

APOC

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INGS

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Article 1. Public Official Financial Disclosure.

2 AAC 50.010(2)(c) is amended to read:

(C) paid the retail business more than \$5,000 [\$1,000] for a good or service after receiving a discount that was not available to the general public. (Eff. 8/20/75, Register 55; am 5/16/76, Register 58; am 1/26/86, Register 97; am 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 39.50.030 AS 39.50.050

2 AAC 50.025 is amended to read:

2 AAC 50.025. Reporting sources of income from rental property. For the purposes of reporting a source of income under AS 39.50.030(b) from rental property located

(1) within the state, a filer shall report the name of a person that paid more than \$5,000 [\$1,000] in rent during the preceding calendar year; and

(2) outside the state and managed by a

(A) filer or the filer's family member, the filer shall report the name of a person that paid more than \$5,000 [\$1,000] in rent during the preceding calendar year; or

(B) person other than a filer or the filer's family member, the filer shall report the name of the manager. (Eff. 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 39.50.030 AS 39.50.050

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2 AAC 50.075(3) is amended to read:

(3) donor is not related to the recipient as a spouse, **domestic partner**
[SPOUSAL EQUIVALENT], parent, child, sibling, grandparent, aunt, uncle, niece, or nephew.
(Eff. 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 39.50.030 AS 39.50.050

2 AAC 50.100 is amended by adding a new subsection to read:

(k) A filer may request a HIPAA exemption if the filer believes that reporting the name of a source of income would disclose protected health information that the filer is prohibited from disclosing under 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act (HIPAA) of 1996). (Eff. 9/9/78, Register 67; am 5/14/80, Register 74; am 1/26/86, Register 97; am 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 39.50.035 AS 39.50.050
AS 39.50.030

The lead-in language of 2 AAC 50.102(a) is amended to read:

(a) For an exemption circumstance under 2 AAC 50.100(c), (d), (e), (g), [OR] (i), **or (k)** and no later than 30 days after the commission receives a written exemption request that complies with 2 AAC 50.100(b), the staff of the commission shall

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(Eff. 7/20/95, Register 135; am ___/___/_____, Register _____)

Authority: AS 15.13.030 AS 39.50.035 AS 39.50.050
AS 39.50.030

2 AAC 50.200(b)(10) and (12) are amended to read:

(10) "domestic partner" ["SPOUSAL EQUIVALENT"] has the meaning given
in AS 39.50.200(a);

(12) "family member" means a spouse, domestic partner [SPOUSAL
EQUIVALENT], or dependent child [, OR THE FILER'S NONDEPENDENT CHILD WHO
LIVES WITH THE FILER];

Register 67; am 7/20/95, Register 135; am 1/1/01, Register 156; am ___/___/_____, Register ___)

Authority: AS 15.13.030 AS 39.50.050

Article 2. Regulation of Campaign Disclosure.

Section

291. Definition of "nongroup entity"

321. Regular reporting by candidates, groups, and nongroup entities [REPORTING CONTRIBUTIONS AND EXPENDITURES]

329. Reporting contributions from ongoing payroll deduction or dues programs

336. Reporting statements of contributions or of independent expenditures
[CONTRIBUTION AND INDEPENDENT EXPENDITURE REPORTS]

363. (Repealed) [CONSTITUTIONALLY QUALIFIED NONPROFIT CORPORATIONS]

2 AAC 50.250(a)(2) and (3), (d), (e), and (f) are amended to read:

(2) includes a

(A) subscription, advance, transfer, forgiveness of all or part of a debt, relaxation of credit, or anything of value made or provided by a person, [OR] group, or nongroup entity for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and

(B) personal contribution as described in 2 AAC 50.254; and

(3) does not include

...

(G) provision of a service or facility to a candidate, [OR] group, or nongroup entity if the entity providing the service or facility is paid at a commercially reasonable rate within a commercially reasonable time or makes the service or facility available to all candidates for a particular office;

(H) provision of an organization's membership or mailing list to the group or nongroup entity affiliated with the organization;

...

(d) The entire amount paid to attend or participate in a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a group, nongroup entity, or candidate is a contribution.

(e) The payment by a person of compensation for the personal services of an individual to a group, nongroup entity, or candidate for any purpose, except for legal and accounting services necessary to complete reports, is a contribution unless the individual works voluntarily and on personal time.

(f) The extension of credit by a person to a candidate, [OR] group, or nongroup entity for a length of time beyond normal business practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt using the methods that the creditor ordinarily uses in a manner similar in intensity to that employed by the creditor in pursuit of a debt unrelated to a campaign.

(Eff. 1/1/2001, Register 156; am ___/___/____, Register _____)

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Authority: AS 15.13.030 AS 15.13.070 AS 15.13.400
AS 15.13.040 AS 15.13.078

2 AAC 50.254(c) is amended to read:

(c) A candidate's transfer to a campaign of personal property not to exceed \$5,000 [\$2,500], a computer, and a printer, from an earlier campaign is a personal contribution.

(Eff. 1/1/2001, Register 156; am ___/___/____, Register _____)

Authority: AS 15.13.030 AS 15.13.070 AS 15.13.400
AS 15.13.040 AS 15.13.078

2 AAC 50.258(b) and (d) are amended to read:

(b) A person, employer, principal, supervisor, or contractor may not lend, pay, advance, or reimburse employees, agents, or other persons for contributions to a candidate, [OR] group, or nongroup entity in the employee's, agent's, or other person's name, or in a name other than the original source of the contribution.

(d) Contributions by two or more groups or nongroup entities [QUALIFIED NONPROFIT CORPORATIONS UNDER 2 AAC 50.364] to the same recipient are contributions using the name of another, if those contributions combine to exceed the limitation in AS 15.13.070, and if the groups or nongroup entities [QUALIFIED NONPROFIT CORPORATIONS]

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- (1) share the majority of members of their board of directors;
- (2) share two or more corporate or organizational officers;
- (3) are owned or controlled by the same shareholders or members; or
- (4) are in a parent-subsidary relationship.

(Eff. 1/1/2001, Register 156; am 1/7/2001, Register 157; am ___/___/____, Register _____)

Authority: AS 15.13.030 AS 15.13.070 AS 15.13.400
AS 15.13.040 AS 15.13.074

2 AAC 50.266(a) is amended to read:

2 AAC 50.266. **Prohibited contributions.** (a) A campaign treasurer shall exercise best efforts to determine the legality of a contribution. A contribution is considered illegal if it does not fully comply with the provisions of AS 15.13.040 and must include the occupation and employer information where required. If the treasurer determines that the contribution is prohibited, the treasurer shall return it, [IMMEDIATELY] but no later than ten [FIVE] days after receipt to the contributor. If the treasurer is unable to identify the contributor within ten [FIVE] days, the contribution is anonymous and must be [IMMEDIATELY] delivered to the Department of Revenue. On the next campaign disclosure report filed by the candidate, [OR] group, or nongroup entity the treasurer shall report the receipt of a contribution that is prohibited or of questionable legality and shall report the final disposition of the contribution.

(Eff. 1/1/2001, Register 156; am ___/___/____, Register _____)

Authority: AS 15.13.030 AS 15.13.070 AS 15.13.114

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AS 15.13.060

AS 15.13.072

2 AAC 50.270(a) is amended to read:

2 AAC 50.270. Independent expenditures. (a) An expenditure is not an independent expenditure as defined in AS 15.13.400 if it is made in cooperation, consultation, or concert with or at the request, suggestion, or prior consent of a candidate, treasurer, or deputy treasurer, or an agent of the candidate or group. An expenditure that is not an independent expenditure includes the following

(1) an expenditure based on information about the candidate's, [OR] group's, or nongroup entity's plans, projects, or needs provided by the candidate or an agent of the candidate, [OR] group, or nongroup entity;

(2) an expenditure made by any person, [OR] group, or nongroup entity based on data from a candidate's, [OR] group's, or nongroup entity's pollster or campaign consultant or any other person who receives compensation or reimbursement from the campaign;

(3) an expenditure made for the purpose of soliciting contributions to be paid to a candidate, [OR] group, or nongroup entity;

(4) an expenditure made to finance the distribution of campaign material provided by the candidate, treasurer, campaign consultant, or any other agent of the candidate, [OR] group, or nongroup entity.

(Eff. 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority: AS 15.13.030

AS 15.13.090

AS 15.13.135

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AS 15.13.040

2 AAC 50.286 is amended to read:

2 AAC 50.286. Candidate exemptions. A candidate who does not intend to receive or accept more than \$5,000 [\$2,500] in contributions or make over \$5,000 [\$2,500] in expenditures may file a candidate exemption form. After filing the form, the candidate is not required to submit any other reports to the commission, but must comply with AS 15.13. The candidate loses the reporting exemption if the candidate accepts more than \$5,000 [\$2,500] in contributions or spends more than \$5,000 [\$2,500] to influence the election. A candidate whose exemption is lost shall immediately register the change of status and, in accordance with AS 15.13.110, disclose campaign contribution and expenditure activity when the next campaign disclosure report is due following the change in status. (Eff. 1/1/2001, Register 156; am ____/____/____, Register____)

Authority: AS 15.13.030 AS 15.13.040 AS 15.13.110

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.291. Definition of "nongroup entity." (a) A nongroup entity is a nonprofit corporation, company, partnership, firm, association, organization, business trust, or society that qualifies to register to participate in election campaigns for or against a candidate or ballot proposition under this section.

(b) Before it may make a contribution or independent expenditure, a nongroup entity

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must demonstrate to the satisfaction of the commission that it does not participate in business activities, does not have shareholders who have a claim on corporate earnings, and is independent from influence of business corporations by submitting the following items:

(1) if the nongroup entity is a corporation

(A) a copy of a determination from the United States Internal Revenue Service that the corporation is a social welfare organization as described in 26 U.S.C. 501(c)(4);

(B) a copy of the certificate of incorporation issued under AS 10.20 (nonprofit corporations);

(C) a copy of the nonprofit corporation's articles of incorporation and bylaws;

(D) an affidavit from a director or officer that the corporation's purposes include one or more of the following:

(i) issue advocacy;

(ii) influencing elections;

(iii) research, training, or educational activities tied to the corporation's political goals;

(E) an affidavit from a director or officer that the corporation does not include shareholders or persons other than employees who

(i) have an equitable interest in the corporation or are affiliated in a way that would allow them to make a claim on the organization's assets or

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earnings; or

(ii) receive a benefit that they would lose if they ended their affiliation with the corporation or that they could not obtain unless they became affiliated; for the purposes of this subparagraph, "benefit" includes a credit card, an insurance policy, a savings plan, and education or business information.

(2) if the nongroup entity is not a corporation, a copy of the by-laws or minutes or an affidavit signed by an owner, officer, chair, director, partner, or board member showing that the nongroup entity does not participate in business activities, has no shareholders, and is independent from the influence of business corporations.

(c) If the commission staff determines after a review that the documentation submitted under (b) satisfies the requirement, the commission staff shall issue a determination that the nongroup entity qualifies to register. If the commission staff determines that the documentation is incomplete or unsatisfactory, the commission staff may request and review additional information or notify the nongroup entity that it does not qualify to register.

(d) No later than 30 days after notice of a determination under (c) of this section, the nongroup entity may request that the commission review the determination. After reviewing the staff's determination and any additional information at its next regular meeting, the commission will issue a determination regarding whether the nongroup qualifies under this section. The commission will provide a copy of its determination to the nongroup entity. The commission's determination is a final order for the purpose of an appeal to the superior court under AS 44.62.560.

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(e) Contributions that a nongroup entity receives for the purpose of making contributions or expenditures must be kept in a separate account and reported to the commission. (Eff. _____ / _____ / _____, Register _____)

Authority: AS 15.13.010 AS 15.13.074 AS 15.13.400
AS 15.13.030 AS 15.13.135

2 AAC 50.298 is amended to read:

2 AAC 50.298. Designated campaign depository. (a) Each candidate, [AND] group, or nongroup entity that intends to raise or spend more than \$5,000 in a calendar year and each group or nongroup entity that intends to be active in more than one election shall designate on a registration statement one or more regulated banking institutions as its campaign depository or depositories. Each account name must indicate that it is a campaign account.

(b) Except as allowed in 2 AAC 50.250(a)(3)(j), all monetary contributions to and expenditures by a candidate, [OR] group, or nongroup entity required by (a) of this section to designate a campaign depository must be deposited to or made from that depository.

(c) A candidate, [OR] group, or nongroup entity required by (a) of this section to designate a campaign depository may obtain and use credit cards to make campaign expenditures for transportation, lodging, meals, and other expenses in connection with traveling for campaign purposes. The credit card account name must indicate that it is a campaign account. (Eff. 1/1/2001, Register 156; am ____/____/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.050 AS 15.13.070

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2 AAC 50.300 is amended to read:

2 AAC 50.300. Individuals who accept contributions. A candidate or treasurer may authorize an individual who is not registered as a deputy treasurer to receive campaign contributions on a candidate, group, or nongroup entity's [OR GROUP'S] behalf at any single event during the campaign. A candidate or treasurer is not in violation of AS 15.13 if contributions collected by the authorized individual are turned over to a candidate, treasurer, or deputy treasurer of the intended committee, [OR] group, or nongroup entity within 72 hours after the event. (Eff. 1/1/2001, Register 156; am ___/___/___, Register _____)

Authority: AS 15.13.030 AS 15.13.076 AS 15.13.400
AS 15.13.060

2 AAC 50.306(b) is amended to read:

(b) The [FOR PURPOSES OF AS 15.13.090(a), THE] name of the campaign chairperson may [MUST] also be identified[, UNLESS THE CANDIDATE IS THE CAMPAIGN CHAIRPERSON].

(Eff. 1/1/2001, Register 156; am ___/___/___, Register _____)

Authority: AS 15.13.030 AS 15.13.090 AS 15.13.400

2 AAC 50.310 is repealed and readopted to read:

2 AAC 50.310. Filing. (a) For a report to be considered timely filed, the report must

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contain the information required in AS 15.13 and this chapter, be in an electronic format that is acceptable to the commission, and be transmitted to the commission electronically. If a person required to file a report does not have access to an internet service provider, the person shall file the report in a format that the commission has approved on a computer-readable disk.

(b) An exemption from the requirement of electronic filing may be requested.

Commission staff shall grant an exemption if

(1) there is no internet service provider within a reasonable distance of the person required to file the report, and

(2) the person required to file the a report does not have access to a computer.

(c) All requests for an exemption must be in writing and signed by the person required to file the report. Upon a request from commission staff, the person requesting the exemption shall provide information or evidence in support of the request.

(d) For the report of a person who is exempt from the requirement of electronic filing to be considered timely filed, the report must contain the information required in AS 15.13 and this chapter and the original or a facsimile of the report must be

(1) received on or before the due date at one of the commission's offices; or

(2) postmarked on or before the due date; the date shown by the postmark is presumed to be the date of deposit in the United States mail.

(e) All forms are available at the commission's offices, department's web site, and participating municipalities.

