# HB

# 368

# HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

**COMMITTEE MEMBERS**

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

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Room 104
(907) 465-4931

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Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

## MEMORANDUM

Date: March 27, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for CSHB 368(JUD) 25-LS1326\V

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Attached please find the following documents, which represent the referral file for HB368:

- Sponsor Statement
- CSHB 368(JUD) 25-LS1326\V
- Adopted amendment #1 with legal opinion
- Withdrawn amendment #2
- Fiscal Note
  - ADM – 0
- Sectional Analysis
- HB 368 (25-LS1326\M)
- Relevant Statutes and Case Law
- Ethics Committee back-up
- HJUD Report

# Alaska State Legislature


**Chairman**
State Affairs Committee

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Economic Development, Trade & Tourism Committee

**Member**
Judiciary Committee
Joint Armed Services Committee

**Finance Subcommittees**
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

*A Communication from*
**REPRESENTATIVE BOB LYNN**
**District 31 Anchorage**

**E-Mail:** Representative_Bob_Lynn@legis.state.ak.us
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

**Session:**
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

**Interim:**
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207


## HB 368 Ethics: Legislative & Gov./Lt. Gov.

Sponsor Statement for Version 25-LS1326\M

No longer can a lobbyist blame the Legislature for not being allowed to buy their spouse a diamond ring!

Seriously, House Bill 368 makes common-sense changes to the state's ethics laws concerning gifts to and from legislators, legislative employees and lobbyists who are immediate family members.

This bill allows a legislator or legislative employee to accept a gift worth $250 or more in valu from anyone in a calendar year; and a gift of any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist if:

> "the gift is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family."

Other proposed changes within HB 368 include:

- Modifying the restrictions on the location where candidates for governor and lieutenant governor can raise campaign funds when the legislature is in session;
- Modifying the restrictions on the location where legislators and legislative employees who are candidates for the state legislative can raise campaign funds when the legislature is in session;
- Establishing the fine for late disclosure filings that are "willful" at $100 for each day to a maximum of $2,500;
- Allowing the Select Committee on Legislative Ethics to publish official summaries of decisions and advisory opinions on an annual basis;

HB 368 enhances state campaign and ethics laws with fair and sensible code revisions based on recommendations from the Select Committee on Legislative Ethics and the Alaska Public Offices Commission.

###

**Contact: Mike Sica, 465-4965**

**Revised: 02/21/08**

# ALASKA STATE LEGISLATURE
# HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701

**Committee Members:**
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

## Fax

To: Dan Wayne
Legislative Legal

Fax #: 2029 Number of pages including cover: 2

From: Jane Pierson

Date: March 2008

Re: Final for HJUD on HB 368 (25-LS1326\O)

Please go final on the above-referenced bill. There is one attached amendment to be included (25-LS1326\O.1.

Should you have any questions concerning this matter, please do not hesitate to contact me.

PASSES

25-LS1326\O.1
Wayne
3/26/08

# AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSHB 368(JUD), Draft Version "O"

Page 1, lines 3 - 4:

Delete "**who are members of their immediate families**"

Page 2, line 30, following "(B)":

Insert "**a contribution to a charity event from any person at any time, and**"

Page 3, line 7:

Delete "**or**"

Page 3, line 10, following "**family**":

Insert "**;**

**(D) a gift delivered on the premises of a state facility and accepted on behalf of a recognized nonpolitical charitable organization; or**

**(E) a compassionate gift under AS 24.60.075**"

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM** March 26, 2008

**SUBJECT:** What does "recognized nonpolitical charitable organization" mean? (Work Order No. 25-LS1326-O.1; CSHB 368(JUD))

**TO:** Representative Jay Ramras
Attn: Jane

**FROM:** Dan Wayne
Legislative Counsel

Enclosed is the draft amendment to CSHB 368(JUD) that you requested. I note two things for your consideration.

First, with your permission I spoke with Joyce Anderson and she and I agreed it made sense to include in the amendment a reference to the charity event ticket exception in AS 24.60.080(c)(10), which says a legislator or legislative employee can accept tickets to certain charity events from "any person." I have done so.

Second, you have asked that the amendment contain language similar to language from AS 24.60.030(a)(2)(I), an exception to the prohibition on the use of government assets for a non legislative purpose or for a partisan political purpose. AS 24.60.030(a)(2)(I) says that AS 24.60.030(a)(2) does not prohibit the following:

> (I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

I have included the language in the amendment as requested, reworded slightly to clarify the meaning of "on behalf," but please note that there is no legal definition in the Legislative Ethics Act for "recognized, nonpolitical charitable organization."

If I may be of further assistance, please advise.

DCW:med
08-224.med

Enclosure

TO CS/HB 318(JUD) #2 By Lawerence

Conceptual Amendment W/D

p 5 l 3 Add the following sentence:

"In addition to any fine that may be ~~imposed~~ imposed, if the committee finds that the late filing was willful, it may issue a private or public reprimand."

# FISCAL NOTE

**STATE OF ALASKA**
**2008 LEGISLATIVE SESSION**

Fiscal Note Number:
Bill Version: HB 366
() Publish Date:

Identifier (file name): HB368-DOA-APOC-2-11-08
Dept. Affected: Administration
Title "An act modifying the limitation on political fundraising..."
RDU AK Public Offices Commission
Component AK Public Offices Commission
Sponsor House State Affairs Committee
Requester House State Affairs Committee
Component Number 70

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| | Appropriation Required | Information | | | | | |
|---|---|---|---|---|---|---|---|
| **OPERATING EXPENDITURES** | **FY 2009** | **FY 2009** | **FY 2010** | **FY 2011** | **FY 2012** | **FY 2013** | **FY 2014** |
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Equipment | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Land & Structures | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants & Claims | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Miscellaneous | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| **TOTAL OPERATING** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** |
| **CAPITAL EXPENDITURES** | | | | | | | |
| **CHANGE IN REVENUES ( )** | | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1037 GF/Mental Health | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other Interagency Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| **TOTAL** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** | **0.0** |

**Estimate of any current year (FY2008) cost:** 0.0

**POSITIONS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Full-time | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Part-time | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Temporary | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**ANALYSIS:** *(Attach a separate page if necessary)*

This bill amends the campaign disclosure law by prohibiting the solicitation and acceptance of campaign contributions for candidates for governor and lieutenant governor on a day when either house of the legislature is in session in the municipality where the session is convened. It will not result in fiscal impact for the Alaska Public Offices Commission.

Prepared by: Brooke Miles
Phone 907-334-1726
Division Alaska Public Offices Commission
Date/Time 2/19/08 12.02 PM
Approved by: Rachael Petro, Deputy Commissioner
Date 2/19/2008
Department of Administration

# Alaska State Legislature


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## HB 368 Ethics: Legislative & Gov./Lt. Gov.

Sectional Analysis for Version 25-LS1326\L

**Sec. 1.** Amends AS 15.13.072(g) to modify the location where a candidate for governor or lieutenant governor may not raise and spend campaign funds, changing it from the "capital city" to the "municipality in which the session is convened" when either house of the legislature is in regular or special session.

