

HB

489

MEMORANDUM

State of Alaska
ALASKA PUBLIC OFFICES COMMISSION
DEPARTMENT OF ADMINISTRATION

TO: Sue Wright

DATE: March 7, 2006

FROM: Tammy Kempton

TEL. NO: 465-4865

SUBJECT: Gifts from Lobbyists

Thank you for asking for my opinion on the issue of lobbyists giving donations of money or items to auctions and other events, the proceeds of which are donated to 501(c)(3) charities.

Joyce Anderson, staff of the Legislative Ethics Committee, has already shared with you the Committee's Advisory Opinion 94-06, solicitation for donations on behalf of charitable organizations. In that opinion, the Committee found that solicitations on behalf of charities are not solicitation of gifts. The Committee stated:

Therefore, technically, you may solicit a charitable contribution from a lobbyist during a legislative session. The committee notes that the potential for the appearance of impropriety is high when legislators and legislative employees request favors of lobbyists, even on behalf of worthwhile organizations. The committee therefore urges you to use caution in making a decision about whether to approach a lobbyist, especially during a legislative session.

The Ethics Committee opinion was based on AS 24.60, which regulates the conduct of legislators and legislative employees. However, the conduct of lobbyists is regulated by AS 24.45. The two chapters are not completely in sync. AS 24.60.080(g) allows legislators and legislative staff to solicit, accept, or receive a gift on behalf of a recognized, nonpolitical charitable organization. **There is no corresponding allowance in the lobbying statutes.** AS 24.45.121(a)(9) prohibits a lobbyist from offering, soliciting, initiating, facilitating or providing gifts to or on behalf of a legislator or legislative employee during the legislative session. The exceptions to the prohibition are food and beverage for immediate consumption and tickets to a charity event. There are no exemptions in the lobbying law, either under the prohibition section or the definition of gifts, that allow a lobbyist to give the types of donations requested for the Fahrenkamp

Classic in the February 1, 2006 letter from Senator Wilken and Representative Chenault.

Additionally, a lobbyist is not allowed to "solicit" or "facilitate" gifts. This means that a lobbyist cannot solicit his or her employer or client to provide gifts / donations such as those requested for the Classic and, should the employer or client decide to provide donations / gifts, the lobbyist cannot deliver them. Such delivery would be facilitating.

There are no prohibitions in the lobbying law that would prevent an employer or client of a lobbyist from providing any or all of the types of donations requested in the Fahrenkamp Classic letter. If an employer or client of a lobbyist wishes to donate money or items to the Fahrenkamp Classic, a lobbyist is prohibited from delivering the donation, but an employee not registered as a lobbyist could do so.

Some of the confusion on this issue has arisen because of the 2003 amendment to AS 24.45.121(a)(9). That amendment allows a lobbyist to give "tickets to a charity event described in AS 24.60.080(c)(10)." The amendment does not allow for the giving of other items, such as those requested for the Classic.

Finally, because of the disparity in the two laws, a legislator or legislative employee can ask a lobbyist for donations to a charity, but a lobbyist is not allowed to give such donations. This dichotomy puts a lobbyist in the position of having to refuse to donate to a charity when the opportunity to donate is structured like the Fahrenkamp Classic.

c: Brooke Miles, Executive Director, APOC
Mike Tibbles, Deputy Commissioner, DOA

Alaska State Legislature

**Select Committee on
Legislative Ethics**

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March 8, 1994

Advisory Opinion 94-06

RE: Sale of various items and solicitation for donations on behalf of charitable organizations.

You are a legislative employee covered by the legislative ethics code. You have requested an advisory opinion on whether you may engage in various fundraising activities on behalf of charitable organizations.

Statement of Facts

The facts and circumstances that you have related, and on which the committee relies in answering your questions, are as follows:

You volunteer for a variety of nonpolitical, nonprofit organizations, one of which has asked you to assist in its fundraising efforts. You ask whether the legislative ethics code prohibits any of the following activities:

1. Selling raffle tickets on behalf of the organization.
2. Selling tickets to a fundraising event, when a portion of the ticket price would go towards covering costs and a portion to support the organization.
3. Selling items for more than the wholesale cost, with profits from the sale going to the organization.
4. Soliciting a contribution or pledge to contribute to the organization.