(f) A report that is unreadable may be returned for correction but will be considered

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timely filed. (Eff. 5/14/80, Register 74; am 1/1/2001, Register 156; am ___/___/_____,

Register _____)

Authority: AS 15.13.020 AS 15.13.040 AS 15.13.110
AS 15.13.030

2 AAC 50.317 is amended to read:

2 AAC 50.317. Reportable date of a contribution. A contribution is considered received and reportable on the day in which that contribution is in the possession of a candidate or a treasurer or deputy treasurer of a candidate, [OR] group, or nongroup entity. (Eff. 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.076

2 AAC 50.320(a), (b), (d) are amended and (c) is repealed, to read:

2 AAC 50.320. General recordkeeping requirements. (a) A candidate, [OR] group, or nongroup entity required to report contributions or expenditures under AS 15.13 shall maintain detailed records of all contributions received and expenditures made.

(b) A candidate or treasurer shall record the receipt of each contribution received, unless otherwise exempted by this chapter, regardless of the dollar amount or value of the contribution. [WHILE THE IDENTITY OF A PERSON WHO HAS CONTRIBUTED NO MORE THAN \$100 TO A CAMPAIGN IS NOT REQUIRED TO BE INDIVIDUALLY REPORTED BY THE TREASURER ON A CAMPAIGN DISCLOSURE REPORT, THE NAME OF THE

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CONTRIBUTOR, ALONG WITH THE AMOUNT AND TYPE OF CONTRIBUTION, MUST BE RECORDED AND MAINTAINED BY THE TREASURER.]

(c) Repealed ___/___/_____.

(d) Each bookkeeping record required under this section must be maintained by the candidate or the treasurer and may not be destroyed for a period of two years [FOUR YEARS] from the date of the contribution. The records must be available for inspection by the commission upon request of the commission.

(Eff. 5/14/80, Register 74; am 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.040 AS 15.13.076

2 AAC 50.321 is repealed and readopted to read:

2 AAC 50.321. Regular reporting by candidates, groups, and nongroup entities. (a)

Each candidate or group, or nongroup entity filing reports under AS 15.13 shall report

- (1) for each monetary contribution,
 - (A) the date received;
 - (B) check number;
 - (C) name and address of contributor; and
 - (D) amount;
- (2) for each nonmonetary contribution,
 - (A) the date received;
 - (B) the name and address of the contributor;

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(C) a description of each contribution; and

(D) the estimated fair market value of each contribution;

(3) for each loan or loan guarantee, the

(A) date received;

(B) name and address of the lender, loan guarantor, or cosigner;

(C) principal occupation and employer of the lender, loan guarantor, or cosigner;

(C) interest rate; and

(E) amount.

(b) When reporting contributions, a candidate, group, or nongroup entity must keep a cumulative total of the contributions, including loans, made by each contributor, regardless of the amount of each contribution. For each contribution or aggregate of contributions from the same contributor that exceeds \$250, a candidate, group, or nongroup entity must report the principal occupation and employer of the contributor in addition to the information reported under (a) of this section.

(c) Each candidate, group, or nongroup entity filing reports under AS 15.13 shall report for each contribution from the candidate to the campaign and for income earned from contributions, including bank interest and income from unused contributions invested in accordance with AS 15.13.112(b) and 2 AAC 50.348, the following items:

(1) the date received;

(2) the description of the income;

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(3) the name and address of the source of the income; and

(4) the amount or estimated value.

(d) Each candidate, group, or nongroup entity filing reports under AS 15.13 shall report each paid expenditure by reporting the

(1) date of payment;

(2) check number;

(3) name and address of the payee;

(4) purpose of the expenditure; and

(5) amount.

(e) Each candidate, group, or nongroup entity filing reports under AS 15.13 shall report each accrued expenditure by reporting the

(1) date the expenditure was incurred;

(2) name and address of the person with whom the debt was incurred;

purpose of the expenditure; and

(3) amount. (Eff. 7/22/78, Register 67; am 1/1/2001, Register 156; am _____

/_____/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.040 AS 15.13.400

2 AAC 50.324 is amended to read:

2 AAC 50.324. Shared campaign activities. (a) The following provisions apply to all candidates, except for the candidates for governor and lieutenant governor from the same

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political party who have been nominated to run in the general election, and to all groups and nongroup entities, other than political parties.

(b) An expenditure made by one group or nongroup entity on behalf of another group or nongroup entity that is controlled by a candidate is considered a contribution and may not exceed the \$1,000 limitation set by AS 15.13.070.

(c) A candidate, [OR] a group, or a nongroup entity may not file a joint report with another candidate, [OR] group, or nongroup entity.

(d) Candidates, [OR] groups, or nongroup entities may share in campaign efforts under (e) of this section if they keep separate campaign accounts and file separate statements of their contributions and expenditures under AS 15.13 and this chapter.

(e) Two or more candidates, [OR] two or more groups, or two or more nongroup entities may share in campaign efforts if the cost of and receipts from shared efforts are allocated equally to each participating candidate's, or group's, or nongroup entity's campaign.

(f) If the costs of and receipts from shared efforts are allocated equally to each participant of a shared campaign, neither the costs nor the receipts are considered a contribution from one participant to another.

(g) Each candidate, [OR] group, or nongroup entity filing reports under AS 15.13 and this chapter must complete a "shared campaign activities" form to report the candidate's, [OR] group's, or nongroup entity's share of the receipts and expenditures of a shared campaign effort, if the shared effort involves activities with a combined cost that exceeds \$2,000, including fundraising activities or campaign media consulting services.

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(h) A proportionate share of an expenditure in a shared campaign effort benefiting a candidate, [OR] group, or nongroup entity other than the candidate, [OR] group, or nongroup entity paying for the effort is a contribution by

(1) the paying candidate to the other candidate;

(2) the paying group to the other group; or

(3) the paying nongroup entity to the other nongroup entity.

(i) Media communications about a shared campaign activity are properly identified if the identification includes the words "paid for by" and the name of each candidate, [OR] group, or nongroup entity sharing in the cost of the communications. The address [AND CAMPAIGN CHAIR] of each participating candidate, [OR] group, or nongroup entity need not be listed. However, if a communication is paid for in its entirety by only one of the participants, then full identification under 2 AAC 50.306 is required. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 6/29/84, Register 90; am 8/22/97, Register 143; am 1/1/2001, Register 156; am _____ / _____ / _____, Register _____)

Authority: AS 15.13.030 AS 15.13.070 AS 15.13.112
AS 15.13.040 AS 15.13.090

2 AAC 50.328 is repealed and readopted to read:

2 AAC 50.328. Reporting exempt fundraisers. (a) To report fund raising activity under AS 15.13.040(l), a candidate or treasurer shall state the total number of contributing participants, the date and location of the event, a description of the type of fund-raising activity,

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and the total costs of and receipts from the event.

(b) If a person contributes more than \$50, the contribution must be reported as set out in 2 AAC 50.320. (Eff. 1/1/2001, Register 156; am ____/____/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.040

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.329. Reporting contributions from ongoing payroll deduction or dues programs. (a) A group or nongroup entity shall report contributions from an ongoing payroll deduction program or other automatic payment plan in each reporting period for each contributor by providing:

- (1) the name and address of contributor;
- (2) the aggregate amount contributed during the reporting period;
- (3) the aggregate amount contributed during the calendar year;
- (4) the principal occupation and employer unless the aggregate amount contributed in a calendar year is \$250 or less;
- (5) the amount of each deduction or payment and the frequency of each deduction or payment.

(b) Reporting must be in an electronic format that is acceptable to the commission. (Eff. ____/____/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.040 AS 15.13.110

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2 AAC 50.332 is amended to read:

2 AAC 50.332. Reporting no activity. A candidate, [OR] group, or nongroup entity that receives contributions or makes expenditures intended to influence the outcome of an election must file all campaign disclosure reports required by AS 15.13.110 throughout the course of that election. However, a candidate, [OR] group, or nongroup entity that does not receive contributions or make expenditures during a specific reporting period may satisfy its reporting requirement by filing the cover page of the campaign disclosure report with the statement "no activity." (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority: AS 15.13.030 AS 15.13.040 AS 15.13.110

2 AAC 50.336 is repealed and readopted to read:

2 AAC 50.336. Reporting statements of contributions or of independent expenditures. (a) A candidate, group, or nongroup entity who files regular reports under 2 AAC 50.321 and satisfies the requirements of AS 15.13.040(a), AS 15.13.040(b) and (c) or AS 15.13.040(j) need not also file a statement of contribution or of independent expenditure under AS 15.13.040(d) or (e).

(b) A person whose contributions to a ballot group reach \$500 during a year shall file a statement of contribution not later than 30 days after reaching \$500.

(c) An individual whose independent expenditures for billboards, signs or printed materials concerning a ballot measure exceeds \$500 shall file a statement of independent

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expenditure not later than 10 days after exceeding \$500. An individual who makes an independent expenditure for any other purpose must file a statement of independent expenditure not later than 10 days after making the expenditure. A person other than an individual that makes an independent expenditure for any purpose shall file a statement of independent expenditure no later than 10 days after making the expenditure. "Expenditure," as it is used in this section, includes a promise or agreement to purchase goods or services.

(d) A corporation, company, partnership, firm, association, organization, business trust, labor union, or publicly funded entity that is not a group and that files a statement of contributions or of independent expenditures under AS 15.13.040(d) satisfies any obligation under AS 15.13.050 to register with the commission.

(e) An individual required to report contributions to candidates for legislative office under AS 15.13.074(g) as a lobbyist shall file a statement of contribution not later than 30 days after making a contribution. (Eff. 1/1/2001, Register 156; am ___/___/____, Register____)

Authority:	AS 15.13.010	AS 15.13.040	[AS 15.13.080]
	AS 15.13.030	AS 15.13.074	AS 15.13.400

2 AAC 50.348(a) and (b) are amended to read:

2 AAC 50.348. Use of campaign contributions. (a) A candidate, [OR] group or nongroup entity may not make an expenditure from a campaign account in connection with a private election such as elections for utility boards, labor union boards, and corporate boards.

(b) A group or nongroup entity with a designated campaign depository as required by

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2 AAC 50.298 must use that depository to pay all expenses associated with their efforts to influence, directly or indirectly, the outcome of state or local elections. (Eff. 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority:	AS 15.13.010	AS 15.13.072	AS 15.13.116
	AS 15.13.030	AS 15.13.074	AS 15.13.400
	AS 15.13.070	AS 15.13.112	

2 AAC 50.364 is repealed:

2 AAC 50.364. Constitutionally qualified nonprofit corporations. Repealed. (Eff. 1/7/2001, Register 156; repealed ___/___/_____, Register _____)

2 AAC 50.368(c) is amended to read:

(c) Nominated candidates for governor and lieutenant governor remain subject to the contribution limitations set out in AS 15.13.070, except as provided in (a) of this section. An individual or nongroup entity [CONTRIBUTOR] may contribute [GIVE] up to \$2,000 [\$1,000] to a joined campaign per year minus any previous contributions made that year to either of the nominated candidates. A group may contribute up to \$4,000 to a joined campaign per year minus any previous contributions made that year to either of the nominated candidates. (Eff. 1/1/2001, Register 156; am ___/___/_____, Register _____)

Authority:	AS 15.13.010	AS 15.13.040	AS 15.13.110
	AS 15.13.030	AS 15.13.070	AS 15.13.112

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2 AAC 50.384 is amended to read:

2 AAC 50.384. Disbursement of group or nongroup entity campaign assets. (a)

Following the election, a group or nongroup entity may

- (1) leave its money in a campaign account until the following election if the group or nongroup entity plans to remain active;
- (2) contribute the money to another candidate, [OR] group, or nongroup entity subject to the contribution limitations and other requirements of AS 15.13;
- (3) donate the money to qualified charitable organizations under 26 U.S.C. 501(c)(3);
- (4) repay its contributors; or
- (5) pay for a victory or thank you party.

(b) A group or nongroup entity may not disburse funds in a manner other than that set out in (a) of this section except if approved by advisory opinion under 2 AAC 50.450. (Eff.

1/1/2001, Register 156; am _____ / _____ / _____, Register _____)

Authority: AS 15.13.030 AS 15.13.112

2 AAC 50.394 is amended to read:

2 AAC 50.394. Reporting final disbursement of campaign assets and satisfaction of campaign debts. (a) Within 10 days after the date all assets of a candidate's, [OR] group's, or nongroup entity's campaign account are disbursed and all campaign debts are paid, the

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candidate, [OR] group, or nongroup entity must file a final report setting out the disbursement of those assets and the payment of those debts.

(b) A candidate, [OR] group, or nongroup entity must continue to file year-end reports as required by AS 15.13.110(a)(4) for a campaign until the candidate, [OR] group, or nongroup entity files the final report required by (a) of this section.

(c) A candidate, [OR] group, or nongroup entity may not file the final report required by (a) of this section until all assets of the candidate's, [OR] group's, or nongroup entity's campaign account are disbursed and all campaign debts are paid. (Eff. 1/1/2001, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.010 AS 15.13.030 AS 15.13.110

2 AAC 50.399(e), (f), (g), and (h) are amended to read:

(e) A candidate, [OR] group, or nongroup entity that is assessed a civil penalty shall within 30 days after receipt of the notice in (d)(2) of this section

(1) pay the civil penalty; or

(2) appeal the assessment by submitting an affidavit under oath and upon penalty of perjury stating reasons for the late filing to show why a civil penalty should not be assessed.

(f) If a candidate, [OR] group, or nongroup entity that is assessed a civil penalty for the late filing of a campaign disclosure report refuses or fails to appeal or pay the penalty, the commission staff shall refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if the appeal is not timely filed except upon a showing of

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good cause.

(g) The commission will consider a timely appeal at the next regular meeting. The commission staff shall notify the candidate, [OR] group, or nongroup entity before the meeting and the candidate, [OR] group, or nongroup entity may appear at the meeting personally or telephonically. The commission staff shall notify the candidate, [OR] group, or nongroup entity of the commission's decision to waive, mitigate, or uphold the penalty. The commission's decision is a final order for purposes of an appeal to the superior court under AS 44.62.560.

(h) If the candidate, [OR] group, or nongroup entity fails to pay the penalty or appeal within 30 days after distribution of the decision, commission staff shall refer the matter to the attorney general for appropriate action.

(Eff. 1/1/2001, Register 156; am ____/____/____, Register ____)

Authority: AS 15.13.010 AS 15.13.030 [AS 15.13.120] [AS 15.13.125]

AS 15.13.380

**Article 3. Campaign Disclosure, Regulation of Lobbying, Public Official Financial
Disclosure Complaints and Investigations.**

Section

450. Complaints

452. Action after receipt of a complaint

454. Expedited consideration

456. Hearing on expedited consideration

458. Answer

460. **Investigation** [PRELIMINARY INVESTIGATION]

470. Hearings

476. Referral to attorney general

2 AAC 50.450 is repealed and readopted to read:

2 AAC 50.450. Complaints. (a) A complaint must be in writing and must contain the following:

- (1) the full name, mailing address, and telephone number of the person, group, or nongroup entity making the complaint;
- (2) the name of the person, group, or nongroup entity alleged to be in violation;
- (3) the statute or regulation for which a violation is alleged;
- (4) a clear and concise description of facts that, if true, would violate the

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campaign finance laws in AS 15.13 or 2 AAC 50.250 - 2 AAC 50.405; the Regulation of Lobbying Act in AS 24.45 or 2 AAC 50.505 - 2 AAC 50.545; or the public official financial disclosure laws in AS 39.50 or 2 AAC 50.010 - 2 AAC 50.200;

(5) the basis of complainant's knowledge of the alleged facts, noting those allegations based upon personal knowledge and those based upon other sources of information and belief;

(6) all documentation relevant to the facts alleged that is available to the complainant;

(7) adequate proof that copies of the complaint and documentation were delivered to each respondent before filing with the commission; and

(8) evidence that satisfies the standard for expediting a complaint in AS 15.13.380(c), if expedited consideration is requested.