**Sec. 2.** Amends AS 24.60.031(a) to modify the location where a legislator or legislative employee who is a candidate for the state legislature may not raise and spend campaign funds, changing it from the "capital city" to the "municipality in which the session is convened" when either house of the legislature is in regular or special session.

**Sec. 3.** Amends AS 24.60.080(a) to allow a legislator or legislative employee to accept a gift worth $250 or more in value from anyone in a calendar year; or accept a gift of any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist if:

> "the gift is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family."

**Sec. 4 and 5.** Amends AS 24.60.080 to restructure language for the Legislative Ethics Act as it relates to legislative volunteers and trainees.

**Sec. 6.** Amends AS 24.60.150(a) to allow the publishing of official summaries of decisions and advisory opinions by the Select Committee on Legislative Ethics on an annual basis versus a semi-annual basis.

**Sec. 7.** Amends AS 24.60.260(c) to establish the fine that may be imposed for a "willful" late filing to $100 for each day to a maximum of $2,500. The fine remains the same at $2 for each day to a maximum of $100 for each late filing. If the filing was "inadvertent," the maximum fine is still $25.

###

**Contact: Mike Sica, 465-4365** **Revised: 03/19/08**

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## Changes from original Version M to Version L
## HB 368: Ethics: Legislative & Gov./Lt. Gov.

Section 7, Page 5, Line 11: changed the word "shall" to "may" relating to the imposition of fines for willful late public filings.

Section 8: Deleted the section that created a definition for the term, "partisan political activity."


**Contact: Mike Sica, 465-4965**


**Revised: March 19, 2008**

# Relevant Statutes for HB 368

Sec. 24.60.990. Definitions.

(a) In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080 (a)(2)(B) or (c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) 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; or

(D) grants under AS 37.05.316 to named recipients;

(3) "committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee;

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

(5) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage;

(6) "immediate family" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

(7) "income" means an asset that a person has received or expects to receive, regardless of whether it is earned or unearned; inheritances and other gifts are not income;

(8) "knowingly" has the meaning given in AS 11.81.900 ;

(9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171 , but does not include a volunteer lobbyist described in AS 24.45.161 (a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041 :

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of $10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct.

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under AS 24.60.080 ;

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

reject

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct.

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under AS 24 60.080 ;

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

LEXSEE 82 F.3D 989

Caution
As of: Mar 19, 2008

**DOUG TEPER, LOUIS FEINGOLD, ALAN ULMAN, Plaintiffs-Appellees, v. ZELL MILLER, in his official capacity as Governor of the State of Georgia, MICHAEL BOWERS, in his official capacity as Attorney General of the State of Georgia, MAX CLELAND, in his official capacity as Secretary of State of the State of Georgia, STEVEN SCHEER, STEVEN WHITE, MICHAEL D. MCRAE, BRIAN FOSTER, in their official capacities as Members of the Georgia State Ethics Commission, Defendants-Appellants.**

**No. 96-8147**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

***82 F.3d 989; 1996 U.S. App. LEXIS 9280; 9 Fla. L. Weekly Fed. C 1082***

**April 24, 1996, Decided**

**SUBSEQUENT HISTORY:** [**1] As Amended May 14, 1996.

**PRIOR HISTORY:** Appeal from the United States District Court for the Northern District of Georgia. D.C. Docket No. 1:96-CV-9-WBH. DISTRICT JUDGE: Willis B. Hunt, Jr.

**DISPOSITION:** AFFIRMED.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiffs, a General Assembly member and potential contributors, filed an action under *2 U.S.C.S. § 453* to enjoin the enforcement of a state law that prohibited General Assembly members from accepting contributions for a federal election campaign while the General Assembly was in session. Defendant state officials appealed the order of the United States District Court for the Northern District of Georgia, which granted a preliminary injunction.

**OVERVIEW:** Plaintiffs, a state General Assembly member and potential contributors, filed an action to enjoin the enforcement of *Ga. Code Ann. § 21-5-35*, which prohibited General Assembly members from accepting contributions for a campaign for federal office while the General Assembly was in session. The district court granted a preliminary injunction, and defendant state officials appealed. The court affirmed the district court's grant of the preliminary injunction, holding that plaintiffs had a substantial likelihood of success on the merits of the action. The court held that the state election law, as applied to candidates for federal office, was preempted by the Federal Election Campaign Act, *2 U.S.C.S. § 431 et seq.* (FECA), at *§ 453*. The court found that the interpretation of the statute by the Federal Election Commission (commission) clarified that *§ 453* preempted state laws such as *Ga. Code Ann. § 21-5-35* which interfered with federal elections. The court found that defendant state officials failed to raise a compelling argument that the commission's interpretation of the preemptive effect of FECA was unreasonable or inconsistent with congressional intent.

**OUTCOME:** The court affirmed the district court's grant of the preliminary injunction, holding that plaintiffs, a General Assembly member and potential contributors, had a substantial likelihood of success on the merits of the action. The court held that the state election law, as applied to candidates for federal office, was preempted by the Federal Election Campaign Act (Act), as was consistent with the interpretation by the Federal Election Commission.

**LexisNexis(R) Headnotes**

***Constitutional Law > Supremacy Clause > General Overview***
***Governments > Federal Government > Elections***
[HN1] The Federal Election Campaign Act (Act), *2 U.S.C.S. § 431 et seq.*, includes a preemption provision, which states that the provisions of the Act, and of rules prescribed under the Act, supersede and preempt any provision of state law with respect to election to federal office. *2 U.S.C.S. § 453.*

***Civil Procedure > Remedies > Injunctions > Elements > General Overview***
***Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions***
[HN2] In order to warrant the grant of a preliminary injunction, a plaintiff has the burden of proving four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest.

***Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions***
***Civil Procedure > Appeals > Standards of Review > De Novo Review***
***Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview***
[HN3] The court reviews the ultimate decision of whether to grant a preliminary injunction for abuse of discretion, but the court reviews de novo determinations of law made by the district court en route. The interpretation and application of a federal statute raises an issue of law, subject to plenary review.

***Estate, Gift & Trust Law > Personal Gifts > General Overview***
***Governments > State & Territorial Governments > Elections***
[HN4] See *Ga. Code Ann. § 21-5-35(a).*

***Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Abuse of Public Office > Illegal Gratuities > Elements***
***Governments > State & Territorial Governments > Elections***
[HN5] Under *Ga. Code Ann. § 21-5-35(a)*, "office" is understood to include federal offices.

***Constitutional Law > Congressional Duties & Powers > Elections > General Overview***
***Governments > Federal Government > Elections***
[HN6] Congress has the well established constitutional power to regulate federal elections.

***Constitutional Law > Supremacy Clause > General Overview***
***Governments > Federal Government > Elections***
[HN7] *2 U.S.C.S. § 453* contains a preemption provision, which states that the provisions of the Federal Election Campaign Act (Act), and of rules prescribed under the Act, supersede and preempt any provisions of state law with respect to election to federal office.

