 3141

Senator Lloyd Jones

October 25, 1988

MEMORANDUM

to, Senate Secretary

by Pearce *Pearce*
1989

Subject: Compliance

On 10/20/88, I am disclosing the maintenance of
information involving a substantial matter
concerning Mr. Ronald A. Duncan and Mr. Robert

President of General Communication,
owns interests in various real properties and

Chairman of General Communication,
owns title to real property in Anchorage.

Representative Pat Furchot, Chairman
Ethics Committee
3111 C Street, Suite 506
Anchorage, Alaska 99503

Dear Representative Furchot:

This letter is to inform the ethics committee that I am
working as a consultant during the interim between the 1988
and 1989 Alaska State Legislative sessions. In my capacity of
consultant I will advise and represent the Sealaska
Corporation on several issues, one of which is the proposed
road link from Tolstoi Bay to the existing Prince of Wales
Island road system.

I will represent my client, when clearly identified as a
consultant, in meetings and discussions with Mark Hickey, the
Commissioner of the Alaska Department of Transportation, and
other employees of agencies which may affect this proposed
project.

Sincerely,

Lloyd Jones
Lloyd Jones



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Office of the Minority Leader

Official Business
Room 24
State Capitol

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4841

TO: ETHICS COMMITTEE
FROM: REPRESENTATIVE TAYLOR
RE: CONFLICT OF INTEREST
DATE: 13 JANUARY 1989

Pursuant to AS 24.60.100:

I declare that during calendar year 1988 I did not represent any person for compensation before a state agency, board or commission. However, as the generic term "represent" could or may be given a broad definition I did assist one client Mr. Steve Thoassen in preparing his application for a limited entry Red & Brown King Crab permit which he submitted to the Limited Entry Commission. As I do not know whether or not "representation" includes the work of my associates I declare that N. Deliza Spangler of Wrangell Alaska was employed in my law office through March of 1988 to the best of my knowledge she did not represent any clients before an agency, board or commission of the state.

Mr. Michael Ledden was employed in Petersburg office through September 15, 1988 and I know that he assisted a client, Mr. Bud Samuelson in the preparation of his limited entry application for Red & Brown King Crab to the Limited Entry Commission. My secretary in Petersburg Vernique Bosworth also assisted a client Peter Thynes in his application for a King Crab permit which he submitted to the Limited Entry Commission. I do not believe that such incidental contact with a state agency, board or commission is encompassed by AS 24.60.100, or that my associates or employees are encompassed by this law but as the phrase "representation before an agency, board or commission..." lacks definition I have submitted the forgoing.

I am certain that in the routine and daily practice of the law that there have been many times when I or my associates might have had to get information from or, inquire of a state agency, board or commission. As example Domestic Relations clients concerned about child support enforcement, Fishermen concerned about Fish and Game regulations, Drivers concerned about their drivers licenses, a fish plant operator needing advice about D.E.C. regulations, a person wishing to sell his

Rep. Taylor
page 2

home that is located on property he is purchasing under a state land sale, etc etc, the list is literally endless.

I currently and for many years have annually reported the list of all clients from whom my law offices received over \$100 a year.

To the best of my knowledge, other than incidental contact with state agency, board, or commission neither I or my associates or employees have represented any client for compensation before any state agency, board, or commission of the state in the calendar year 1988.

Representative Max Gruenburg and I have requested the Ethics Committee to give us an opinion on the proper interpretation and definition of the phrase "...representation before..." and I request the opportunity to delay and supplement this filing until a reasonable period after the Ethics Committee has reached it's decision.

Sincerely,

Robin L. Taylor

EMICS wcd

STATE OF ALASKA
THE LEGISLATURE

PO BOX 11 STATE CAPITOL
NINE PALM ALASKA 99511
907 465 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1989

SUBJECT: Representation of others by certain public officials and employees (WO 6-0634)

TO: Representative Peter Goll

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is a draft you requested dealing with representation of others by public officials and state employees before state agencies. At the request of Mr. Hayden Kaden, I have not, in this draft, addressed the issue of the application of the prohibition to other members of the business a public official or employee is involved in. The committee may wish to consider this matter.

TBC:kb
wkk1/066

Enclosure

6-0634A
Cook
1/23/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to representation of others by
7 certain public officials and state employees before
8 state agencies."

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

10 * Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person employed by the legis-
12 lative branch of government [TO WHOM THIS CHAPTER APPLIES] who repre-
13 sents as an advocate another person for compensation before an agen-
14 cy, board, or commission of the executive branch of the state shall
15 disclose the name of the person represented, the subject matter of the
16 representation, and the body before which the representation is to
17 take place in the journal of the appropriate body or, if the legis-
18 lature is not in session, to the committee. The committee shall
19 maintain a public record of the disclosure and forward the disclosure
20 to the respective house for inclusion in the journal by the fifth day
21 of the session. Nothing in this subsection requires disclosure of the
22 rendering of technical assistance to another, so long as the person
23 employed by the legislative branch of government does not advocate the
24 position of the other person before an agency, board, or commission of
25 the executive branch.

26 * Sec. 2. AS 24.60.100 is amended by adding a new subsection to read:

27 (b) A legislator may represent another for compensation before
28 an agency, board, or commission of the executive branch only as pro-
29 vided under AS 39.50.090(c).

1 * Sec. 3. AS 39.50.090(c) is amended to read:

2 (c) A public official may not represent a client before a state
3 commission or board, or agency of the executive branch of state
4 government for a fee. This [HOWEVER, THIS] prohibition does not apply
5 to a

6 (1) municipal officer, or chairman or member of a state
7 commission or board except with regard to representation before that
8 commission or board; this exception from the general prohibition does
9 not apply to one whose service on the commission or board constitutes
10 the person as a full-time state employee under this title; or

11 (2) legislator rendering technical assistance to a client,
12 so long as the legislator does not advocate the position of the client
13 before a state commission or board, or agency of the executive branch
14 of state government.

6-0634A
Cook
1/25/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to representation of others by
7 legislators and certain legislative employees before
8 state agencies."

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

10 * Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter
12 applies may not represent [WHO REPRESENTS] another person for compen-
13 sation before an agency, board, or commission of the state. However,
14 a person to whom this chapter applies who is an attorney may represent
15 a client before a court [SHALL DISCLOSE THE NAME OF THE PERSON REPRE-
16 SENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE
17 WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPRO-
18 PRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE.
19 THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND
20 FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE
21 JOURNAL BY THE FIFTH DAY OF THE SESSION].
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