(b) The complaint must be signed and sworn under oath before a notary public, municipal clerk, court clerk, postmaster, or any person authorized to administer oaths. The commission will provide notary service without charge.

(c) The complaint may be on a form prescribed by the executive director, which is available from the commission or on the department's web site; or any other form satisfying the requirements of subsection (a) of this regulation. (Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am 6/29/84, Register 90; am 1/4/86, Register 97; am 1/1/01, Register 156; am _____ / _____ / _____, Register _____)

Authority: AS 15.13.030 AS 15.13.380 AS 39.50.050

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AS 15.13.045 AS 24.45.021

[AS 15.13.120] AS 24.45.131

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.452. Action after receipt of a complaint. (a) Within one day after receipt of a complaint, commission staff shall examine the complaint and may reject it for filing if

- (1) it is not signed and notarized under oath;
- (2) it does not contain the information required in subsection (a) of this regulation;
- (3) it does not, on its face, allege a violation of a statute or regulation; or
- (4) more than 1 year has elapsed since the date of the alleged violation.

(b) A complainant may ask the commission to review commission staff's determination under (a) of this section; the commission will review the determination and

- (1) uphold staff's determination; or
- (2) determine that the complaint contains the items required by subsection (a) of

this regulation and direct staff to initiate an investigation or set a hearing for expedited consideration, as appropriate. (Eff. ____/____/____, Register____)

Authority: AS 15.13.030 AS 15.13.385 AS 39.50.050

AS 15.13.045 AS 24.45.021

AS 15.13.380 AS 24.45.131

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.454. Expedited consideration. (a) A request to expedite a complaint is made by the complainant in the complaint or by the respondent in the answer.

(b) The executive director or the executive director's designee shall grant expedited consideration of a complaint if substantial evidence supports expediting consideration under the factors named in AS 15.13.380(c) and deny expedited consideration if substantial evidence does not support this conclusion.

(c) Commission staff shall notify the complainant and respondent of a decision on a request to expedite, and if the decision is to expedite consideration, of the date, time, and location of the hearing.

(d) A complainant or respondent may ask the commission to review a decision about expediting consideration; the commission will independently consider whether expediting consideration is appropriate under subsection (b) of this regulation and issue its decision under subsection (c) of this regulation. Review under this subsection does not stay action on the complaint. (Eff. ____/____/____, Register____)

Authority: AS 15.13.030 AS 15.13.385 AS 39.50.050
AS 15.13.045 AS 24.45.021
AS 15.13.380 AS 24.45.131

2 AAC 50 is amended by adding a new section to read:

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2 AAC 50.456. Hearing on expedited consideration. (a) A hearing on expedited consideration is before the commission in its Anchorage office.

(b) The commission will in its discretion participate in person, by telephone, or by delegation to a hearing officer.

(c) In addition to the notice provided in 2 AAC 50.454, the commission will provide notice of the hearing on its web site and by posting in a prominent place, available to the general public, at its offices;

(d) Complainant, respondent, or staff may appear at the hearing telephonically and testify, call witnesses, or present evidence in connection with the complaint. Each witness shall be sworn.

(e) Complainant, respondent, or staff may be represented by an attorney or authorized agent.

(f) The hearing will be recorded.

(g) Complainant has the burden to prove a violation by a preponderance of the evidence.

(h) No written brief or memoranda will be accepted after the hearing concludes and the record is closed by the commission or hearing officer.

(i) No later than one day after the record closes, the commission will issue an order under AS 15.13.380(d). (Eff. ____/____/____, Register____)

Authority:	AS 15.13.030	AS 15.13.385	AS 39.50.050
	AS 15.13.045	AS 24.45.021	
	AS 15.13.380	AS 24.45.131	

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.458. Answer. (a) A respondent may file an answer to the complaint any time until 15 days after receipt of notice that the complaint satisfies the requirements in

2 AAC 50.450.

(b) An answer must be signed, include the mailing address and telephone number of the respondent, and be accompanied by adequate proof that copies of the answer and supporting documentation were mailed or delivered to complainant. An answer may

(1) respond to the allegations in the complaint;

(2) state any defenses to the allegations;

(3) object to the complaint as so indefinite or uncertain that respondent cannot prepare a defense;

(4) include relevant documentation; and

(6) include evidence that satisfies the standard for expediting a complaint in

AS 15.13.380(c), if expedited consideration is requested.

(c) The executive director or executive director's designee may issue an order enlarging the time for filing an answer for good cause shown. (Eff. ____/____/____, Register____)

Authority: AS 15.13.030 AS 15.13.385 AS 39.50.050

AS 15.13.045 AS 24.45.021

AS 15.13.380 AS 24.45.131

2 AAC 50.460 is amended to read:

2 AAC 50.460. Investigation. (a) If the complaint satisfies the requirements in 2 AAC 50.450 and is being considered on a regular, rather than expedited, basis, staff shall

(1) notify the complainant, respondent, and commission of these facts within seven days of receipt of the complaint; the notice shall include the statement that a respondent may file a written answer no later than 15 days after receipt of the notice; and

(2) begin an investigation.

(b) In conducting an investigation, staff may use any of the methods set out in AS 15.13.045. Staff may also

(1) request written and sworn statements from a party, witness, or other person; and

(2) use the services of the Alaska State Troopers or private investigators.

(c) After investigation but no later than 30 days after the complaint is accepted for filing, staff shall

(1) prepare an accusation if staff finds that the evidence supports a violation of the law;

(2) recommend dismissal, if the evidence does not support a violation; or

(3) recommend approval of a consent agreement, if staff and respondent have agreed to a resolution.

(d) Staff shall provide a copy of the accusation or recommendation to the complainant,

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respondent, and commission.

(e) For ten days after an accusation is issued under 2 AAC 50.460, respondent may file an answer or amended answer.

(f) After the investigation concludes and upon request, complainant or respondent may view or copy at cost the case file during normal business hours, except for documents protected by a privilege. (Eff. 5/16/76, Register 58; am 12/29/77, Register 64; am 6/29/84, Register 90; am 1/4/86, Register 97; am 1/1/01, Register 156; am ____/____/____, Register ____)

Authority:	AS 15.13.030	AS 15.13.380	AS 24.45.021
	AS 15.13.045	AS 15.13.385	AS 24.45.131
	[AS 15.13.120]	AS 18.65.090	AS 39.50.050

2 AAC 50.470 is repealed and readopted to read:

2 AAC 50.470. Hearings. (a) After the complaint is accepted for filing, the executive director or the executive director's designee shall schedule a hearing on the complaint at the commission office in Anchorage and provide notice of the date and time of the hearing to the complainant and respondent by personal service or by mail and to the public on its web site and by posting in a prominent place, available to the public, at its offices.

(b) The commission in its discretion will participate in person, by telephone, or by delegation to a hearing officer.

(c) Staff presents the accusation and has the burden to prove a violation by a preponderance of the evidence.

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(d) Staff, complainant, and respondent are parties to the hearing, may be represented by an attorney or authorized agent, and may call witnesses and present evidence.

(e) The hearing will be conducted under the rules in AS 44.62.330 – 44.62.660.

(f) The hearing will be recorded. The recording will be maintained with the public file of the proceedings. A transcript will not routinely be prepared. A complainant or respondent may prepare a transcript at its own expense. A copy of the transcript must be filed with the commission.

(g) No later than 10 days after the hearing, the commission will issue an order.

(h) The commission will, in its discretion, reconsider its order in accordance with AS 44.62.540. A request for reconsideration must be filed within 15 days after the commission issues an order under subsection (g) of this regulation and must state the reason for the request.

A decision will be reconsidered only if

(1) there was a substantial procedural error;

(2) the order was based on fraud, misrepresentation, or material mistake of fact or law;

(3) a court decision or statute changed the law applied in the hearing; or

(4) new evidence has been discovered that could not have been discovered before the hearing using reasonable diligence. (Eff. 6/29/84, Register 90; am 1/4/86, Register 97; am ____/____/____, Register____)

Authority:	AS 15.13.030	AS 15.13.380	AS 24.45.131
	AS 15.13.045	AS 24.45.021	AS 39.50.050

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[AS 15.13.120]

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.476. Referral to attorney general. (a) The commission may refer a complaint to the attorney general for consideration of a civil complaint if the complaint raises serious and substantial questions about the constitutionality of a law the commission administers, for criminal prosecution, or as provided in AS 15.13.380.

(b) If the commission refers a matter to the attorney general, staff shall provide to the attorney general a copy of the commission's file.

(c) If the attorney general files a civil complaint addressing the allegations in a complaint filed with the commission before the commission concludes its action, the commission will dismiss the administrative complaint without prejudice.

(d) If the attorney general initiates a criminal proceeding before the commission concludes its action on a complaint, the commission may in its discretion suspend action until the criminal proceeding concludes. (Eff. ____/____/____, Register____)

Authority: AS 15.13.030 AS 15.13.380

Article 4. Regulation of Lobbying.

Section

504. Registration

508. Registering and reporting by employee lobbyists

513. (Repealed) [AGENCY ENFORCEMENT OF ADMINISTRATIVE LOBBYING
ACTIVITIES]

530. (Repealed) [REPORTING ON THE ACCRUAL BASIS BY THE LOBBYIST]

537. Preparation of reports by the employer of lobbyist

2 AAC 50 is amended by adding a new section to read:

2 AAC 50.504. Registration. (a) A professional lobbyist under AS 24.45.171(8)(A) shall register before engaging in any lobbying.

(b) A person who becomes a lobbyist under AS 24.45.171(8)(B) after engaging in lobbying activity for the prescribed period shall register no later than two days after becoming a lobbyist.

(c) The form for registration is available in the offices of the commission and on its department web site. (Eff. ____/____/____, Register ____).

Authority: AS 15.13.030 AS 24.45.021 AS 24.45.041

2 AAC 50.505 is repealed and readopted to read:

2 AAC 50.505. Filing. (a) Until the commission implements a system for

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electronic filing, a registration statement accompanied by the required fee is timely filed by hand delivery to the commission's office or by deposit into the United States mail on or before the due date; a report is timely filed by hand delivery or facsimile transmission to the commission's office or by deposit into the United State mail on or before the due date. The date of the postmark is presumed to be the date of deposit.

(b) After the commission implements a system for electronic filing, a registration or report is timely filed if the information required is entered on or before the due date into the electronic filing system provided by the commission and, in the case of a registration, the fee is paid contemporaneously through the process provided by the commission's electronic filing system. (Eff. 12/29/77, Register 64; am ____/____/____, Register ____).

Authority: AS 24.45.021 AS 24.45.041 AS 24.45.051
AS 24.45.061 AS 24.45.081

2 AAC 50.507(c) and (e) are amended to read:

(c) Upon receipt of a delinquent registration statement or report, commission staff will calculate the initial civil penalty at \$10 for each day of delinquency including [FROM THE DUE DATE THROUGH] the date the registration or report is submitted, and send a notice of the civil penalty assessed against the lobbyist or employer of lobbyist. The notice shall include

(1) a statement of the amount of the assessment; and

(2) an affidavit form which may be used by the lobbyist or employer of lobbyist

to request a reduction or waiver of the assessment.

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...

(e) If a lobbyist or employer of a lobbyist subject to a civil penalty assessment for the late filing of a registration statement or report refuses or fails, within the time required, to submit an affidavit or make payment, commission staff will pursue appropriate collection action. The commission will not hear an untimely request to reduce or waive an assessment. A request is untimely if an affidavit is not filed within the time required under **(d)** [(e)] of this section. (Eff. 7/22/78, Register 67; am 5/14/80, Register 74; am 5/24/81, Register 78; am 9/27/91, Register 119; am ___/___/___, Register _____)

Authority:	AS 15.13.030	AS 24.45.051	AS 24.45.131
	AS 24.45.021	AS 24.45.061	AS 24.45.141
	AS 24.45.041	AS 24.45.081	

2 AAC 50. is amended by adding a new section to read:

2 AAC 50.508. Registering and reporting by employee lobbyists. The first report filed by a person who becomes a lobbyist under AS 24.45.171(8)(B) after engaging in lobbying activity for the prescribed period must include all lobbying activity undertaken in the qualifying period. (Eff. ___/___/___, Register _____)

Authority:	AS 15.13.030	AS 24.45.041	AS 24.45.051
	AS 24.45.021		

2 AAC 50.513 is repealed:

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2 AAC 50.513. Agency enforcement of administrative lobbying activities. Repealed.

(Eff. 4/28/79, Register 70; am 5/14/80, Register 74; repealed ____/____/____, Register ____)

Authority: AS 15.13.030 AS 24.45.021 AS 24.45.171

2 AAC 50.530 is repealed:

2 AAC 50.530. Reporting on the accrual basis by the lobbyist. Repealed. (Eff.

12/29/77, Register 64; repealed ____/____/____, Register ____)

Authority: AS 24.45.021 AS 24.45.051

2 AAC 50. is amended by adding a new section to read:

2 AAC 50.537. Preparation of reports by the employer of lobbyist. The report that an employer of a lobbyist files under AS 24.45.061 may not be prepared by the lobbyist, unless the lobbyist is an employee of the employer. (Eff. ____/____/____, Register ____)

Authority: AS 15.13.030 AS 24.45.021 AS 24.45.061

2 AAC 50.542 is amended to read:

2 AAC 50.542. Gifts and exchanges [EXCHANGE]. (a) "Gifts" and "exchanges" as used in AS 24.45.051(3) and (4), and for the purposes of AS 24.45 and 2 AAC 50 are not reportable by the lobbyist under AS 24.45.051 if the gift of exchange of an item of value is between members of the immediate family of the lobbyist.

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(b) Gifts of tickets to charity events given to legislators or legislative employees during the legislative session must be reported on the next due lobbyist report, regardless of the value of the ticket. (Eff. 7/22/78, Register 67; am ____/____/____, Register ____)

Authority: AS 24.45.021 AS 24.45.121 AS 24.60.080

2 AAC 50.545(a)(2), (e), and (h) are amended to read:

(2) "public official" means a public official as defined in AS 39.50.200 [(1)]; however, it does not include a judicial officer or an elected or appointed municipal officer;

(e) "Payments in support of or assistance to a lobbyist or his activities," as used in AS 24.45.171(10)(B), includes

(1) direct costs and expenses incurred by the employer in the current research, drafting, preparation and adaptation of documents for use by the lobbyist for the purpose of influencing legislative or administrative action; [.]