***Constitutional Law > Supremacy Clause > Federal Preemption***
[HN8] Under the *supremacy clause*, state law that in effect substantially impedes or frustrates federal regulation, or trespasses on a field occupied by federal law, must yield, no matter how admirable or unrelated the purpose of that law.

***Constitutional Law > Supremacy Clause > General Overview***
***Governments > Federal Government > Elections***
[HN9] A Federal Election Commission regulation, *11 C.F.R. § 108.7(b)(3)*, specifies that federal law supersedes state law concerning limitation on contributions and expenditures regarding federal candidates and political committees.

***Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation***
***Administrative Law > Separation of Powers > Legislative Controls > General Overview***
***Governments > Legislation > Interpretation***
[HN10] The United States Supreme Court has instructed that when Congress, through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policy-making authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited. If a statute is silent or ambiguous with respect to the specific issue in question, courts should accept reasonable administrative interpretations.

***Administrative Law > Judicial Review > Standards of Review > General Overview***
***Constitutional Law > Supremacy Clause > General Overview***
***Governments > Legislation > Interpretation***
[HN11] Many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies. Where this is true, the United States Supreme Court has cautioned that even in the area of preemption, if the agency's choice to preempt represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, the court should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.

***Constitutional Law > Supremacy Clause > General Overview***
***Governments > Federal Government > Elections***
[HN12] An agency like the Federal Election Commission, to which Congress has delegated broad discretion in interpreting and administering a complex federal regulatory regime, is entitled to significant latitude when acting within its statutory authority, even in its decisions as to the scope of preemption of state law.

**COUNSEL:** ATTORNEY(S) FOR APPELLANT(S): Michael Bowers, Atty General, Atlanta, GA, Jeff L. Milsteen -do-, Dennis R. Dunn -do-, Rebecca S. Mick -do-.

ATTORNEY(S) FOR APPELLEE(S): Kenneth S. Canfield, Doffermyre, Shields, Canfield, Knowles & Devine, Atlanta, GA.

**JUDGES:** Before KRAVITCH and CARNES, Circuit Judges, and HILL, Senior Circuit Judge. CARNES, Circuit Judge, concurring. HILL, Senior Circuit Judge, dissenting.

**OPINION BY:** KRAVITCH

**OPINION**

[*991] KRAVITCH, Circuit Judge:

Officials of the State of Georgia appeal the grant of a preliminary injunction against enforcement of *O.C.G.A. § 21-5-35* to prohibit a member of the General Assembly from accepting contributions for a campaign for federal office while the General Assembly is in session. The court (Judge Hill dissenting) [*992] affirms the district court's grant of the preliminary injunction, concluding that the Georgia statute is preempted by the Federal Election Campaign Act.

I.

Doug Teper is a member of the Georgia General Assembly who is contemplating a campaign for federal office; Teper's co-plaintiffs are potential contributors to his federal campaign. As a member of the General Assembly, Teper is precluded by a provision of the Georgia Ethics in Government Act *O.C.G.A. § 21-5-35*, from accepting campaign contributions during any legislative session. The most recent session [**2] of the General Assembly began on January 8, 1996, and ran through the beginning of April. [1] Teper asserts that had he been barred from accepting contributions for his federal campaign until the end of the session, he would have been seriously disadvantaged relative to other federal candidates who are not state officials. Indeed, he might have been faced with the dilemma of resigning from state office or foregoing his federal campaign.

1 The General Assembly session ended after oral argument in this case but before this opinion had issued. Adjournment of the General Assembly session did not render the case moot, however. The Supreme Court has recognized that often in cases challenging rules governing elections there is not sufficient time between the filing of the complaint and the election to obtain judicial resolution of the controversy before the election. Consequently, the Court has allowed such challenges to proceed under the "capable of repetition yet evading review" exception to the mootness doctrine. See *Norman v. Reed, 502 U.S. 279, 112 S. Ct. 698, 704-05, 116 L. Ed. 2d 711 (1992); First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 1414-15, 55 L. Ed. 2d 707 (1978); Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 1494, 23 L. Ed. 2d 1 (1969)*; see also *American Civil Liberties Union v. Florida Bar, 999 F.2d 1486, 1496-97 (11th Cir. 1993)*.

This exception applies under two conditions: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again." *Weinstein v. Bradford, 423 U.S. 147, 96 S. Ct. 347, 348, 46 L. Ed. 2d 350 (1975)* (per curiam); see also *News-Journal Corp. v. Foxman, 939 F.2d 1499, 1507 (11th Cir. 1991)*. Application of the "capable of repetition yet avoiding review" exception is particularly appropriate in cases like Teper's presenting "as applied" challenges to state law, because "the construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simpli-

fying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held." *Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 1282-83 n.8, 39 L. Ed. 2d 714 (1974)*. Given that our decision in this expedited appeal has come too late for the current legislative session, because Teper himself certainly could desire to accept campaign contributions during a future session, and in view of the importance of this issue and its possible bearing on other similarly situated state elected officeholders, this case is not mooted just because the General Assembly recently has adjourned.

[**3] Teper contends that *§ 21-5-35* is preempted by federal campaign finance laws, which place no such prohibition on the timing of campaign contributions. In particular, [HN1] the Federal Election Campaign Act ("FECA"), *2 U.S.C. § 431 et seq.*, includes a preemption provision, which states that "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." *2 U.S.C. § 453*.

On January 2, 1996, Teper filed a motion in district court requesting a preliminary injunction prohibiting Georgia state officials ("the State") from enforcing *§ 21-5-35* as it applies to candidates for federal office. The district court, after concluding that Teper had standing to challenge the state statute, determined that Teper had a substantial likelihood of success on the merits of his claim that *§ 21-5-35* was preempted by FECA and regulations promulgated by the Federal Election Commission ("FEC") under the Act. [2] Consequently, the district court preliminarily enjoined enforcement of *§ 21-5-35* as it relates to federal elections. [3]

2 In addition to the winning preemption claim, Teper argued to the district court that enforcement of *§ 21-5-35* violated the *First Amendment* and the *Equal Protection Clause*. The district court did not reach these claims, and they are not before this court on appeal.

[**4]

3 [HN2] In order to warrant the grant of a preliminary injunction, a plaintiff has the burden of proving four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest. See, e.g., *Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994)*. The district court found that Teper had established the second, third, and fourth of these factors before proceeding to focus on the first.

[*993] II.

The sole issue on appeal is whether Teper has a substantial likelihood of success on the merits of his claim that *O.C.G.A. § 21-5-35* is preempted by FECA and FEC regulations. The district court, in granting Teper a preliminary injunction, concluded that *O.C.G.A. § 21-5-35*, as applied to federal candidates, falls within the scope of FECA's preemption provision. [HN3] We review the ultimate decision of whether to grant a preliminary injunction [**5] for abuse of discretion, but we review de novo determinations of law made by the district court en route. *Haitian Refugee Ctr., Inc. v. Baker, 953 F.2d 1498, 1505* (11th Cir.), cert. denied, *502 U.S. 1122, 112 S. Ct. 1245, 117 L. Ed. 2d 477 (1992)*. The interpretation and application of a federal statute raises an issue of law, subject to plenary review. See, e.g., *United States v. McLeod, 53 F.3d 322, 324 (11th Cir. 1995)*.