You also ask whether, during a legislative session, you may ask lobbyists to contribute by each of the ways listed above.

The committee assumes, in answering your questions, that you propose to engage in your fund raising activities outside of working hours and that you do not intend to use public facilities in this activity.

Discussion

1. **Sale of raffle tickets, tickets to an event, and various items.**

The ethics code does not forbid legislators and legislative employees from engaging in commercial activities, including the sale of items of varying sorts.¹ Accordingly, you may generally act as a seller or sales clerk. However, you are not proposing to find outside employment. The sales you are considering will not result in a financial benefit for you but, you hope, for the charitable organization sponsoring the effort. Another aspect that may distinguish the sales you are considering engaging in from other commercial activity is that the price may be higher than a commercial seller would be able to ask: the buyer may be willing to pay an extra amount to support the charitable activities of the organization sponsoring the sale.

While the ethics code permits you to engage in selling raffle tickets, tickets to events, and other items as a fundraising effort for a charitable organization, there are some restrictions that apply to your activities. To begin with, you have stated that none of the organizations for which you propose to raise money could be considered a political party or other partisan political organization. The committee is also assuming that the organizations for which you will be raising money are bona fide charitable organizations and that you will not receive any compensation for your activities. Therefore, this opinion does not address issues that arise concerning political fundraising or outside employment.

Under AS 24.60.030(a)(2), legislators and legislative employees may not, while engaged in fundraising efforts for a charitable organization,

use public funds, facilities, equipment, services, or another government asset or resource for a nongovernmental purpose or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and the cost or value related to the use is nominal;

(B) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nongovernmental purposes; or

(C) telephone use that does not carry a special charge;

Under AS 24.60.030(e), a legislator is prohibited from stating or implying that the legislator will take or withhold legislative, administrative or political action or perform a constituent service because of a person's decision to make a donation or to refrain from

¹ In earlier advisory opinions the committee has frequently recognized that Alaska has a citizen legislature and that legislators and at least some legislative staff will have to have employment in addition to their legislative commitment in order to survive economically. In AS 24.60.085, the code addresses the outside employment of legislators and legislative employees by forbidding them from seeking or accepting compensation for personal services that involves payments that are not commensurate with the services rendered.

making a donation.² While this subsection does not directly apply to you, the committee believes that the same result is reached under AS 24.60.030(a)(2), which is cited above. Under paragraph (a)(2), you are prohibited from using your legislative office (which the committee considers to be a government asset or resource) for the purpose of influencing a person's decision about making a charitable contribution (which the committee believes would be using your office for a nongovernmental purpose, as well as for a private benefit, for the charitable organization).

The sale probably will not create a close economic association between you and the purchaser, reportable under AS 24.60.070. Subsection (c) of that section defines a close economic association as "a financial relationship that exists between a person covered by this chapter and some other person or entity." The committee expects that the financial relationship will be between the charitable organization and the purchaser, not between you and the purchaser. However, even if you had a financial relationship with a purchaser, you are required to report close economic associations only if the association involves "a substantial financial matter" and only if you form it with a supervisor, a legislator, a public official required to form a financial disclosure statement, or a lobbyist. AS 24.60.070(a). It seems unlikely that typical fund raising sales for charitable organizations would meet the "substantial financial matter" requirement.

2. Solicitation of gifts for a charitable organization.

To the extent that the raffle tickets, event tickets, and items for sale are priced substantially above their commercial value, your efforts to sell them raise the question of whether they could be considered to result in a gift to the charitable organization. You also ask whether you may directly solicit donations of money or other items on behalf of a charitable organization.