(2) costs of social events such as receptions, dinners, and luncheons;

(3) the cost of media to communicate the employer's position on issues relating to the employer's lobbying activities;

(4) the cost of conducting polls or surveys on issues relating to the employer's lobbying activities;

(5) the costs an employer incurs communicating with the employer's lobbyist to discuss issues and strategies relating to the employer's lobbying activities, including

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compensation, travel expenses and per diem, and related expenses;

(6) the costs an employer incurs in direct communication with a public official, including compensation, travel expenses and per diem, and related expenses;

(7) the costs an employer incurs to provide a trip for a public official, including transportation, accommodations, and meals, when the trip is primarily for obtaining information on matters of legislative or administrative concern.

...

(h) "Campaign treasurer" and "deputy campaign treasurer," as used in AS 24.45, mean an individual [A PERSON] whom [THAT] a legislative candidate authorizes to receive, hold, or disburse campaign funds or goods. (Eff. 12/29/77, Register 64; am 7/20/95, Register 135; am ____/____/____, Register ____)

Authority:	AS 15.13.030	AS 24.45.051	AS 24.45.121
	AS 24.45.021	AS 24.45.061	AS 24.45.171
	AS 24.45.041		

2 AAC 50.545(a) is amended by adding a new paragraph to read:

(4) "professional lobbyist" means a lobbyist under AS 24.45.171(8)(A) and includes an employee who has primary or substantial responsibility to communicate directly with public officials to influence legislative or administrative action on behalf of an employer. (Eff. 12/29/77, Register 64; am 7/20/95, Register 135; am ____/____/____, Register ____)

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Authority: AS 15.13.030 AS 24.45.051 AS 24.45.121
AS 24.45.021 AS 24.45.061 AS 24.45.171
AS 24.45.041

2 AAC 50.545(b) and (f) are repealed:

(b) repealed ____/____/____;

...

(f) repealed ____/____/____; (Eff. 12/29/77, Register 64; am 7/20/95, Register 135;
am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 24.45.051 AS 24.45.121
AS 24.45.021 AS 24.45.061 AS 24.45.171
AS 24.45.041

2 AAC 50.545(c) is amended to read:

(c) "Communicate directly," as used in AS 24.45.171(8)(B), includes time spent appearing before the legislature or either house, or standing, special, or interim committee, unless the individual is appearing in response to an invitation issued as provided in AS 24.45.161(c). (Eff. 12/29/77, Register 64; am 7/20/95, Register 135; am ____/____/____, Register ____)

Authority: AS 15.13.030 AS 24.45.051 AS 24.45.121
AS 24.45.021 AS 24.45.061 AS 24.45.171

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AS 24.45.041

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Article 5. Legislative Financial Disclosure.

2 AAC 50.705(1)(C) is amended to read:

(C) paid the retail business more than \$5,000 [\$1,000] for a good or service after receiving a discount that was not available to the general public. (Eff. 7/20/95, Register 135; am _____/_____/_____, Register _____)

Authority: AS 24.60.200 AS 39.50.030 AS 39.50.050
AS 24.60.220

2 AAC 50.725(2)(A) is amended to read:

(A) a filer or the filer's family member, the filer shall report the name of a person that paid more than \$5,000 [\$1,000] in rent during the preceding calendar year; or (Eff. 7/20/95, Register 135; am 1/1/01, Register 156; am _____/_____/_____, Register _____)

Authority: AS 24.60.200 AS 39.50.030 AS 39.50.050
AS 24.60.220

2 AAC 50.775 is amended by adding a new subsection to read:

(k) A filer may request a HIPAA exemption if the filer believes that reporting the name of a source of income would disclose protected health information that the filer is prohibited from disclosing under 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act (HIPAA) of 1996). (Eff. 7/20/95, Register 135; am 1/1/01, Register 156; am ___/___/___,

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Register_____)

Authority: AS 24.60.200 AS 24.60.230 AS 39.50.050
AS 24.60.220

The lead-in language of 2 AAC 50.780(a) is amended to read:

2 AAC 50.780. Commission consideration of exemption requests. (a) For an exemption circumstance under 2 AAC 50.775(c), (d), (e), (g), [OR] (i), or k and no later than 30 days after the commission receives a written exemption request that complies with 2 AAC 50.775(b), the staff of the commission shall

...

(Eff. 7/20/95, Register 135; am ___/___/___, Register _____)

Authority: AS 24.60.200 AS 24.60.230 AS 39.50.050
AS 24.60.220

2 AAC 50.805(d) is amended to read:

(d) If, during a year in which a state election is scheduled, a filer is or becomes a candidate for the legislature and files the disclosure statement 30 days after the due date, [LATE,] the commission will recommend that the lieutenant governor remove the filer's name from the ballot for that state election. If the filer's name cannot be removed from the ballot, the commission will recommend that the lieutenant governor not certify the filer's nomination for office or election to office.

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(Eff. 7/20/95, Register 135; am 1/2/2001, Register 156, am ____/____/____, Register _____)

Authority: AS 24.60.200 AS 24.60.220 AS 24.60.250
 AS 24.60.210 AS 24.60.240 AS 24.60.260

2 AAC 50.890(8) and (18) are amended to read:

(8) "family member" means a spouse, domestic partner, [SPOUSAL EQUIVALENT] or dependent child, or the filer's nondependent child who lives with the filer;

...

(18) "domestic partner" ["SPOUSAL EQUIVALENT"] has the meaning given in AS 24.60.990(a). (Eff. 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register _____)

Authority: AS 24.60.220 AS 39.50.050

Article 6. General provisions.

Section

905. Advisory Opinions

910. Availability of reports filed with the commission

920. Definitions

2 AAC 50.905 is repealed and readopted to read:

2 AAC 50.905. Advisory opinions. (a) Commission staff shall review all requests for advisory opinions submitted under AS 15.13.374. If commission staff determines that a request does not satisfy the requirements in AS 15.13.374, commission staff shall reject the request and notify the person, group, or nongroup entity making the request of the deficiencies. A rejected request may be refiled.

(b) If commission staff determines that the request satisfies the requirements in AS 15.13.374, the executive director or the executive director's designee shall prepare a recommended advisory opinion within seven days after receipt of the opinion request for the commission to consider at its next regular meeting.

(c) The commission will approve, disapprove, or modify the recommended advisory opinion.

(d) The commission will, in its discretion, reconsider an advisory opinion at any time

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upon the motion of a member who voted with the majority that originally approved the opinion, and if the commission adopts the motion to reconsider by the affirmative vote of at least four members. Adoption of a motion to reconsider vacates the advisory opinion to which it relates. Action by the requesting party in good faith reliance on the advisory opinion before the party has notice of its reconsideration may not be the subject of an investigation under 2 AAC 50.460, 2 AAC 50.507, or 2 AAC 50.810. (Eff. 1/4/86, Register 97; am 7/20/95, Register 135; am 1/1/01, Register 156; am ____/____/____, Register _____)

Authority: AS 15.13.030 AS 15.13.374 AS 24.60.220

2 AAC 50.910 is amended to read:

2 AAC 50.910. Availability of report filed with the commission. Except as provided under 2 AAC 50.270, [2 AAC 50.351(D),] copies of any report required to be filed with the commission may be obtained at cost. (Eff. 5/16/76, Reg. 58; am 1/4/86, Reg. 97; am ____/____/____, Register _____)

Authority: AS 15.13.030 AS 15.13.110 AS 39.50.050
AS 15.13.040 AS 39.50.020

2 AAC 50.920 is amended read:

2 AAC 50.920. Definitions. In this chapter,

- (1) "commission" means the Alaska Public Offices Commission;
- (2) "minor" means an individual who is 17 [18] years old or younger;

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(3) "complainant" means a person, group, or nongroup entity, including the executive director or a commission member, filing a complaint under 2 AAC 50.450;

(4) "respondent" means a person, group, or nongroup entity alleged in a complaint or accusation to have violated a statute or regulation that the commission administers. (Eff.5/16/76, Reg.58; am 1/1/01, Register 156; am _____ / _____ / _____, Register _____)

Authority: AS 15.13.020 AS 15.13.030



Chapter 24.45. REGULATION OF LOBBYING

Article 01. LEGISLATIVE DECLARATION OF PURPOSE

Sec. 24.45.010. [Repealed, Sec. 1 ch 167 SLA 1976].

2002 AS

Repealed or Renumbered

Sec. 24.45.011. Purpose.

The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity, income, expenditures, and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action.

Sec. 24.45.020. [Repealed, Sec. 1 ch 167 SLA 1976].

Repealed or Renumbered

Article 02. ADMINISTRATION

Sec. 24.45.021. Administration.

(a) This chapter shall be administered by the Alaska Public Offices Commission created under AS 15.13.020 (a).

(b) The commission shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement the provisions of this chapter.

Sec. 24.45.030. [Repealed, Sec. 1 ch 167 SLA 1976].

Repealed or Renumbered

Sec. 24.45.031. Powers and duties.

(a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices, and other documents required by this chapter;

(2) prepare and publish instructions setting out the methods of accounting, bookkeeping, and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the instructions shall be updated periodically;



Chapter 24.45. REGULATION OF LOBBYING

Article 01. LEGISLATIVE DECLARATION OF PURPOSE

Sec. 24.45.010. [Repealed, Sec. 1 ch 167 SLA 1976].

2003 supplement

Repealed or Renumbered

Sec. 24.45.011. Purpose.

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Sec. 24.45.020. [Repealed, Sec. 1 ch 167 SLA 1976].

Repealed or Renumbered

Article 02. ADMINISTRATION

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(a) This chapter shall be administered by the Alaska Public Offices Commission created under AS 15.13.020 (a).

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Repealed or Renumbered

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2002 AS

Sec. 24.45.171. Definitions.

In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act);

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(4) "immediate family" means the spouse and dependent children of an individual;

(5) "individual" means a natural person;

(6) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing, or delaying or 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, or 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 that 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;

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051 (2);

(11) "person", in addition to the terms set out in AS 01.10.060 includes a labor union; and

(12) "public official" or "public officer" means a public official as defined in AS 39.50.200 (a), a member of the legislature, or a legislative director as defined in AS 24.60.990 (a); however, it does not include a judicial officer or an elected or appointed municipal officer.

Sec. 24.45.181. Short title.

This chapter may be cited as the Regulation of Lobbying Act.

Chapter 24.50. STUDENT GUESTS OF LEGISLATURE

Sec. 24.50.010. Annual student guests.

The legislature may each year while in session serve as host to one member of each high school in the state for a stay of one week in the capital to observe and learn the legislative process.

Sec. 24.50.020. Selection by schools.

Each high school of the state may annually and before the end of the calendar year select one member of its student body as a legislative guest.

Sec. 24.50.030. Arrangements.

When the representative has been selected under AS 24.50.020, the principal of the school shall certify the selection to the legislative council. The legislative council is responsible for making all necessary administrative and fiscal arrangements for the transportation and housing of the selected students in coordination with the principals. Funds for the transportation, housing, and meals of the students shall be included in the general appropriation for legislative expenses as budgeted for by the legislative council.

Sec. 24.50.040. Essay contest.

Before leaving the state capital, each legislative guest shall prepare and submit to the director of the Legislative Affairs Agency a paper of not less than 1,000 words entitled "The Legislature Should". Each paper shall be examined and judged as to content by the governor, the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house. The author of the paper determined best by majority vote shall receive a one-year scholarship to the University of Alaska.

Chapter 24.55. OFFICE OF THE OMBUDSMAN

Article 01. ORGANIZATION

Sec. 24.55.010. Office of the ombudsman.

There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. Appointment of the ombudsman.

(a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of the minority party caucus in each house shall be appointed to the selection committee.

(b) The ombudsman selection committee shall examine persons to serve as ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. However, the governor may veto the appointment and return it, with a statement of objections, to the legislature. Upon receipt of a veto message the legislature shall meet immediately in joint session and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the membership of the legislature in joint session. The vote on the appointment and on reconsideration of a vetoed appointment shall be entered in the journals of both houses.

(c) The appointment of the ombudsman becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days, Sundays excepted, after its delivery to the governor. If the legislature is not in session and the governor neither approves nor vetoes the appointment within 20 days, Sundays excepted, after its delivery to the governor, the appointment becomes effective.

Sec. 24.55.030. Qualifications; prohibition against political activity.

(a) A person may not serve as ombudsman

(1) within one year of the last day on which the person served as a member of the legislature;

(2) while the person is a candidate for or holds any other national, state, or municipal office; nor may the ombudsman become a candidate for national, state, or municipal office until one year has elapsed from the date the ombudsman vacates the office of ombudsman;

(3) while the person is engaged in any other occupation for which the person receives compensation;

(4) unless the person is at least 21 years of age and is a qualified voter who has been a resident of the state for at least three years.

(b) It is essential that the nonpartisan nature, integrity, and impartiality of the ombudsman's functions and services be maintained. The ombudsman and members of the staff of the ombudsman may not join, support, or otherwise participate in a partisan political organization, faction, or activity, including but not limited to the making of political contributions. However, this subsection does not restrict the ombudsman or members of the staff of the ombudsman from expressing private opinion, registering as to party, or voting.

Sec. 24.55.040. Term of office.

(a) The term of office of the ombudsman is five years. An ombudsman may be reappointed but may not serve for more than three terms.

(b) If the term of an ombudsman expires without the appointment of a successor under this chapter, the incumbent ombudsman may continue in office until a successor is appointed. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the person appointed as acting ombudsman under AS 24.55.070 (a) serves until a new ombudsman is appointed for a full term.

Sec. 24.55.050. Removal.

The legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members in each house entered in the journal, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

Sec. 24.55.060. Compensation.

The ombudsman is entitled to receive an annual salary equal to Step A, Range 26 on the salary schedule set out in AS 39.27.011 (a) for Juneau.

Sec. 24.55.070. Staff and delegation.

(a) The ombudsman shall appoint a person to serve as acting ombudsman in the absence of the ombudsman. The ombudsman shall also appoint assistants and clerical personnel necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to the assistants any of the ombudsman's duties except those specified in AS 24.55.190 and 24.55.200; however, during the ombudsman's absence from the principal business offices, the ombudsman may delegate the duties specified in AS 24.55.190 and 24.55.200 to the acting ombudsman for the duration of the absence. The duties specified in AS 24.55.190 and 24.55.200 shall be performed by the acting ombudsman when serving under AS 24.55.040(b).

(c) The ombudsman and the staff appointed by the ombudsman are in the exempt service under AS 39.25.110 and are not subject to the employment policies under AS 24.10 or AS 24.20.

Sec. 24.55.080. Office facilities and administration.

(a) Subject to restrictions and limitations imposed by the executive director of the Legislative Affairs Agency, the administrative facilities and services of the Legislative Affairs Agency, including computer, data processing, and teleconference facilities, may be made available to the ombudsman to be used in the management of the office of the ombudsman and to carry out the purposes of this chapter.

(b) The salary and benefits of the ombudsman and the permanent staff of the ombudsman shall be paid through the same procedures used for payment of the salaries and benefits of other permanent legislative employees.

(c) The ombudsman shall submit a budget for each fiscal year to the Alaska Legislative Council and the council shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget. After reviewing and approving, with or without modifications, the budget submitted by the ombudsman, the council shall submit the approved budget to the finance committees of the legislature.

Sec. 24.55.090. Procedure.

(a) The ombudsman shall, by regulations adopted under AS 44.62 (Administrative Procedure Act), establish procedures for receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the ombudsman in the course of an investigation will not be improperly disclosed.