Preemption doctrine is rooted in the *Supremacy Clause* and grows from the premise that when state law conflicts or interferes with federal law, state law must give way. See, e.g., *CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 113 S. Ct. 1732, 1737, 123 L. Ed. 2d 387 (1993)*; *Cipollone v. Liggett Group, Inc., 505 U.S. 504, 112 S. Ct. 2608, 2617, 120 L. Ed. 2d 407 (1992)*. Federalism concerns counsel that state law should not be found preempted unless that is "the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 67 S. Ct. 1146, 1152, 91 L. Ed. 1447 (1947)*. "Clear and manifest" does not necessarily mean "express," however, and Congress's intent to preempt can be implied from the structure and purpose of a statute even if it is not unambiguously stated in the text. *Jones v. Rath Packing Co., 430 U.S. 519, 97 S. Ct. 1305, 1309, 51 L. Ed. 2d 604* [**6] *(1977)*.

The Supreme Court has identified three categories of preemption: (1) "express," where Congress "defines explicitly the extent to which its enactments pre-empt state law," *English v. General Elec. Co., 496 U.S. 72, 110 S. Ct. 2270, 2275, 110 L. Ed. 2d 65 (1990)*; (2) "field," in which Congress regulates a field so pervasively, or federal law touches on a field implicating such a dominant federal interest, that an intent for federal law to occupy the field exclusively may be inferred; (3) "conflict," where state and federal law actually conflict, so that it is impossible for a party simultaneously to comply with both, or state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz, 312 U.S. 52, 61 S. Ct. 399, 404, 85 L. Ed. 581 (1941)*. See *English, 110 S. Ct. at 2275*. Preemption of any type "fundamentally is a question of congressional intent." Id.

In order to decide the preemptive effect of FECA on *O.C.G.A. § 21-5-35*, we must juxtapose the state and federal laws, demarcate their respective scopes, and evaluate the extent to which they are in tension.

[HN4] *O.C.G.A. § 21-5-35(a)* provides, "No member of the General Assembly or that member's campaign [**7] committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session." A "contribution" is defined to include "a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office." [HN5] "Office" is understood to include federal offices.

The Attorney General of Georgia has described the purpose of the statute as follows:

> It is clear that the General Assembly intended *O.C.G.A. § 21-5-35* to prevent even the appearance of impropriety by its members or certain state officers in accepting contributions during a period where legislation is pending and there could be a perception that any legislative action could be influenced by the giving of a campaign contribution. This strong statement by [*994] the General Assembly is consistent with its desire that public officials not be influenced in the performance of their duties by improper "political contributions." See *O.C.G.A. § 16-10-2* (bribery prohibited); see also *State v. Agan, 259 Ga. 541, 384 S.E.2d 863 (1989)*, [**8] cert. denied, *494 U.S. 1057, 108 L. Ed. 2d 765, 110 S. Ct. 1526 (1990)*.

Op. Att'y Gen. U95-27. The State similarly describes *§ 21-5-35* as "regulating the actions of state officials in order to preserve the public's faith in the integrity of the political system." Br. of Appellants at 10. No one disputes that *§ 21-5-35* would have the effect of precluding members of the General Assembly from accepting contributions for federal campaigns while the Assembly is in session.

Nor does anyone dispute [HN6] the well established "constitutional power of Congress to regulate federal elections." *Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 632, 46 L. Ed. 2d 659 (1976)*. The Federal Election Campaign Act of 1971 (as amended), *2 U.S.C. § 431 et seq.*, creates an intricate federal statutory scheme governing campaign contributions and expenditures related to federal elections. [4] Various FECA provisions detail the structure of political committees, impose reporting requirements, empower and design the FEC, place limitations on the amounts of campaign contributions and expenditures by individuals and corporations, and restrict the use of such funds.

> 4 In *Buckley, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659*, the Supreme Court upheld FECA's contribution limitations, record-keeping and disclosure requirements, and provisions for public financing of Presidential elections and conventions; however, the Court also held that certain expenditure limitations under the Act were in violation of the *First Amendment* and that the exercise of administrative and enforcement powers delegated to the FEC was unconstitutional because of the way the Committee members were appointed. FECA was amended in 1976 to reconstitute the FEC to allow it to exercise its full powers under the Act constitutionally. See infra note 7. Otherwise, Buckley's effect on FECA is of no consequence for the present case.

[**9] [HN7] FECA was amended in 1974 to include a preemption provision, which states that "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provisions of state law with respect to election to Federal office." *2 U.S.C. § 453*. The current *§ 453* replaced a prior provision that included a savings clause, expressly preserving state laws, except where compliance with state law would result in a violation of FECA or would prohibit conduct permitted by FECA. See Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 1972 U.S.C.C.A.N.N. (86 Stat.) 23 (amended by Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 1974 U.S.C.C.A.N. (88 Stat.) 1469). The House Committee that drafted the current provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

"When Congress ... has included in the enacted legislation a provision explicitly addressing [preemption], and when that provision provides a 'reliable indicium [**10] of congressional intent with respect to state authority, there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation." *Cipollone, 112 S. Ct. at 2616* (citations omitted). The express language of the broadly worded FECA preemption provision, illuminated by the legislative history, may be sufficiently clear to preempt *O.C.G.A. § 21-5-35*, which could readily be understood as a "state law with respect to election to Federal office."

Likewise, this court could determine that FECA has "occupied the field" of regulation of federal elections and that the Georgia statute has impermissibly strayed into this field. [5]

5 In this case, express preemption via the FECA preemption clause and field preemption are no different in practice. The FECA preemption clause means that FECA occupies the field "with respect to election to federal office." *2 U.S.C. § 453*. The only real issue is the effective reach of this phrase.

I have no doubt that the purpose of the [**11] state law is, as the Attorney General and State assert, to prevent the appearance [*995] of impropriety--bribery, to be precise--that may arise when state legislators accept campaign contributions during the period of time when they are actually legislating. To be sure, the Georgia Ethics in Government Act is an admirable example of self-regulation by incumbent state legislators, and it is not specifically directed toward federal elections. Nonetheless, it is the effect of the state law that matters in determining preemption, not its intent or purpose. [HN8] Under the *Supremacy Clause*, state law that in effect substantially impedes or frustrates federal regulation, or trespasses on a field occupied by federal law, must yield, no matter how admirable or unrelated the purpose of that law. See *Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 112 S. Ct. 2374, 2386-87, 120 L. Ed. 2d 73* ("In assessing the impact of a state law on the federal scheme, we have refused to rely solely on the legislature's professed purpose and have looked as well to the effects of the law."); *Felder v. Casey, 487 U.S. 131, 108 S. Ct. 2302, 2306, 101 L. Ed. 2d 123 (1988)* ("'The relative importance to the State of its own law is not material when there is a conflict [**12] with a valid federal law,' for 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.'") (quoting *Free v. Bland, 369 U.S. 663, 82 S. Ct. 1089, 1092, 8 L. Ed. 2d 180 (1962)*); *Napier v. Atlantic Coast Line R.R. Co., 272 U.S. 605, 47 S. Ct. 207, 209-10, 71 L. Ed. 432 (1926)* (preemption depends not on whether federal and state laws "are aimed at distinct and different evils" but whether they "operate upon the same object").