² AS 24.60.030(e) states

(e) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

(2) state or imply that the legislator will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value; or

(3) unless required by the Uniform Rules of the Alaska State Legislature, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of another person with whom the legislator is negotiating for employment.

(Emphasis added.)

The legislative ethics code addresses gifts in AS 24.60.080. The basic prohibition is set out in subsection (a), which states:

(a) A legislator or legislative employee may not solicit, accept, or receive, directly or indirectly, a gift worth \$100 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$100 that in a calendar year aggregate to \$100 or more in value, and may not solicit, accept, or receive during a legislative session a gift with any monetary value from a lobbyist or a person acting on behalf of a lobbyist.

(Emphasis added.) This subsection prohibits a legislator or legislative employee from soliciting a gift worth \$100 or more at any time and from soliciting a gift in any amount from a lobbyist during a legislative session. To answer the question you raise, the committee must determine whether fundraising activities on behalf of a charitable organization constitute prohibited solicitation of a gift on behalf of the organization. The prohibition against solicitation cited above does not depend, on its face, on the identity of the person whom the gift is expected to benefit. The section does not limit its prohibition to solicitations of gifts that will benefit the legislator or legislative employee. However, the committee holds that the identity of the recipient of a gift does make a difference in whether the solicitation is prohibited.

In other sections of the code the ethics code treats contributions to charitable organizations as meriting separate treatment. The definition of "benefit" or "thing of value" as AS 24.60.990(a)(2) specifically excludes "contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction."³ This definition does not apply to the prohibition against soliciting, accepting, or receiving gifts under AS 24.60.080(a) and therefore the committee cannot rely directly on it in answering your question. However, the committee believes that the ethics code should be interpreted to permit legislators and legislative employees to participate in the communities in which they live. Accordingly, the committee finds that contributions to charitable organizations should be excepted from the prohibition against solicitation of gifts, at least where the organization on whose behalf the solicitation is made is a recognized charitable organization. To satisfy that requirement, the organization's status as exempt from taxation under 26 U.S.C. 501(c)(3) is relevant as is its history in the community. You have not provided specific information about the organizations on whose behalf you are considering acting and therefore the committee cannot specifically address whether they would satisfy this

³ This definition applies to the use of public funds (AS 24.60.030(a)(2)), solicitation or receipt of compensation in addition to official compensation (AS 24.60.030(a)(1)), requiring a legislative employee to perform personal services (AS 24.60.030(a)(4), retaliation for making a decision to contribute or not to contribute (AS 24.60.030(e) cited above), and restrictions on earned income (AS 24.60.085).

standard. If you have additional questions in this regard you may, of course, request additional advice from the committee.

3. Solicitation of sales to and contributions from lobbyists.

If your fundraising activities result only in a commercial transaction, the ethics code does not prohibit you from soliciting lobbyists. As noted above, if you, in place of or in addition to the organization, enter into a close economic association with a lobbyist, you will have an obligation to disclose the association if it involves a substantial financial matter. If your activities result in the solicitation of a gift, AS 24.60.080(a) prohibits you from soliciting, accepting, or receiving a gift with any monetary value from a lobbyist during the legislative session. However, the committee has determined that solicitations on behalf of charitable organizations should not be considered solicitation of gifts under that statute. Therefore, technically, you may solicit a charitable contribution from a lobbyist during a legislative session. The committee notes that the potential for the appearance of impropriety is high when legislators and legislative employees request favors of lobbyists, even on behalf of worthwhile organizations. The committee therefore urges you to use caution in making a decision about whether to approach a lobbyist, especially during a legislative session.

Conclusion

For the reasons stated above, the committee finds that you may engage in fundraising activities on behalf of nonpolitical charitable organizations, including selling raffle tickets, tickets to events, and various items and requesting donations on behalf of the organizations. The committee urges you to use caution in deciding whether to approach lobbyists in your fund raising efforts.

Adopted by the Select Committee on Legislative Ethics on March 8, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula
Edith Vorderstrasse

Members absent were:

Representative Jerry Mackie
Senator Drue Pearce

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