(b) The ombudsman may not charge fees for the submission or investigation of complaints.

Article 02. JURISDICTION AND INITIATION OF INVESTIGATIONS

Sec. 24.55.100. Jurisdiction.

(a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise the ombudsman's powers without regard to the finality of an administrative act.





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Sec. 24.45.171. Definitions.

In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include

(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

(E) the issuance of, or ensuring compliance with, an opinion or activity related to a collective bargaining agreement including negotiating or enforcing the agreement;

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "commission" means the Alaska Public Offices Commission;

(4) "communicate directly" means to speak with a legislator, legislative employee, or public official;

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person.

(5) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

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(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(6) "immediate family" means the spouse and dependent children of an individual;

(7) "individual" means a natural person;

(8) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

(9) "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;

(10) "lobbyist" means a person who

(A) engages in the business, occupation, or profession of influencing legislative or administrative action; or

(B) receives wages or other economic consideration, including reimbursement of travel and living expenses, to communicate directly with any public official

(i) for the express purpose of influencing legislative or administrative action; and

(ii) during more than 40 hours in any 30-day period in one calendar year;

(11) "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;

(12) "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 that 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;

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051 (2);

(13) "person", in addition to the terms set out in AS 01.10.060 includes a labor union; and

(14) "public official" or "public officer" means a public official as defined in AS 39.50.200 (a), a member of the legislature, or a legislative director as defined in AS 24.60.990 (a); however, it does not include a judicial officer or an elected or appointed municipal officer.

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This chapter may be cited as the Regulation of Lobbying Act.

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The legislature may each year while in session serve as host to one member of each high school in the state for a stay of one week in the capital to observe and learn the legislative process.

Sec. 24.50.020. Selection by schools.

Each high school of the state may annually and before the end of the calendar year select one member of its student body as a legislative guest.

Sec. 24.50.030. Arrangements.

When the representative has been selected under AS 24.50.020, the principal of the school shall certify the selection to the legislative council. The legislative council is responsible for making all necessary administrative and fiscal arrangements for the transportation and housing of the selected students in coordination with the principals. Funds for the transportation, housing, and meals of the students shall be included in the general appropriation for legislative expenses as budgeted for by the legislative council.

Sec. 24.50.040. Essay contest.

Before leaving the state capital, each legislative guest shall prepare and submit to the director of the Legislative Affairs Agency a paper of not less than 1,000 words entitled "The Legislature Should". Each paper shall be examined and judged as to content by the governor, the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house. The author of the paper determined best by majority vote shall receive a one-year scholarship to the

University of Alaska.

Chapter 24.55. OFFICE OF THE OMBUDSMAN

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Sec. 24.55.010. Office of the ombudsman.

There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. Appointment of the ombudsman.

(a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of the minority party caucus in each house shall be appointed to the selection committee.

(b) The ombudsman selection committee shall examine persons to serve as ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination. The appointment is effective if the nomination is approved by a roll call vote of two-thirds of the members of the legislature in joint session and approved by the governor. However, the governor may veto the appointment and return it, with a statement of objections, to the legislature. Upon receipt of a veto message the legislature shall meet immediately in joint session and reconsider approval of the vetoed appointment. The vetoed appointment becomes effective by an affirmative vote of two-thirds of the membership of the legislature in joint session. The vote on the appointment and on reconsideration of a vetoed appointment shall be entered in the journals of both houses.

(c) The appointment of the ombudsman becomes effective if, while the legislature is in session, the governor neither approves nor vetoes it within 15 days, Sundays excepted, after its delivery to the governor. If the legislature is not in session and the governor neither approves nor vetoes the appointment within 20 days, Sundays excepted, after its delivery to the governor, the appointment becomes effective.

Sec. 24.55.030. Qualifications; prohibition against political activity.

(a) A person may not serve as ombudsman

(1) within one year of the last day on which the person served as a member of the legislature;

(2) while the person is a candidate for or holds any other national, state, or municipal office; nor may the ombudsman become a candidate for national, state, or municipal office until one year has elapsed from the date the ombudsman vacates the office of ombudsman;

(3) while the person is engaged in any other occupation for which the person receives compensation;

(4) unless the person is at least 21 years of age and is a qualified voter who has been a resident of the state for at least three years.

(b) It is essential that the nonpartisan nature, integrity, and impartiality of the ombudsman's functions and services be maintained. The ombudsman and members of the staff of the ombudsman may not join, support, or otherwise participate in a partisan political organization, faction, or activity, including but not limited to the making of political contributions. However, this subsection does not restrict the ombudsman

or members of the staff of the ombudsman from expressing private opinion, registering as to party, or voting.

Sec. 24.55.040. Term of office.

(a) The term of office of the ombudsman is five years. An ombudsman may be reappointed but may not serve for more than three terms.

(b) If the term of an ombudsman expires without the appointment of a successor under this chapter, the incumbent ombudsman may continue in office until a successor is appointed. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the person appointed as acting ombudsman under AS 24.55.070 (a) serves until a new ombudsman is appointed for a full term.

Sec. 24.55.050. Removal.

The legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members in each house entered in the journal, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

Sec. 24.55.060. Compensation.

The ombudsman is entitled to receive an annual salary equal to Step A, Range 26 on the salary schedule set out in AS 39.27.011 (a) for Juneau.

Sec. 24.55.070. Staff and delegation.

(a) The ombudsman shall appoint a person to serve as acting ombudsman in the absence of the ombudsman. The ombudsman shall also appoint assistants and clerical personnel necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to the assistants any of the ombudsman's duties except those specified in AS 24.55.190 and 24.55.200; however, during the ombudsman's absence from the principal business offices, the ombudsman may delegate the duties specified in AS 24.55.190 and 24.55.200 to the acting ombudsman for the duration of the absence. The duties specified in AS 24.55.190 and 24.55.200 shall be performed by the acting ombudsman when serving under AS 24.55.040(b).

(c) The ombudsman and the staff appointed by the ombudsman are in the exempt service under AS 39.25.110 and are not subject to the employment policies under AS 24.10 or AS 24.20.

Sec. 24.55.080. Office facilities and administration.

(a) Subject to restrictions and limitations imposed by the executive director of the Legislative Affairs Agency, the administrative facilities and services of the Legislative Affairs Agency, including computer, data processing, and teleconference facilities, may be made available to the ombudsman to be used in the management of the office of the ombudsman and to carry out the purposes of this chapter.

(b) The salary and benefits of the ombudsman and the permanent staff of the ombudsman shall be paid through the same procedures used for payment of the salaries and benefits of other permanent legislative employees.

(c) The ombudsman shall submit a budget for each fiscal year to the Alaska Legislative Council and the council shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget. After reviewing and approving, with or without modifications, the budget submitted by the ombudsman, the council shall submit the approved budget to the finance committees of the legislature.

Sec. 24.55.090. Procedure.

(a) The ombudsman shall, by regulations adopted under AS 44.62 (Administrative Procedure Act), establish procedures for receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the ombudsman in the course of an investigation will not be improperly disclosed.

(b) The ombudsman may not charge fees for the submission or investigation of complaints.

Article 02. JURISDICTION AND INITIATION OF INVESTIGATIONS

Sec. 24.55.100. Jurisdiction.

(a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise the ombudsman's powers without regard to the finality of an administrative act.



Ray Gillespie
Gillespie & Associates
Lobbying and Governmental Affairs

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Tammy Kempton
PO Box 110222
Juneau, AK 99811-0222

February 26, 2004

Re: Proposed Regulation
2 AAC 50.513 et al

Dear Tammy:

Following are my comments on the proposed regulations:

I.

Proposed 2AAC 50.537 does not appear to serve any good purpose. Reports are either accurate or not, whether prepared by the lobbyist or the employer.

Some national firms who have lobbyist in several states require the lobbyist to complete the forms. They do not have in-house experts in multiple state disclosure laws. If the preparer is the lobbyist it is his or her duty to get accurate information for disclosure in the same fashion as it would be if the preparer were an employee of the employer.

What does "prepare" mean? Would it be improper for the lobbyist to "prepare" the report for the employer's signature? Or are you attempting to prevent a lobbyist from "preparing" and signing the employers report?

This proposed regulation does not assure more accurate Employer reports. I suggest you enforce your current requirements for accurate reports rather than trying to get at a perceived problem in this indirect fashion.

II.

Proposed Regulation 2 AAC 50.545 (a)

It appears that all the verbage after (A) contradicts and is inconsistent with the legislative definition of "lobbyist" contained in AS 24.45.171 (8) (A).

Having followed the legislation last year, I don't believe the legislature intended to provide only a partial definition of "professional lobbyist." If it had intended to exclude certain employees from the 40-hour rule, the legislature would have said so.

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The APOC modifications to the definition of a professional lobbyist are confusing at best and at worst completely contradictory of the explicit definition provided by statute

Thank you for your time and attention.

Sincerely,

Ray Gillespie

EIDE, MILLER
& PATE P.C.

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March 4, 2004

Senator Ralph Seekins
Chair, Senate Judiciary Committee
State Capital, Room 125
Juneau, AK 99801-1182

Via Facsimile & 1st Class Mail

Re: Proposed Revisions to APOC Regulations

Dear Senator Seekins:

I understand that the Senate Judiciary Committee is holding a hearing on the proposed revisions to the APOC Regulations. Because I will not be available to testify at the hearing, I wanted to provide you with my written comments. I would appreciate it if you would share them with the Committee.

Attached is a copy of the public comment I submitted to APOC regarding the proposed revisions to the regulations covering lobbyists and lobbying activities. As stated in the conclusion of my public comment, "The regulations are poorly drafted, exceed the Commission's regulatory authority, are inconsistent with and/or violate current State statutes, and are unconstitutional. In over 25 years of practice, I have not reviewed draft regulations which are so clearly objectionable."

As you know during the 2003 session, the Legislature passed significant revisions to the lobbying statutes (AS 24.45.011, et seq.) in order to clear up ambiguities in the earlier statutes and APOC regulations. The statutory revisions set forth the rules of conduct for lobbyists and their employers in a clear and unambiguous manner. The proposed AFOC regulations are inconsistent with the rules established by the Legislature and create ambiguity where none current exists. Additionally, the proposed regulations are a clear attempt to circumvent the 40 hour rule adopted by the Legislature last year to define in concrete terms when a person who is not a professional lobbyist must register with APOC. APOC does not have the authority to overrule the Legislature.

Senator Ralph Seekins
March 4, 2004
Page Two

Given the clarity of the current lobbying statutes, I ask that the Legislature revoke APOC's authority to adopt the regulations referenced in the attached letter. Alternatively, I ask that your Committee demand that APOC redraft its proposed regulations so that the regulations are consistent with State statutes.

Thank you for your consideration of my comments. If you or your staff have any questions, please feel free to contact me.

Very truly yours,

EIDE, MILLER & PATE



John M. Miller

Enclosure

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X

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February 27, 2004

Christina L. Ellingson
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Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Room 128
Anchorage, AK 99508

Via e-mail & 1st Class Mail

Re: Proposed Changes to APOC Regulations

Dear Ms. Ellingson:

During the past few years, our firm has had the opportunity to study the State statutes and the APOC regulations relating to lobbyists and lobbying activities. We have also followed closely the amendments to the applicable statutes which were enacted during the 2003 Legislative session. Based on our familiarity with the current statutes, we offer the following public comments relating to the proposed amendments to the APOC regulations dealing with lobbyists and lobbying activities.

1. PROPOSED AMENDMENTS TO 2 AAC 50.545(e). Initially, we point out that the proposed amendments contain typographical errors, are poorly drafted, are inconsistent with applicable State statutes, and are unconstitutional. As a result, as currently drafted, the proposed amendments are invalid and unenforceable. As stated in more detail below, except for subsection (e)(1), the provision must be completely redrafted or discarded.

(a) Introductory Language to 2 AAC 50.545(e). The introductory language cites to AS 24.45.171(10)(B). However, because of revisions to the cited statute during the 2003 Legislative session, the correct cite is AS 24.45.171(12)(B). Additionally, the introductory language attempts to quote a section of the cited statute, but does so incorrectly. The correct quotation is "A payment is support of or assistance to a lobbyist or the lobbyist's activities".

(b) 2 AAC 50.545(e)(2) through (7). We address each of the referenced subsections below, but we first want to set forth a number of general objections which apply to all of the subsections. Subsections (2) through (7) reference items which the Commission apparently intends to include within the definition of "Payment in support of or assistance to a lobbyist or the lobbyist's activities". However, that language from AS 24.45.171(12)(B) cannot be read independently from AS 24.45.171(12). That section deals with "Payment to influence legislative or administration action", and subsection (12)(B) merely sets forth a category of payments which fall within the broader definition. In order to comply with the statute, items referenced in the draft amendments to the regulation must meet both criteria set forth in the statute. In other words, all of the items referenced in the regulation must (1) constitute a payment to influence legislative or administrative action and (2) constitute a payment in support of or assistance to a lobbyist or the lobbyist's activities. Putting it another way, a payment in support of or assistance to a lobbyist or his activities is not subject to regulation by APOC, unless the payment also is intended to influence legislative or administrative action. The draft amendments to 2 AAC 50.545(e)(2) through (7) do not comply with the statutory requirements and therefore are unenforceable. See generally, Warner v. State, 819 P.2d 28 (Alaska 1991).

(c) 2 AAC 50.545(e)(2). This subsection is invalid because, as stated above, it does not meet the statutory requirements of AS 24.45.171(12). That is, the draft amendment does not make it clear that the "costs of social events such as receptions, dinners, and luncheons" must be part of an effort to "influence legislative or administrative action". Additionally, this provision is unconstitutionally vague. The provision does not define whose attendance at a social event is subject to the regulation, does not define whether or not a legislator, legislative staffer, or other public official must be present at the social event in order to fall within the regulation and does not specify whether or not communication between the unidentified person who is subject to the regulation and a public official is required before the regulation applies. All Alaskans enjoy the constitutionally protected rights of free speech and free association. This provision is so vague and over broad that it chills the exercise of those rights. Furthermore, the language is so imprecise that it does not give adequate notice of the conduct which is subject to regulation and allows for the possibility of arbitrary enforcement which is prohibited under Alaska law. See generally, Summers v. Anchorage, 589 P.2d 863 (Alaska 1979); Halliburton Energy Services v. State Department of Labor, 2 P.3d 41 (Alaska 2000); State v. Marathon Oil Co., 528 P.2d 293 (Alaska 1974).

Finally, this subsection is invalid because its application is dependent upon the subjective intent of the unidentified person attending the social event. For example, assume that an employee of Acme Co. attends the Governor's Annual Summer Picnic on the Park Strip in Anchorage during work hours. Further assume that the Governor and a number of other public officials are present at the picnic. Does the regulation apply automatically based on mere attendance; does it apply only if the Acme employee speaks with a public official; does it apply if the Acme employee speaks with a public official, but engages only in light social conversation without any effort to influence legislative or administrative action; or does it apply only if there is "direct communication" between the Acme employee and a public official and the communication is intended to influence legislative or administrative action. The language of the regulation is so imprecise that its application must be based on the subjective intent of the individual the Commission is charging with a violation. Basing the determination of whether or not a violation has occurred on the subjective intent of the accused, is impermissible under both State and Federal law.