In this case, the effect of *O.C.G.A. § 21-5-35* is to place a limitation on Teper's fundraising for his federal campaign. It would be possible to conclude, therefore, that the state law operates "with respect to election to Federal office," and thus falls within FECA's express preemption provision, *2 U.S.C. § 453*. [6] Other courts have found express FECA preemption of state laws that are no more, or not much more, intrusive of federal regulation. See *Bunning v. Commonwealth of Kentucky, 42 F.3d 1008 (6th Cir. 1994)* (holding that *§ 453* preempts state law purporting to regulate poll conducted by U.S. Congressman's federal election committee to test the effectiveness of advertising conducted during a federal campaign); *Weber v. Heaney, [**13] 995 F.2d 872, 875 (8th Cir. 1993)* (concluding that, "under every plausible reading of *§ 453*," state law establishing system of public funding for U.S. Congressional candidates "falls squarely within the boundaries of the preempted domain"). And cases in which preemption was not found invariably involve state laws that are more tangential to the regulation of federal elections. See *Karl Rove & Co. v. Thornburgh, 39 F.3d 1273 (5th Cir. 1994)* (federal candidate's personal, contractual liability for costs of direct mail fundraising services during his campaign not preempted); *Stern v. General Elec. Co., 924 F.2d 472 (2d Cir. 1991)* (state law claims of corporate waste based on corporation's contributions to federal political campaigns not preempted); *Reeder v. Kansas City Bd. of Police Comm'rs, 733 F.2d 543 (8th Cir. 1984)* (ban on political contributions by city police department employees not preempted). I hesitate, however, to conclude summarily that the preemptive scope of *§ 453* is so unambiguous as to evince a "clear and manifest purpose of Congress," *Rice, 67 S. Ct. at 1152*, to encompass state laws such as *§ 21-5-35*. Because further, and more definitive, evidence [**14] of Congress's intent is provided by the FEC's interpretation of FECA--and because *§ 453* incorporates by reference "rules prescribed under" FECA--I think it appropriate to take the agency's view into account before finally resolving the issue.

6 Indeed, this is Judge Carnes's conclusion.

The 1974 amendments to FECA created the FEC and "vested in it primary and substantial responsibility for administering and enforcing the Act," delegating to the agency "extensive rulemaking and adjudicative powers." *Buckley, 96 S. Ct. at 677-78*; see also *FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 102 S. Ct. 38, 45, 70 L. Ed. 2d 23 (1981)*. [7] [*996] The FEC is authorized to prescribe rules and regulations to carry out the provisions of FEC, *2 U.S.C. § 438(a)(8)*, and to give, upon request, advisory opinions concerning the application of FECA, *2 U.S.C. §§ 437d(7), 437f*. Exercising this delegated authority, the FEC has promulgated regulations and issued a number of advisory opinions interpreting and applying FECA to determine its preemptive [**15] effect on state law. With respect to the type of regulation imposed by *O.C.G.A. § 21-5-35*, the FEC's interpretation of FECA is unambiguous: such state laws are preempted.

7 In response to Buckley, the 1976 amendments to FECA reconstituted the FEC to allow the agency constitutionally to exercise its delegated

duties and powers under the Act. See S. Rep. No. 677, 94th Cong., 2d Sess. 1, 1-4 (1976), reprinted in 1976 U.S.C.C.A.N. 929, 929-32. The FEC was restructured as an independent executive branch agency, comprised of six commissioners to be appointed by the President with the advice and consent of the Senate. No more than three of the commissioners may be affiliated with the same political party.

[HN9] A 1977 FEC regulation specifies that "Federal law supersedes state law concerning ... limitation on contributions and expenditures regarding Federal candidates and political committees." *11 C.F.R. § 108.7(b)(3)*. Interpreting this regulation, the district court plausibly determined that, according to [**16] the terms of the regulation, *O.C.G.A. § 21-5-35* would be preempted, for "[a] restriction on when a potential candidate may accept contributions is simply another type of limitation." The regulation also enumerates the following areas in which state law is not preempted: "(1) manner of qualifying as a candidate or political party organization; (2) dates and places of election; (3) voter registration; (4) prohibition of false registration, voting fraud, theft of ballots, and similar offenses; or (4) candidate's personal financial disclosure." *11 C.F.R. § 108.7(c)*. Although, as the State emphasizes, the regulation allows states to legislate "prohibition[s] of false registration, voting fraud, theft of ballots, and similar offenses," *§ 21-5-35* is not about voting fraud. The Georgia statute operates against fraud at the level of governance, as in bribery of a state legislator through campaign donations, not at the level of registering to vote and casting ballots (which the state is free to regulate). Thus, I am inclined to agree with the district court that the gloss this FEC regulation places on the FECA preemption provision could be a sufficient basis for inferring Congress's [**17] intent to preempt the Georgia law. [8]

8 FECA details the procedures FEC must follow in prescribing regulations. The FEC must submit a proposed regulation and an accompanying statement to both the House and the Senate; if neither disapproves the proposed regulation within thirty days, the FEC may issue it. *2 U.S.C. § 438(d)*. We note that Congress has seen and not disapproved *11 C.F.R. § 108.7*, thus suggesting that the regulation is not inconsistent with congressional intent. See *Weber, 995 F.2d at 876-77*.

Any residual ambiguity as to the FEC's understanding of the preemptive effect of FECA on the Georgia statute is conclusively resolved by FEC advisory opinions. The FEC consistently has expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions. See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); [**18] Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions). In fact, Teper himself wrote to the FEC in November 1995 requesting an advisory opinion on the constitutionality of *O.C.G.A. § 21-5-35*. In a reply letter dated December 5, 1995, the Associate General Counsel of the FEC wrote that a formal advisory opinion was unnecessary because FEC regulations and previous advisory opinions made clear that the Georgia law was preempted. Subsequently, after the district court's decision in this case, the FEC did address *§ 21-5-35* in a formal advisory opinion, [9] reiterating that the Georgia statute was preempted by FECA. See Op. FEC 1995-48. The advisory [*997] opinion noted the district court decision in this case and concluded, "Under the broad preemptive powers of [FECA], only Federal law could limit the time during which a contribution may be made to the Federal election campaign of a State legislator." Id.

9 This formal opinion was issued in response to an inquiry by another, more persistent, member of the Georgia General Assembly running for Congress.

[**19] Thus, even if the FECA preemption provision is not sufficiently determinate on its face to preempt *O.C.G.A. § 21-5-35*, the FEC's unambiguous understanding is that FECA preempts the state statute. The pressing question at this point, therefore, is to what extent this court should defer to the FEC's interpretation of FECA. Although this court could, of course, accept the FEC's interpretation simply as persuasive authority, in fact I believe that we are obliged to take the FEC's interpretation as more than merely convincing.

[HN10] The Supreme Court has instructed, "When Congress, through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policy-making authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited." *Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 111 S. Ct. 2524, 2534, 115 L. Ed. 2d 604 (1991)*. This language reflects the general principle established in the landmark case of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984)*, that if a statute is "silent or ambiguous with respect to the specific issue" in question, courts should accept "reason-

able" administrative [**20] interpretations. See 114 S. Ct. at 2782.

The FEC, in particular, is "precisely the type of agency to which deference should presumptively be afforded." *FEC v. Democratic Senatorial Campaign Comm., 102 S. Ct. at 45*; see also *Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986)* (allowing the FEC's interpretation of FECA "considerable deference"). This is not only because of the extensive responsibility and discretion in administering FECA expressly vested in the FEC by Congress, but also in light of the fact that "the Commission is inherently bipartisan ... and it must decide issues charged with the dynamics of party politics, often under the pressure of an impending election." Id.; see also *Common Cause v. FEC, 268 U.S. App. D.C. 440, 842 F.2d 436, 448 (D.C. Cir. 1988)* (judicial deference particularly appropriate in the context of FECA, which explicitly relies on the bipartisan Commission as its primary enforcer). Deference to FEC interpretations of FECA is appropriate not only for rules but also for advisory opinions, given the FEC's express statutory responsibility for issuing advisory opinions concerning the application of FECA. *2 U.S.C. §§ 437d, 437f.* See *FEC v. Colorado Republican Fed.* [**21] *Campaign Comm., 59 F.3d 1015, 1021 (10th Cir. 1995)* (deferring to FEC interpretive advisory opinions), cert. granted, *116 S. Ct. 689 (1996)*; *FEC v. Ted Haley Congressional Comm., 852 F.2d 1111, 1115 (9th Cir. 1988)* (FEC interpretation of FECA through regulations and advisory opinions "entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute"); *Orloski, 795 F.2d at 164* (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language"). [10]

10 The fact that the multiple FEC advisory opinions interpreting FECA to preempt state regulations of the timing of campaign contributions have been consistent further militates in favor of deference. See, e.g., *Wagner Seed Co. v. Bush, 292 U.S. App. D.C. 44, 946 F.2d 918, 921-22 (D.C. Cir. 1991)* (in the course of concluding that EPA interpretation issued via decision letter entitled to deference, noting that interpretation was given "in order to resolve an important and recurring matter before it," and that "agency has applied this interpretation consistently"), cert. denied, *503 U.S. 970, 112 S. Ct. 1564, 118 L. Ed. 2d 304 (1992)*.

[**22] There is, however, one further twist to Chevron deference: it may not be obvious that this court's obligation to defer to FEC interpretations of FECA attaches even when those interpretations address the scope of preemption of state law by federal regulation. I recognize that the law may be unsettled in general as to the application of Chevron [*998] to an agency's determination of its own jurisdiction. See generally Cass R. Sunstein, Law and Administration After Chevron, *90 Colum. L. Rev. 2071, 2097-2101 (1990)*. Indeed, there is an inherent tension between Chevron deference, which only obtains where a statute is "silent or ambiguous," *Chevron, 104 S. Ct. at 2782*, and preemption doctrine, which maintains that state law will not be preempted unless that is "the clear and manifest purpose of Congress," *Rice, 67 S. Ct. at 1152*. So, to say that a court should defer to an agency's determination that state law is preempted is seemingly paradoxical: the agency would command deference under Chevron only if the federal statute were ambiguous; but if the federal statute were ambiguous, then Congress's intent to preempt seemingly would not be "clear and manifest." Furthermore, [**23] although separation of powers (or institutional competence) concerns might counsel in favor of courts' deferring to agencies in the resolution of ambiguous questions of statutory interpretation, [11] countervailing federalism concerns offset this rationale for Chevron deference in preemption cases. Although federal agencies are more democratically accountable than courts, state legislatures are arguably yet more politically accountable. In the abstract, then, it is not at all clear that a state's view that a federal statute does not preempt state law should give way to a federal agency's view that the statute does preempt.

11 The Chevron Court articulated this rationale in passages such as this:

> Judges are not experts in the field, and are not part of either political branch of the Government. ...
>
> When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In

> such a case, federal judges--who have no constituency--have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches." *TVA v. Hill, 437 U.S. 153, 98 S. Ct. 2279, 2302, 57 L. Ed. 2d 117 (1978).*

*104 S. Ct. at 2793.*

[**24] Fortunately, I need not completely untangle this knotty issue of jurisprudence in order to conclude that the FEC's interpretation of FECA is entitled to deference in this case. In City of New York v. FCC, a unanimous Court clarified the law sufficiently to settle the issue before us:

> It has long been recognized that [HN11] many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies. Where this is true, the Court has cautioned that even in the area of preemption, if the agency's choice to preempt "represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned."

*486 U.S. 57, 108 S. Ct. 1637, 1642, 100 L. Ed. 2d 48 (1988)* (quoting *United States v. Shimer, 367 U.S. 374, 81 S. Ct. 1554, 1560, 6 L. Ed. 2d 908 (1961)*, and citing *Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 104 S. Ct. 2694, 2700, 81 L. Ed. 2d 580 (1984)*). [HN12] An agency like the FEC, to which Congress has delegated broad discretion in interpreting and administering a complex federal regulatory regime, is entitled [**25] to significant latitude when acting within its statutory authority, even in its decisions as to the scope of preemption of state law. See also *Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 102 S. Ct. 3014, 3022-23, 73 L. Ed. 2d 664 (1982)*. But cf. *Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986)* (overturning agency preemption determination without mention of Chevron deference). In other words, even if a statute is on its face ambiguous, Congress's intent to preempt may be clear when the administrative agency expressly responsible for interpreting and implementing the statute has clarified it.

Finally, the State has failed to construct a compelling argument that the FEC's interpretation of the preemptive effect of FECA is unreasonable or inconsistent with congressional [*999] intent. To the contrary, I find the FEC's interpretation persuasive and corroborative of my own (and the district court's) understanding of the scope of the FECA preemption provision. Thus, even if the FECA preemption provision, read in light of the purposes and structure of the Act, is not adequately clear to preempt the Georgia statute expressly, FEC's interpretation of the statute settles the matter. I [**26] conclude that *O.C.G.A. § 21-5-35*, as applied to candidates for federal office, is preempted. Thus, the district court correctly decided that Teper has a substantial likelihood of success on the merits.

The district court's grant of a preliminary injunction is AFFIRMED.