(d) 2 AAC 50.545(e)(3). This subsection deals with "the cost of media to communicate the employer's position on issues relating to the employer's lobbying activities". This provision is invalid and unenforceable for each of the reasons set forth above. That is, it is inconsistent with the applicable State statutes and is unconstitutionally vague. In addition, this provision violates the constitutionally protected right of free speech. As you know, the stated purpose of the State lobbying statutes is to require disclosure of the identity of persons engaged in an effort to influence legislative or administrative action and the disclosure of payments to such persons in furtherance of that effort. Under the applicable lobbying statutes, there is no prohibition or regulation of efforts to inform the public on any issues, or to affect public opinion. Any effort to prohibit or regulate such activities under the authority of the lobbying statutes constitutes a direct violation of the free speech rights guaranteed in the State and Federal constitutions. Alaska Gay Coalition v. Sullivan, 578 P.2d 951 (Alaska 1978).

Furthermore, as with subsection (e) (2), this provision is unconstitutionally vague because its enforcement depends entirely on the subjective intent of the party accused of a violation by the Commission. Only the person incurring the expense of a communication to the public through the media knows whether the communication is being used to inform the public or affect public opinion, or to influence legislative or administrative action. This is especially true given the fact that media communication does not fall within the statutory definition of "communicating directly" with a legislator, legislative employee, or other public official. See AS 24.45.171(4).

Based on the foregoing, there can be no question that, as stated, subsection (e) (3) is invalid and unenforceable.

(e) 2 AAC 50.545(e)(4). Again, this subsection is invalid and unenforceable for all of the reasons set forth above. In addition, this subsection relies on a standard for requiring compliance which is inapposite to the standard established in the applicable statutes.

This subsection deals with "the cost of conducting polls or surveys on issues relating to the employer's lobbying activities". As state above, pursuant to the applicable statutes, the only standard which can be applied when drafting regulations is the standard specifically set forth in AS 24.45.171(12) and (12)(B). That is, in order to be subject to regulation, the cost incurred by an employer must be directed to "influence legislative or administrative action" and must be "in support of or assistance to a lobbyist or the lobbyist's activities". Conducting polls or any other activity of an employer which is not performed in support of or assistance to a lobbyist or a lobbyist's activities are not subject to regulation by the Commission. As a result, this subsection fails for two reasons. First, it applies to the "employer's lobbying activities" rather than the activities of "a lobbyist or the lobbyist's activities". Independent conduct by an employer is not subject to regulation under AS 24.45.171(12)(B). Second, this subsection applies to polls or surveys on issues "relating" to the employer's activities. Whether a poll or any other conduct by an employer "relates" to the employer's activities is completely irrelevant. The cost of such conduct is only subject to disclosure pursuant to the applicable statutes if it is intended to influence legislative or administrative action and used in support of or assistance to a lobbyist or the lobbyist's activities.

In addition to the other problems with this provision, it is so over broad that it would be impossible to separate out conduct which falls within the prescriptions of the applicable statutes and conduct which falls outside of the regulatory scheme. Because the regulation attempts to regulate conduct not covered by the lobbying statutes, it is invalid and unenforceable.

(f) 2 AAC 50.545(e)(5). This subsection deals with "the costs an employer incurs communicating with the employer's lobbyist to discuss issues and strategies relating to the employer's lobbying activities, including compensation, travel expenses and per diem, and related expenses". Once again, this provision does not meet the requirements of the applicable State statutes. In order to be subject to regulation, the employer's communications with its lobbyist must be intended to "influence legislative or administrative action" and be "in support or assistance to a lobbyist or the lobbyist's

activities". As you must know, most communications between employers and lobbyists fall outside of that regulatory scheme. In fact, employers retain the services of a lobbyist based on the lobbyist's ability to develop successful strategies to support the employer's goals. We submit that it would be extremely unusual for an employer to give advice to a qualified lobbyist regarding strategies, approaches or any other matter relating to the lobbyist's activities. Nevertheless, if an employer incurs costs associated with communicating with the employer's lobbyist and the communication is intended "to influence legislative or administrative action" and "in support of or assistance to the lobbyist or the lobbyist's activities" (AS 24.45.171(12), (12)(B)) the cost would be subject to regulation. However, that is not the standard used in subsection (e)(5). Additionally, AS 24.45.171(12)(B) addresses only the activities of a lobbyist. The proposed regulation turns the statute on its head and addresses only "the employer's lobbying activities". As written, the provision is grossly over broad, inconsistent with statutory authority and unconstitutionally vague. As such, it is invalid and unenforceable.

(g) 2 AAC 50.545(e)(6). This subsection deals with "the cost an employer incurs in direct communication with a public official, including compensation, travel expenses and per diem, and related expenses". Again, this provision misses the point of the applicable statute. It relates solely to an employer's direct communication with a public official rather than costs incurred in support of the employer's "lobbyist or the lobbyist's activities". More importantly, this provision is in direct conflict with AS 24.45.171(10) which specifically defines when an employer, or the employee of an employer, is subject to regulation as a lobbyist. That statute states that a person becomes a lobbyist subject to regulation by the Commission, when he or she "receives wages or other economic consideration, . . . to communicate directly with any public official (i) for the express purpose of influencing legislative or administrative action; and (ii) during more than forty (40) hours in any thirty- (30) day period in one calendar year". Until an employer, or the employee of an employer, exceeds the forty (40) hour rule, he or she is not subject to regulation as a lobbyist. On that point, we refer specifically to AS 24.45.061(b) which requires reporting of payments from employers only when the employer retains "the services of one or more lobbyists . . . and who directly or indirectly makes payments to influence legislative or administrative action". (Emphasis added.) In other words, if an employer does not retain a lobbyist or an employee who meets the forty (40) hour rule, expenditures by the employer are not subject to disclosure or regulation. Subsection (e)(6) is an obvious effort to contravene the forty (40) hour rule which was adopted by the Legislature, and therefore it is invalid and unenforceable.

(h) 2 AAC 50.545(e)(7). This subsection deals with "the costs an employer incurs to provide a trip for a public official, including transportation, accommodations, and meals, when the trip is primarily for obtaining information on matter of legislative or administrative concern." Again, this provision is invalid for the reasons set forth above. Principally, the provision is inconsistent with the authorizing statutes because it refers specifically to "obtaining" information on matters of legislative or administrative concern. That simply is not consistent with the statutory scheme relating to the regulation of lobbying activities. As stated above, pursuant to the applicable statutes, in order to be subject to regulation, a payment must be intended "to influence legislative or administrative action" and be "in support of or assistance to a lobbyist or the lobbyist's activities". Instead, this subsection deals expressly with costs associated with "obtaining information". There is nothing in the applicable statutes which prohibits or regulates a person's efforts to obtain information, and therefore the Commission cannot presume to regulate such activities.

Additionally, as with all of the other subsections of 2 AAC 50.545(e), subsection (7) is grossly over broad in that it attempts to regulate both conduct which could possibly be regulated under the statute and conduct which clearly falls outside of the regulatory scheme established by the statutes. Finally, the provision is unconstitutionally vague in that the determination of whether or not a violation has occurred turns solely on the subjective intent of the target of the alleged violation.

Based on the foregoing, we strongly suggest that the Commission dramatically revise the proposed amendments to 2 AAC 50.545(e). As stated, the proposed amendments are, without question, invalid and unenforceable. If the amendments are adopted in their current form, they are, as a legal matter, completely meaningless in that the Commission would not be able to compel compliance.

2. PROPOSED AMENDMENT TO 2 AAC 50.545(a)(4). The addition of this subsection to 2 AAC 50.545(a) is objectionable because it is an obvious attempt to circumvent the effect of AS 24.45.171(10) which was adopted by the Legislature during the 2003 Legislative session. That Legislation specifically states that a person who receives wages or other economic consideration (referred to as an "employee" in the draft regulation) does not qualify as a lobbyist unless he or she communicates directly with a public official "(i) for the express purpose of influencing legislative or administrative action; and (ii) during more than forty (40) hours in any thirty- (30) day period in one calendar year". That Legislation was specifically adopted in order to avoid the ambiguity contained in the preexisting statutory definition of a "lobbyist" which required that a person spend "a substantial or regular" portion of his or her activities attempting to

influence legislative or administrative action. The Legislature repealed the "regular or substantial" language and adopted the forty (40) hour rule in order to establish a bright line test for when an employee must register as a lobbyist.

In addition to its obvious attempt to circumvent the forty (40) hour rule, the draft amendment also takes a step backward in that it reinjects an ambiguity into the definition of "lobbyist" by using the extraordinarily vague and legally undefinable language of "primary or substantial". Oddly, APOC previously found that the original statutory language of "substantial or regular" was ambiguous and adopted a four (4) hour rule to establish a concrete definition for "substantial or regular". 2 AAC 50.545(f). The four (4) hour rule was superseded by AS 24.45.171(10), but by adopting the four (4) hour rule, APOC acknowledged the ambiguity of the terms "substantial or regular." Now the Commission is attempting to defeat the concrete forty (40) hour rule established by the Legislature by creating an ambiguity in the definition of "lobbyist" with the use of the terms "primary or substantial." Given the clarity of the statutory definition of "lobbyist", the Commission does not have the proper authority to revise or supplement the statutory definition. See generally, Warner v. State, supra; Beran v. State, 705 P.2d 1280 (Alaska App. 1985); Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

Finally, the draft regulation illegally attempts to establish a new classification for lobbyists which is not authorized by statute. The draft regulation attempts to define the term "professional lobbyist" pursuant to AS 24.45.171(8)(A) [The statutory citation is an error. The proper citation is AS 24.45.171(10)(A)]. No where in the statute is the term "professional lobbyist" used. Instead, the statute defines the term "lobbyist." Furthermore, the lobbyist statutes generally do not refer to "professional lobbyists" and do not establish any special or unique prohibitions, reporting or other legal requirements for "professional lobbyists". All such prohibitions and requirements apply only to "lobbyists". As a result, the use of the term "professional lobbyist" in the draft regulation creates an ambiguity throughout the lobbying statutes and APOC regulations. As you know, it is the intent of regulatory process to clarify ambiguities, not to create ambiguities.

Finally, the use of the terms "primary or substantial" in the draft regulation are unconstitutionally vague and unenforceable. The language is so imprecise that it does not provide adequate notice to individuals as to when they meet the requirements of the regulation. Additionally, the term "employee" is completely undefined.

Based on the foregoing, 2 AAC 50.545(a)(4) as currently stated is invalid and unenforceable.

3. 2 AAC 50.545(c). This draft regulation is objectionable because it is inconsistent with the statutory definition of "communicate directly" and has a chilling effect on the constitutional rights of Alaska citizens.

The draft regulation attempts to define the term "communicate directly" as that term is used in AS 24.45.171(8)(B). [The citation is an error. The correct citation is AS 24.45.171(10)(B)]. However, the Legislature has already defined the term "communicate directly", and therefore the Commission has no authority to adopt a contrary definition. See A.S. 24.45.171(4). Additionally, the statutory definition makes it clear that the Legislature intended to include only conversations with legislators, legislative employees, and other public officials within the definition of "communicate directly". There is no reference to communication through testimony at public hearings. By extending the definition, the Commission is attempting to defeat not only the express terms of the statute but the intent of the Legislature as well. As you know, State statutes take precedence over State regulations and therefore the draft regulation cannot stand. See also, AS 24.45.161(a)(1)(B).

We also note that Alaska citizens have a constitutionally protected right to petition their elected representatives. Subjecting citizens to the reporting and other legal requirements included in the lobbying statutes and regulations simply because they testify before a legislative committee will have a significant chilling effect on the free exercise of that constitutional right. See White v. Lee, 227 F.3d 1214 (9th Cir. 2000). Furthermore, the lobbying statutes are intended to require disclosure of lobbying activities which are not otherwise discoverable by the public. Hearings before legislative committees are open public forums and therefore do not fall within the coverage of the lobbying statutes. Given the fact that hearings are part of an open and public process, and the importance of a citizen's right to petition their government, the Commission has no authority to regulate or restrict a citizen's right to testify before a legislative committee. Any such attempt violates both the express and implied intent of the statutory scheme relating to lobbying activities and the Alaska constitution.

Based on the foregoing, 2 AAC 50.545(c) as currently stated is invalid and unenforceable.

Christina L. Ellingson
February 27, 2004
Page 9

CONCLUSION

For the reasons stated above, we ask that the Commission reject the draft regulations referred to herein. The regulations are poorly drafted, exceed the Commission's regulatory authority, are inconsistent with and/or violate current State statutes, and are unconstitutional. In over 25 years of practice, I have not reviewed draft regulations which are so clearly objectionable.

Thank you for your consideration of these comments. Please provide me with a date and time when the Commission will consider the draft regulations.

Very truly yours,

EIDE, MILLER & PATE


John M. Miller by ps

cc: Nancy Freeman (via e-mail)

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**EIDE, MILLER
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Senator Ralph Seekins
Chair, Senate Judiciary Committee
State Capital, Room 125
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Via Facsimile & 1st Class Mail

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Dear Senator Seekins:

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Senator Ralph Seckins

March 4, 2004

Page Two

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Very truly yours,

EIDE, MILLER & PATE



John M. Miller

Enclosure

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Commission apparently intends to include within the definition of "Payment in support of or assistance to a lobbyist or the lobbyist's activities". However, that language from AS 24.45.171(12)(B) cannot be read independently from AS 24.45.171(12). That section deals with "Payment to influence legislative or administration action", and subsection (12)(B) merely sets forth a category of payments which fall within the broader definition. In order to comply with the statute, items referenced in the draft amendments to the regulation must meet both criteria set forth in the statute. In other words, all of the items referenced in the regulation must (1) constitute a payment to influence legislative or administrative action and (2) constitute a payment in support of or assistance to a lobbyist or the lobbyist's activities. Putting it another way, a payment in support of or assistance to a lobbyist or his activities is not subject to regulation by APOC, unless the payment also is intended to influence legislative or administrative action. The draft amendments to 2 AAC 50.545(e)(2) through (7) do not comply with the statutory requirements and therefore are unenforceable. See generally, Warner v. State, 819 P.2d 28 (Alaska 1991).

(c) 2 AAC 50.545(e)(2). This subsection is invalid because, as stated above, it does not meet the statutory requirements of AS 24.45.171(12). That is, the draft amendment does not make it clear that the "costs of social events such as receptions, dinners, and luncheons" must be part of an effort to "influence legislative or administrative action". Additionally, this provision is unconstitutionally vague. The provision does not define whose attendance at a social event is subject to the regulation, does not define whether or not a legislator, legislative staffer, or other public official must be present at the social event in order to fall within the regulation and does not specify whether or not communication between the unidentified person who is subject to the regulation and a public official is required before the regulation applies. All Alaskans enjoy the constitutionally protected rights of free speech and free association. This provision is so vague and over broad that it chills the exercise of those rights. Furthermore, the language is so imprecise that it does not give adequate notice of the conduct which is subject to regulation and allows for the possibility of arbitrary enforcement which is prohibited under Alaska law. See generally, Summers v. Anchorage, 589 P.2d 863 (Alaska 1979); Halliburton Energy Services v. State, Department of Labor, 2 P.3d 41 (Alaska 2000); State v. Marathon Oil Co., 528 P.2d 293 (Alaska 1974).