**CONCUR BY:** CARNES

**CONCUR**

CARNES, Circuit Judge, concurring:

I concur in the Court's holding that *O.C.G.A. § 21-5-35*, which has the effect of limiting the time for making contributions to some candidates for federal office, is preempted by the Federal Election Campaign Act, *2 U.S.C. § 431 et seq.* ("FECA"). However, I would base that conclusion upon the express language of the preemption clause in the act, *2 U.S.C. § 453*, which states unambiguously that the provisions of the act and rules prescribed under it, "supersede and preempt any provision of State law with respect to election to Federal office." (emphasis added) A state law regulating the time in which a category of citizens can accept contributions to run for election to federal office is a "State law with respect to election to Federal office." It is as simple as that. Moreover, nothing in either the legislative history of the act or in the rules and regulations [**27] adopted by the Federal Election Commission casts any doubt upon the clear and manifest preemptive purpose of Congress as plainly stated in the act itself. [1]

1 The legislative history discussed in Judge Hill's dissenting opinion does not cast such doubt. Although a Senate conference report does state, "It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or

superseded by the amendments to [the FECA]," S. Conf. Rep. No. 1237, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 5618, 5669, it is clear that this statement was aimed at preserving the so-called "little Hatch acts" of the states, not at permitting direct regulation of the activities of federal candidates. See *Weber v. Heaney, 995 F.2d 872, 876-77 (8th Cir. 1993)* (overturning state law creating monetary incentives for federal candidates to limit campaign expenditures); *Reeder v. Kansas City Bd. of Police Comm'rs, 733 F.2d 543, 545-46 (8th Cir. 1984)* (upholding a "little Hatch act").

[**28] The discussion in Judge Kravitch's opinion about the deference that might be due the Commission's regulations and advisory opinions if there were any ambiguity in FECA's preemption language is, in my view, unnecessary to proper decision of this appeal, because there is no ambiguity in the statutory language. Accordingly, while I agree that FECA preempts *O.C.G.A. § 21-5-35*, I do not join the part of Judge Kravitch's opinion that discusses the effect of the Federal Election Commission's regulations and advisory opinions.

**DISSENT BY:** HILL

**DISSENT**

HILL, Senior Circuit Judge, dissenting:

I dissent and I state my reason succinctly: [1] "The fleas come with the dog."

1 Today, our panel's judgment does, in effect, release appellee Teper from restraint of Georgia law. While I disagree, I realize that this judgment ought to be mandated right away. I should not be the instrument of delay while engaging in lengthy opinion writing. [NOTE: This was written and submitted while the Georgia legislature was still in session.]

First, [**29] there is no issue as to whether or not the federal law, FECA, preempts state law. It does so, explicitly. Therefore, what federal law controls, state law may not.

That is not the end of the inquiry. The preemption is coextensive with FECA - no more, no less. So, we should determine how far FECA goes. We may look to legislative history to understand FECA.[2]

2 Briefs have argued, correctly, that we need not look to the legislative history of this Act to determine preemption vel non. That is correct, but the extent of the reach of FECA, and, therefore, just *what* it preempts, is not so clear.

Our majority finds comfort, in footnote 7 to the opinion, in noting that, long after the passage of FECA and its 1974 amendment, the Commission submitted its proposed regulation to Congress and was not allowed to promulgate it prior to the expiration of thirty days. Noting that Congress did not disapprove the proposed regulation, our majority believes that this suggests a congressional interpretation of FECA in accord with that of the Commission.

We have a long line of cases, however, which hold that once a bill has become an Act, the interpretation of it is for the Third Branch. Post hoc expressions by legislators--what then-Judge Scalia called "subsequent legislative history"--is of no weight. See *Gott v. Walters, 244 U.S. App. D.C. 193, 756 F.2d 902, 914 (D.C. Cir. 1985)*.

[**30] [*1000] In *Reeder v. Kansas City Bd. of Police Comm'rs, 733 F.2d 543 (8th Cir. 1984)*, the Eighth Circuit did just that:

> The conference report on the bill that became the 1974 amendment leaves little room for doubt on this question. The report says:
>
> It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded by the amendments to title 5, United States Code, made by this legislation.

S.Conf.Rep. No. 93-1237, 93d Cong., 2d Sess., reprinted in 1974 U.S.Code Cong. & Ad.News 5587, 5618, 5669. Furthermore, right before the conference report was agreed to by the Senate, a colloquy took place between Senator Stevens and Senator Cannon that covers this very point. Senator Cannon was Chairman of the Committee of Rules and Administration, from which the bill was reported, senior conferee on the part of the Senate, and manager of the bill on the Senate floor, so his remarks must be given special weight in determining what Congress meant to say. Mr. Cannon stated that "any State law regulating the political activity of State or local officers or employees is not preempted [or] [**31] . . . superseded." 120 Cong.Rec. 34386 (Oct. 8, 1974). "It [would be] . . . up to the State to determine the extent to which they may participate in Federal elections.[.]" Ibid. (remarks of Senator Stevens).

*Reeder, 733 F.2d at 545-46.*

When a law says that one may avail oneself of a right - as FECA says a federal candidate may solicit and receive campaign funds - that law does not forbid the candidate from voluntarily surrendering that right.

It happens all the time.

Georgia law, itself, circumscribes participation in charitable fund raising activities. See *O.C.G.A. § 43-17-2, et seq.* If one meets and complies with the requirements, it would seem that one may conduct a fund raising campaign.

But I think that a judge may not. Fund raising would violate a canon applicable specifically to the office. See Georgia Code of Judicial Conduct, Canon 5B(2). The judge has accepted a position of trust. By doing so, he or she has relinquished the right to solicit funds, though all the rest may do so. So you see, the fleas, do indeed, come with the dog.

The above does not implicate preemption. It illustrates proper construction of statutes in apparent tension [**32] but fully compatible.

The same principles of construction may be employed where preemption of one rule is clear. Our *Bill of Rights* trumps all aces. No provision of law is more preemptive.

For example, free expression is protected by the *First Amendment*; there may be no state law to the contrary. Indeed, in spite of some strong disapproval of states (and many of their citizens), some conduct deemed free expression embodied in rather bizarre entertainment is not subject to state regulation. See *Barnes v. Glen Theatre, Inc., 501 U.S. 560, 115 L. Ed. 2d 504, 111 S. Ct. 2456 (1991)*; see also *Redner v. Dean, 29 F.3d 1495 (11th Cir. 1994)*.

At the same time, the sale and consumption of beverage alcohol is peculiarly subject to state regulation. When the *Eighteenth Amendment's* "war on whiskey" ended with the *Twenty-first Amendment*, control of alcohol was given to the states.

The upshot of this is that, while Georgia may not prohibit scantily clad terpsichorean performers from performing (it's protected expression), Georgia can absolutely prohibit the sale of alcohol at places where dancers dance. See *New York State Liquor Authority v. Bellanca, 452 U.S. 714, 69 L. Ed. 2d 357, 101 S. Ct. 2599 (1981)*; see also *Geaneas v. Willets, 911 F.2d* [**33] *579 (11th Cir. 1990)*. The state, preempted by the *First Amendment*, is [*1001] not undertaking to regulate dancers qua dancers. It is validly regulating the sale and consumption of alcohol qua alcohol.

In the case before us, I see no indication that Georgia has undertaken to regulate candidates for federal office qua candidates. The state undertakes - validly, I believe - to regulate its legislators qua legislators. If appellee Teper feels that he has unwisely encumbered himself by becoming a legislator, he holds the key to his release in his own pocket.