Finally, this subsection is invalid because its application is dependent upon the subjective intent of the unidentified person attending the social event. For example, assume that an employee of Acme Co. attends the Governor's Annual Summer Picnic on the Park Strip in Anchorage during work hours. Further assume that the Governor and a number of other public officials are present at the picnic. Does the regulation apply automatically based on mere attendance; does it apply only if the Acme employee speaks

with a public official; does it apply if the Acme employee speaks with a public official, but engages only in light social conversation without any effort to influence legislative or administrative action; or does it apply only if there is "direct communication" between the Acme employee and a public official and the communication is intended to influence legislative or administrative action. The language of the regulation is so imprecise that its application must be based on the subjective intent of the individual the Commission is charging with a violation. Basing the determination of whether or not a violation has occurred on the subjective intent of the accused, is impermissible under both State and Federal law.

(d) 2 AAC 50.545(e)(3). This subsection deals with "the cost of media to communicate the employer's position on issues relating to the employer's lobbying activities". This provision is invalid and unenforceable for each of the reasons set forth above. That is, it is inconsistent with the applicable State statutes and is unconstitutionally vague. In addition, this provision violates the constitutionally protected right of free speech. As you know, the stated purpose of the State lobbying statutes is to require disclosure of the identity of persons engaged in an effort to influence legislative or administrative action and the disclosure of payments to such persons in furtherance of that effort. Under the applicable lobbying statutes, there is no prohibition or regulation of efforts to inform the public on any issues, or to affect public opinion. Any effort to prohibit or regulate such activities under the authority of the lobbying statutes constitutes a direct violation of the free speech rights guaranteed in the State and Federal constitutions. Alaska Gay Coalition v. Sullivan, 578 P.2d 951 (Alaska 1978).

Furthermore, as with subsection (e) (2), this provision is unconstitutionally vague because its enforcement depends entirely on the subjective intent of the party accused of a violation by the Commission. Only the person incurring the expense of a communication to the public through the media knows whether the communication is being used to inform the public or affect public opinion, or to influence legislative or administrative action. This is especially true given the fact that media communication does not fall within the statutory definition of "communicating directly" with a legislator, legislative employee, or other public official. See AS 24.45.171(4).

Based on the foregoing, there can be no question that, as stated, subsection (e) (3) is invalid and unenforceable.

(e) 2 AAC 50.545(e)(4). Again, this subsection is invalid and unenforceable for all of the reasons set forth above. In addition, this subsection relies on a standard for requiring compliance which is inapposite to the standard established in the applicable statutes.

This subsection deals with "the cost of conducting polls or surveys on issues relating to the employer's lobbying activities". As state above, pursuant to the applicable statutes, the only standard which can be applied when drafting regulations is the standard specifically set forth in AS 24.45.171(12) and (12)(B). That is, in order to be subject to regulation, the cost incurred by an employer must be directed to "influence legislative or administrative action" and must be "in support of or assistance to a lobbyist or the lobbyist's activities". Conducting polls or any other activity of an employer which is not performed in support of or assistance to a lobbyist or a lobbyist's activities are not subject to regulation by the Commission. As a result, this subsection fails for two reasons. First, it applies to the "employer's lobbying activities" rather than the activities of "a lobbyist or the lobbyist's activities". Independent conduct by an employer is not subject to regulation under AS 24.45.171(12)(B). Second, this subsection applies to polls or surveys on issues "relating" to the employer's activities. Whether a poll or any other conduct by an employer "relates" to the employer's activities is completely irrelevant. The cost of such conduct is only subject to disclosure pursuant to the applicable statutes if it is intended to influence legislative or administrative action and used in support of or assistance to a lobbyist or the lobbyist's activities.

In addition to the other problems with this provision, it is so over broad that it would be impossible to separate out conduct which falls within the prescriptions of the applicable statutes and conduct which falls outside of the regulatory scheme. Because the regulation attempts to regulate conduct not covered by the lobbying statutes, it is invalid and unenforceable.

(f) 2 AAC 50.545(e)(5). This subsection deals with "the costs an employer incurs communicating with the employer's lobbyist to discuss issues and strategies relating to the employer's lobbying activities, including compensation, travel expenses and per diem, and related expenses". Once again, this provision does not meet the requirements of the applicable State statutes. In order to be subject to regulation, the employer's communications with its lobbyist must be intended to "influence legislative or administrative action" and be "in support or assistance to a lobbyist or the lobbyist's activities". As you must know, most communications between employers and lobbyists fall outside of that regulatory scheme. In fact, employers retain the services of a lobbyist based on the lobbyist's ability to develop successful strategies to support the employer's goals. We submit that it would be extremely unusual for an employer to give advice to a qualified lobbyist regarding strategies, approaches or any other matter relating to the lobbyist's activities. Nevertheless, if an employer incurs costs associated with communicating with the employer's lobbyist and the communication is intended "to influence legislative or administrative action" and "in support of or assistance to the lobbyist or the lobbyist's activities" (AS 24.45.171(12), (12)(B)) the cost would be subject to regulation. However, that is not the standard used in subsection (e)(5). Additionally, AS 24.45.171(12)(B)

addresses only the activities of a lobbyist. The proposed regulation turns the statute on its head and addresses only "the employer's lobbying activities". As written, the provision is grossly over broad, inconsistent with statutory authority and unconstitutionally vague. As such, it is invalid and unenforceable.

(g) 2 AAC 50.545(e)(6). This subsection deals with "the cost an employer incurs in direct communication with a public official, including compensation, travel expenses and per diem, and related expenses". Again, this provision misses the point of the applicable statute. It relates solely to an employer's direct communication with a public official rather than costs incurred in support of the employer's "lobbyist or the lobbyist's activities". More importantly, this provision is in direct conflict with AS 24.45.171(10) which specifically defines when an employer, or the employee of an employer, is subject to regulation as a lobbyist. That statute states that a person becomes a lobbyist subject to regulation by the Commission, when he or she "receives wages or other economic consideration, . . . to communicate directly with any public official (i) for the express purpose of influencing legislative or administrative action; and (ii) during more than forty (40) hours in any thirty- (30) day period in one calendar year". Until an employer, or the employee of an employer, exceeds the forty (40) hour rule, he or she is not subject to regulation as a lobbyist. On that point, we refer specifically to AS 24.45.061(b) which requires reporting of payments from employers only when the employer retains "the services of one or more lobbyists . . . and who directly or indirectly makes payments to influence legislative or administrative action". (Emphasis added.) In other words, if an employer does not retain a lobbyist or an employee who meets the forty (40) hour rule, expenditures by the employer are not subject to disclosure or regulation. Subsection (e)(6) is an obvious effort to contravene the forty (40) hour rule which was adopted by the Legislature, and therefore it is invalid and unenforceable.

(h) 2 AAC 50.545(e)(7). This subsection deals with "the costs an employer incurs to provide a trip for a public official, including transportation, accommodations, and meals, when the trip is primarily for obtaining information on matter of legislative or administrative concern." Again, this provision is invalid for the reasons set forth above. Principally, the provision is inconsistent with the authorizing statutes because it refers specifically to "obtaining" information on matters of legislative or administrative concern. That simply is not consistent with the statutory scheme relating to the regulation of lobbying activities. As stated above, pursuant to the applicable statutes, in order to be subject to regulation, a payment must be intended "to influence legislative or administrative action" and be "in support of or assistance to a lobbyist or the lobbyist's activities". Instead, this subsection deals expressly with costs associated with "obtaining information". There is nothing in the applicable statutes which prohibits or regulates a person's efforts to obtain information, and therefore the Commission cannot presume to regulate such

activities.

Additionally, as with all of the other subsections of 2 AAC 50.545(e), subsection (7) is grossly over broad in that it attempts to regulate both conduct which could possibly be regulated under the statute and conduct which clearly falls outside of the regulatory scheme established by the statutes. Finally, the provision is unconstitutionally vague in that the determination of whether or not a violation has occurred turns solely on the subjective intent of the target of the alleged violation.

Based on the foregoing, we strongly suggest that the Commission dramatically revise the proposed amendments to 2 AAC 50.545(e). As stated, the proposed amendments are, without question, invalid and unenforceable. If the amendments are adopted in their current form, they are, as a legal matter, completely meaningless in that the Commission would not be able to compel compliance.

2. PROPOSED AMENDMENT TO 2 AAC 50.545(a)(4). The addition of this subsection to 2 AAC 50.545(a) is objectionable because it is an obvious attempt to circumvent the effect of AS 24.45.171(10) which was adopted by the Legislature during the 2003 Legislative session. That Legislation specifically states that a person who receives wages or other economic consideration (referred to as an "employee" in the draft regulation) does not qualify as a lobbyist unless he or she communicates directly with a public official "(i) for the express purpose of influencing legislative or administrative action; and (ii) during more than forty (40) hours in any thirty- (30) day period in one calendar year". That Legislation was specifically adopted in order to avoid the ambiguity contained in the preexisting statutory definition of a "lobbyist" which required that a person spend "a substantial or regular" portion of his or her activities attempting to influence legislative or administrative action. The Legislature repealed the "regular or substantial" language and adopted the forty (40) hour rule in order to establish a bright line test for when an employee must register as a lobbyist.

In addition to its obvious attempt to circumvent the forty (40) hour rule, the draft amendment also takes a step backward in that it reinjects an ambiguity into the definition of "lobbyist" by using the extraordinarily vague and legally undefinable language of "primary or substantial". Oddly, APOC previously found that the original statutory language of "substantial or regular" was ambiguous and adopted a four (4) hour rule to establish a concrete definition for "substantial or regular". 2 AAC 50. 545(f). The four (4) hour rule was superseded by AS 24.45.171(10), but by adopting the four (4) hour rule, APOC acknowledged the ambiguity of the terms "substantial or regular." Now the Commission is attempting to defeat the concrete forty (40) hour rule established by the Legislature by creating an ambiguity in the definition of "lobbyist" with the use of the terms "primary or sub: antial." Given the clarity of the statutory definition of "lobbyist", the Commission

does not have the proper authority to revise or supplement the statutory definition. See generally, Warner v. State, supra; Beran v. State, 705 P.2d 1280 (Alaska App. 1985); Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

Finally, the draft regulation illegally attempts to establish a new classification for lobbyists which is not authorized by statute. The draft regulation attempts to define the term "professional lobbyist" pursuant to AS 24.45.171(8)(A) [The statutory citation is an error. The proper citation is AS 24.45.171(10)(A)]. No where in the statute is the term "professional lobbyist" used. Instead, the statute defines the term "lobbyist." Furthermore, the lobbyist statutes generally do not refer to "professional lobbyists" and do not establish any special or unique prohibitions, reporting or other legal requirements for "professional lobbyists". All such prohibitions and requirements apply only to "lobbyists". As a result, the use of the term "professional lobbyist" in the draft regulation creates an ambiguity throughout the lobbying statutes and APOC regulations. As you know, it is the intent of regulatory process to clarify ambiguities, not to create ambiguities.

Finally, the use of the terms "primary or substantial" in the draft regulation are unconstitutionally vague and unenforceable. The language is so imprecise that it does not provide adequate notice to individuals as to when they meet the requirements of the regulation. Additionally, the term "employee" is completely undefined.

Based on the foregoing, 2 AAC 50.545(a)(4) as currently stated is invalid and unenforceable.

3. 2 AAC 50.545(c). This draft regulation is objectionable because it is inconsistent with the statutory definition of "communicate directly" and has a chilling effect on the constitutional rights of Alaska citizens.

The draft regulation attempts to define the term "communicate directly" as that term is used in AS 24.45.171(8)(B). [The citation is an error. The correct citation is AS 24.45.171(10)(B)]. However, the Legislature has already defined the term "communicate directly", and therefore the Commission has no authority to adopt a contrary definition. See A.S. 24.45.171(4). Additionally, the statutory definition makes it clear that the Legislature intended to include only conversations with legislators, legislative employees, and other public officials within the definition of "communicate directly". There is no reference to communication through testimony at public hearings. By extending the definition, the Commission is attempting to defeat not only the express terms of the statute but the intent of the Legislature as well. As you know, State statutes take precedence over State regulations and therefore the draft regulation cannot stand. See also, AS 24.45.161(a)(1)(B).

We also note that Alaska citizens have a constitutionally protected right to petition

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their elected representatives. Subjecting citizens to the reporting and other legal requirements included in the lobbying statutes and regulations simply because they testify before a legislative committee will have a significant chilling effect on the free exercise of that constitutional right. See White v. Lec., 227 F.3d 1214 (9th Cir. 2000). Furthermore, the lobbying statutes are intended to require disclosure of lobbying activities which are not otherwise discoverable by the public. Hearings before legislative committees are open public forums and therefore do not fall within the coverage of the lobbying statutes. Given the fact that hearings are part of an open and public process, and the importance of a citizen's right to petition their government, the Commission has no authority to regulate or restrict a citizen's right to testify before a legislative committee. Any such attempt violates both the express and implied intent of the statutory scheme relating to lobbying activities and the Alaska constitution.

Based on the foregoing, 2 AAC 50.545(c) as currently stated is invalid and unenforceable.

CONCLUSION

For the reasons stated above, we ask that the Commission reject the draft regulations referred to herein. The regulations are poorly drafted, exceed the Commission's regulatory authority, are inconsistent with and/or violate current State statutes, and are unconstitutional. In over 25 years of practice, I have not reviewed draft regulations which are so clearly objectionable.

Thank you for your consideration of these comments. Please provide me with a date and time when the Commission will consider the draft regulations.

Very truly yours,

EIDE, MILLER & PATE

John M. Miller

cc: Nancy Freeman (via e-mail)

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515

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Anchorage, Alaska 99501
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Christina Ellingson
Assistant Director
Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Room 128
Anchorage, AK 99508

Re: Proposed Changes to APOC Regulations

Dear Ms. Ellingson:

The Alaska State Chamber of Commerce has reviewed the proposed amendments to the APOC regulations dealing with lobbyists and lobbying activities, and we have found many areas of concern with the regulations as proposed.

It is our opinion that the proposed amendments to 2 AAC 50.545(a)(4) are an obvious attempt to circumvent the effect of AS 24.45.171(10) which was adopted by Legislature and signed into law by the Governor in 2003. That legislation was specifically adopted in order to avoid the ambiguity contained in the former definition of a "lobbyist" which required that a person spend "a substantial or regular" portion of his or her activities attempting to influence legislative or administrative action. Last year, in acknowledgement of the ambiguity of this language, APOC adopted a four-hour rule. The Commission is now attempting to defeat the concrete forty-hour rule established by the Legislature by creating further ambiguity with the use of the terms "primary or substantial". The Commission does not have the authority to revise or supplement the statutory definition.

Additionally, the draft regulation illegally attempts to establish a new classification for a lobbyist that is not authorized by statute. The draft regulation attempts to define the term "professional lobbyist" pursuant to AS 24.45.171(8)(A) [The correct statutory citation AS 24.45.171(10)(A)]. Nowhere in the statute is the term "professional lobbyist" used. Instead, the statute defines the term "lobbyist." Therefore, the use of the term in the draft regulation creates another ambiguity throughout the lobbying statutes and APOC regulations.

Draft regulation 2 AAC 50.545(c) is objectionable because it is inconsistent with the statutory definition of "communicate directly" and has a chilling effect on the constitutional rights of Alaska citizens. The draft regulation attempts to define the term "communicate directly" as that term is used in AS 24.45.171(8)(B). [The citation is in error. The correct citation is AS 24.45.171(10)(B)]. However, the Legislature has already defined the term "communicate directly", and therefore the Commission has no authority to adopt a contrary definition.

Furthermore, the statutory definition makes it clear that the Legislature intended to include only conversations with legislators, legislative employees, and other public officials within the definition of "communicate directly". There is no reference to communication through testimony at public

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hearings. By extending the definition, APOC is attempting to defeat not only the express terms of the statute but the intent of the Legislature as well.

We also believe 2 AAC 50.545(c) is unconstitutional. Alaska citizens have a constitutionally protected right to petition their elected representatives. Subjecting citizens to the reporting and other legal requirements included in the lobbying statutes and regulations simply because they testify before a legislative committee will have a chilling effect on the free exercise of that constitutional right. Furthermore, hearings before legislative committees are open public forums and therefore do not fall within the coverage of the lobbying statutes. Given the fact that hearings are part of an open and public process, and the importance of a citizen's right to petition their government, the Commission has no authority to regulate or restrict a citizen's right to testify before a legislative committee. Any such attempt violates both the express and implied intent of the statutory scheme relating to lobbying activities and the Alaska constitution.

Proposed amendments to 2 AAC 50.545(e) are inconsistent with applicable State statutes and are unconstitutional. We believe, therefore, that they are invalid and unenforceable.

Subsections (2) through (7) of 2 AAC 50.545(e) reference items which APOC apparently intends to include within the definition of "Payment in support of or assistance to a lobbyist or the lobbyist's activities". However, that language from AS 24.45.171(12)(B) cannot be read independently from AS 24.45.171(12). That section deals with "Payment to influence legislative or administration action", and subsection (12)(B) merely sets forth a category of payments that fall within the broader definition. In order to comply with the statute, items referenced in the draft amendments to the regulation must meet both criteria set forth in the statute. All of the items referenced in the regulation must (1) constitute a payment to influence legislative or administrative action and (2) constitute a payment in support of or assistance to a lobbyist or the lobbyist's activities. A payment in support of or assistance to a lobbyist or his activities is not subject to regulation by APOC, unless the payment also is intended to influence legislative or administrative action.

Subsection 2 AAC 50.545(e)(2) is invalid because, as stated above, it does not meet the statutory requirements of AS 24.45.171(12). The draft amendment does not make it clear that the "costs of social events such as receptions, dinners, and luncheons" must be part of an effort to "influence legislative or administrative action". This provision is unconstitutionally vague as it does not define whose attendance at a social event is subject to the regulation, does not define whether or not a legislator, legislative staffer, or other public official must be present at the social event in order to fall within the regulation and does not specify whether or not communication between the unidentified person who is subject to the regulation and a public official is required before the regulation applies. All Alaskans enjoy the constitutionally protected rights of free speech and free association. Furthermore, the language is so vague that it does not give adequate notice of the conduct that is subject to regulation and allows for the possibility of arbitrary enforcement, which is prohibited under Alaska law.

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Finally, this subsection is invalid because its application is dependent upon the subjective intent of the unidentified person attending the social event must be based on the subjective intent of the individual the Commission is charging with a violation. Basing the determination of whether or not a violation has occurred on the subjective intent of the accused is impermissible under both State and Federal law.

Subsection 2 AAC 50.545(e)(3) deals with "the cost of media to communicate the employer's position on issues relating to the employer's lobbying activities". This provision is inconsistent with the applicable State statutes and is unconstitutionally vague. In addition, it violates the constitutionally protected right of free speech. The stated purpose of the State lobbying statutes is to require disclosure of the identity of persons engaged in an effort to influence legislative or administrative action and the disclosure of payments to such persons in furtherance of that effort. Under the applicable lobbying statutes, there is no prohibition or regulation of efforts to inform the public on any issues, or to affect public opinion. Any effort to prohibit or regulate such activities under the authority of the lobbying statutes constitutes a direct violation of the free speech rights guaranteed in the State and Federal constitutions.

Furthermore, as with subsection (e)(2), this provision is unconstitutionally vague because its enforcement depends entirely on the subjective intent of the party accused of a violation. Only the person incurring the expense of a communication to the public through the media knows whether the communication is being used to inform the public or affect public opinion, or to influence legislative or administrative action. This is especially true given the fact that media communication does not fall within the statutory definition of "communicating directly" with a legislator, legislative employee, or other public official.

Subsection 2 AAC 50.545(e)(4) deals with "the cost of conducting polls or surveys on issues relating to the employer's lobbying activities". As state above, pursuant to the applicable statutes, the only standard which can be applied when drafting regulations is the standard specifically set forth in AS 24.45.171(12) and (12)(B). That is, in order to be subject to regulation, the cost incurred by an employer must be directed to "influence legislative or administrative action" and must be "in support of or assistance to a lobbyist or the lobbyist's activities". Conducting polls or any other activity of an employer that is not performed in support of or assistance to a lobbyist or a lobbyist's activities are not subject to regulation by the Commission. As a result, this subsection fails for two reasons. First, it applies to the "employer's lobbying activities" rather than the activities of "a lobbyist or the lobbyist's activities". Independent conduct by an employer is not subject to regulation under AS 24.45.171(12)(B). Second, this subsection applies to polls or surveys on issues "relating" to the employer's activities. Whether a poll or any other conduct by an employer "relates" to the employer's activities is completely irrelevant. The cost of such conduct is only subject to disclosure pursuant to the applicable statutes if it is intended to influence legislative or administrative action and used in support of or assistance to a lobbyist or the lobbyist's activities. Because the regulation attempts to regulate conduct not covered by the lobbying statutes, it is invalid and unenforceable.

Subsection 2 AAC 50.545(e)(5) deals with "the costs an employer incurs communicating with the employer's lobbyist to discuss issues and strategies relating to the employer's lobbying activities, including compensation, travel expenses and per diem, and related expenses". Once again, this provision does not meet the requirements of the applicable State statutes. In order to be subject to regulation, the employer's communications with its lobbyist must be intended to "influence legislative or administrative action" and be "in support or assistance to a lobbyist or the lobbyist's activities". The proposed regulation addresses only "the employer's lobbying activities". As written, the provision is grossly over broad, inconsistent with statutory authority and unconstitutionally vague.

Subsection 2 AAC 50.545(e)(6) deals with "the cost an employer incurs in direct communication with a public official, including compensation, travel expenses and per diem, and related expenses". This provision relates solely to an employer's direct communication with a public official rather than costs incurred in support of the employer's "lobbyist or the lobbyist's activities". More importantly, this provision is in direct conflict with AS 24.45.171(10), which specifically defines when an employer, or the employee of an employer, is subject to regulation as a lobbyist. That statute states that a person becomes a lobbyist subject to regulation by the Commission, when he or she "receives wages or other economic consideration, . . . to communicate directly with any public official (i) for the express purpose of influencing legislative or administrative action; and (ii) during more than forty hours in any thirty-day period in one calendar year". Until an employer, or the employee of an employer, exceeds the forty-hour rule, he or she is not subject to regulation as a lobbyist.

Also, if an employer does not retain a lobbyist or an employee who meets the forty-hour rule, expenditures by the employer are not subject to disclosure or regulation. Subsection (e)(6) is an obvious effort to contravene the forty-hour rule adopted by the Legislature, and therefore it is invalid and unenforceable.

Subsection 2 AAC 50.545(e)(7) deals with "the costs an employer incurs to provide a trip for a public official, including transportation, accommodations, and meals, when the trip is primarily for obtaining information on matter of legislative or administrative concern." This provision is inconsistent with the authorizing statutes because it refers specifically to "obtaining" information on matters of legislative or administrative concern. This is not consistent with the statutory scheme relating to the regulation of lobbying activities. Pursuant to the applicable statutes, in order to be subject to regulation, a payment must be intended "to influence legislative or administrative action" and be "in support of or assistance to a lobbyist or the lobbyist's activities". Instead, this subsection deals expressly with costs associated with "obtaining information". There is nothing in the applicable statutes that prohibits or regulates a person's efforts to obtain information, and therefore such activities are not subject to APOC regulation.

Additionally, the provision is unconstitutionally vague in that the determination of whether or not a violation has occurred turns solely on the subjective intent of the target of the alleged violation.

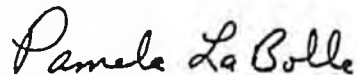
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Based on the foregoing, it is our opinion that the Commission should dramatically revise the proposed amendments to the regulations referred to herein. The regulations are poorly drafted, exceed the Commission's regulatory authority, are inconsistent with and/or violate current State statutes, and are unconstitutional.

Additionally, we request that the Commission extend the comment period on the proposed regulations in order that adequate time be allowed for others in the business community to review and submit comments.

Thank you for your consideration of these comments.

Sincerely,



Pamela La Bolle
President

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALASKA PUBLIC OFFICES COMMISSION

The Alaska Public Offices Commission proposes to adopt regulation changes in Title 2 of the Alaska Administrative Code, dealing with changes to the campaign finance law, AS 15.13, lobbying law, AS 24.45, public Official financial disclosure law, AS 39.50, and legislative financial disclosure law, AS 24.60.

Changes are proposed to 2 AAC 50.010 - 2 AAC 50.920, including the following:

1. Sections 010 and 025 will be changed to increase the threshold for reporting income to the commission from \$1,000 to \$5,000.
2. Sections 075 and 200 will be changed to replace the term "spousal equivalent" with "domestic partner."
3. Sections 100 and 102 will add to the list of exemptions from reporting sources of income by public officials and candidates to conform to the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996.
4. Sections 250, 258, 266, 270, 298, 300, 317, 320, 321, 324, 332, 348, 368, 384, 394, and 399 will be changed and 291 will be added to add "nongroup entities" to the organizations that have duties under the campaign finance law in AS 15.13.
5. Sections 266, 320, 321, 328 will be changed to implement the changes to the reporting requirements in AS 15.13.040 and to make the requirements easier to understand.
6. Sections 254 and 368 will be changed to implement the increase of the campaign contribution limits.
7. Section 286 will be changed so that the reporting requirements reflect changes to the reporting requirements and to the increase in the campaign contribution limits.
8. Section 306 will be changed to make identifying a campaign chairperson in political communications voluntary.
9. Sections 310 will be changed and 329 will be added to require electronic filing of campaign finance reports and to set out requirements for reporting contributions by dues or payroll deduction.
10. Section 336 will be changed to simplify reporting requirements and make them easier to understand.
11. Sections 450, 460, and 470 will be changed and 452, 454, 456, 458, 476 will be added to implement the changes to the complaint, investigation, and hearing requirements in AS 15.13.380.
12. Section 505 will be changed to require electronic filing of lobbyist's reports when the commission converts to electronic filing.
13. Section 508 will be changed and 504 will be added to implement the changes to the definition of lobbyist in AS 24.45.171.
14. Section 507 will change penalty provisions for late filing by lobbyists to make them easier to follow and to make housekeeping changes.
15. Sections 542 and 545 will change the reporting requirements for lobbyists to implement changes to AS 24.45.121 and 24.45.171.
16. Sections 705 and 725 will increase the threshold for reporting income for legislative filers from \$1,000 to \$5,000.
17. Section 775 will add to the list of exemptions from reporting sources of income by legislative filers to conform to the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996.
18. Section 805 will change the time when the commission reports to the lieutenant governor late filing of financial disclosure reports by legislators.
19. Section 890 will replace the term "spousal equivalent" with "domestic partner."

20. Section 905 will be changed to implement AS 15.13.374, authorizing advisory opinions.
21. Section 929 makes housekeeping changes to the definitions of terms used in 2 AAC 50.
22. Section 364, which defines constitutionally qualified nonprofit corporations, will be repealed because the concept is now covered in AS 15.13.400.
23. Section 513, which defines administrative lobbying for purposes of enforcement, will be repealed because the concept is now covered in AS 24.45.171.
24. Section 530, which requires reporting on an accrual basis by lobbyists, will be repealed to simplify reporting by lobbyists.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alaska Public Offices Commission, Christina Ellingson at 2221 E. Northern Lights Blvd, Rm 128 Anchorage, AK 99508. In addition, you may e-mail your comments to Nancy_Freeman@admin.state.ak.us. You may fax comments to 907-276-7018. The comments must be received no later than 5 p.m. on March 2, 2004.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Cynthia Lind at 276-4176 or 1-800-478-4176 no later than March 2, 2004, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Cynthia Lind at 2221 E. Northern Lights Blvd., Rm 128, Anchorage AK. 99508 or by telephone at 907-276-4176 or 800-478-4176 or go to our web site at www.state.ak.us/apoc.

After the public comment period ends, the Alaska Public Offices Commission will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED. ALL WRITTEN COMMENTS RECEIVED ARE PUBLIC RECORDS AND ARE SUBJECT TO PUBLIC INSPECTION.**

Statutory Authority: AS 15.13.010; AS 15.13.030; 24.45.021; 24.60.220; 39.50.050

Statutes Being Implemented, Interpreted, or Made Specific: AS 15.13.030, 15.13.040, 15.13.070, 15.13.072, 15.13.074, 15.13.110, 15.13.116, 375, 15.13.380, 15.13.400; AS 24.45.041, 24.45.051, 24.45.061, 24.45.116, 24.45.121, 24.45.171; AS 24.60.050, 24.60.070, 24.60.080, 24.60.090, 24.60.200, 24.60.990; AS 39.50.030, 39.50.050, 39.50.090, 39.50.200

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: _____

Brooke Miles, Executive Director

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Public Offices Commission
2. General subjects of regulations: Public Official Financial Disclosure; Campaign Disclosure; Lobbying Law; Legislative Financial Disclosure
3. Citation of regulation (may be grouped): 2 AAC 50.010 – .200; 2 AAC 50.250 –.399; 2 AAC 50.450 476; 2 AAC 50.504 – 545; 2 AAC 50.705 – 890; 2 AAC 50.905 - 920
4. Reason for the proposed action: compliance with new or changed state statutes
5. BRU/component affected: 70
6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 04	Subsequent Years
Cost	\$ 0	\$ 0
Federal receipts	\$ 0	\$ 0
General fund match	\$ 0	\$ 0
General fund	\$ 0	\$ 0
General fund/ program receipts	\$ 0	\$ 0
General fund/ mental health	\$ 0	\$ 0
Other funds (specify)	\$ 0	\$ 0

7. The name of the contact person for the regulations:

Name Christina Ellingson
Title Assistant Director
Address 2221 E. Northern Lights Blvd. Room 128
Anchorage, AK 99508
Telephone (907) 276-4176
E-mail address Chris_Ellingson@admin.state.ak.us

8. The origin of the proposed action: Staff of state agency

9. Date: _____

Prepared by: _____

Name: Christina Ellingson
Title: Assistant Director
Telephone: (907) 276-4176

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STATE OF ALASKA**

(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101

*130 Seward Street, Suite 400
Juneau, Alaska 99801-2105*

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

Mary Pagenkopf

Senate Judiciary Committee, 3/26/03, 1:34 p.m.