I have undertaken to be deferential to the conclusions of the Federal Election Campaign Commission that its power trumps this state law, but I remain convinced that its interpretation is flawed. I really doubt that the reach of FECA is more preemptive than the *First Amendment*.

I would reverse.

# Alaska State Legislature

**Select Committee on**
**Legislative Ethics**

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510 – 1468

January 7, 2008

Sent to: Senator Hollis French, chair, Senate Judiciary
Senator Lesil McGuire, chair, Senate State Affairs
Representative Jay Ramras, chair, House Judiciary
Representative Bob Lynn, chair, House State Affairs

RE: 2008 Suggested Statutory Changes to the Legislative Ethics Act

At the September 28, 2007 and December 12, 2007 meetings, the Select Committee on Legislative Ethics voted to forward recommendations to the chairs of the Senate and House Judiciary Committees and State Affairs Committees for changes to the Legislative Ethics Act, AS 24.60.

1. **Gifts from registered lobbyists who are immediate family members.** Currently, a legislative employee cannot receive a gift from a spouse or domestic partner who is a registered lobbyist under AS 24.60.080. The same would hold true if a sibling or child of a legislative employee was a registered lobbyist. With the implementation of HB 109, a legislator's spouse or domestic partner cannot be a registered lobbyist under AS 24.45.121(e). A sibling or child of a legislator who is a registered lobbyist may not give a gift to the legislator.

   The committee recommends the strict prohibition on gifts from lobbyists be relaxed to allow gifts from immediate family members who are registered lobbyists. The committee did not define "immediate family member" but decided to leave the definition up to the legislature. There are two definitions of "immediate family member" in AS 24.60. One definition is narrowly construed, AS 24.60.990(a)(6), and the other is broad and includes extended family members, AS 24.60.080(c)(5).

# Alaska State Legislature

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716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address
P.O. Box 101468
Anchorage, AK.
99510 - 1468

TO: All Legislators

FROM: Herman G. Walker, Jr, Chair

DATE: January 7, 2008

RE: Legislative Ethics Legislation

As we approach the 2008 legislative session, it is likely ethics legislation will be one of the priorities again. If you are considering 'legislative' ethics legislation, keep in mind staff and committee members are here to work with you and assist you in drafting legislation. Joyce Anderson is very knowledgeable about the code and may have background information or be able to direct you to supplementary materials which would be helpful to you and your staff.

Given we are the body who administers the ethics code, the committee is respectfully requesting copies of ethics legislation prior to introduction. The committee and/or staff would like to have time to review the changes and provide you with a constructive review of your proposed legislation.

Thank you for considering our request to be actively involved in legislation having a direct impact on the Select Committee on Legislative Ethics' oversight of the ethics code.

The committee is recommending three statutory changes to the Legislative Ethics Act. For your information, attached is a copy of a letter sent to the House and Senate State Affairs and Judiciary chairs outlining the proposed changes. If you would like copies of the background materials on these proposed changes, please give the ethics office a call.

2. **Campaigning during a special session.** AS 24.60.031 prohibits campaigning during a special session unless the session is during the 90 days immediately preceding an election and then the prohibition only applies in the Capital City. For example: if a special session was held in Anchorage, legislators who represent Anchorage could attend the session during the day and campaign in the evening.

   The committee recommends the statute be changed to include language prohibiting campaigning in any location where a legislative session is held.

3. **Fine structure for late disclosures.** AS 24.60.260 authorizes the Ethics Committee to impose fines of $2.00 for each day a disclosure is late with a maximum fine of $100. A maximum fine of $100 does not have an intended deterrent effect. Further, the attorney general's office has a policy of not pursuing fines of less than $500.

   The committee recommends adding a fine structure for willful omission or blatantly failing to file a disclosure. An innocent late filing would not trigger the increased penalty and the current fine structure would apply. The committee would make the determination of a willful omission or blatant failure to file. After reviewing a survey of the fine structure in thirteen states, the committee recommended the fine structure in the State of Louisiana - $100 a day with a maximum of $2500.

Attached are background materials that may be helpful in preparing legislation. Joyce Anderson, administrator, is available to answer any questions you may have and work with you and your staff in drafting legislation.

Changes to the Legislative Ethics Act have a direct impact on the committee's oversight of the Act. Therefore, the committee's active role in the legislative process is essential.

Thank you for considering our recommendations.

Sincerely,

Herman G. Walker, Jr.
Chair, Legislative Ethics Committee

Enc.

**September 28, 2007 Ethics Committee Meeting**
Minutes from Agenda Item # 7, Advisory Opinion 07-03, Lobbyists and Gifts

**7. ADVISORY OPINION 07-03: Lobbyists and Gifts, requested by the Ethics Committee**
Dan Wayne, LAA legal, went over the draft opinion. A legislator or legislative employee may not accept a gift, other than food and beverage for immediate consumption or tickets to a charity event, from a lobbyist, regardless if the lobbyist is a family member of the person. A gift of food and beverage for immediate consumption may be accepted at a lobbyist's residence. A gift of incidental travel is prohibited. AS 24.60.080(a) now provides a very broad prohibition. A lobbyist may also not facilitate a gift of arranging travel for a legislative fact-finding trip if the facilitating has a monetary value.

Staff stated she believes the unintended consequence of changes to AS 24.60.080 prohibit gifts from lobbyist family members of legislators and legislative staff and recommends the statute be changed. Senator Bunde moved to have the committee make a recommendation to the legislature to change the statute to allow gifts from a family member lobbyist. Mr. Wayne pointed out the definition of family member in AS 24.60.080 is very broad. Senator Bunde's motion was deferred until action was taken on the opinion.

Member Thomas made a motion to accept the opinion. Further discussion held. Chair Cook posed the following scenario: A lobbyist would host a reception for a legislative employee at the lobbyist's residence. Informal advice previously given stated the use of the home would be considered a "service" to the legislative employee. If the home were to be provided, the employee would need to pay for the use of the home. Committee members agreed with this interpretation and felt no additional language was needed in the draft opinion. Roll vote taken: YES – all members present voted in favor of the draft opinion. AO 07-03 accepted as drafted.

Back to Senator Bunde's motion on suggested legislation. The first step is to define family member. Staff pointed out there are two definitions of family in the ethics code. AS 24.60.990(a)(6) includes spouse domestic partner, child, stepchild, adoptive child, parent, sibling, grandparent, aunt and uncle and stepparent sister,
brother grandparent aunt uncle of both the person covered by the code and their spouse domestic. AS 24.60.080(c)(5) includes only spouse domestic partner, parent, child, stepchild, adoptive child or sibling. AS 24.60.080Senator Bunde preferred the more narrow definition. Representative Roses questioned whether a cousin could give a gift. The committee decided to leave the definition of family member to the legislature.

# Alaska State Legislature

## Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage, AK
(907) 269-0150
FAX 269-0152

Mailing Address
P.O. Box 101468
Anchorage, AK
99510-1468

September 28, 2007

**ADVISORY OPINION 2007-03**

**Subject: Gifts – Lobbyists**

RE: Gifts from lobbyists.

This opinion was initiated by the Select Committee on Legislative Ethics (the committee) in order to clarify its understanding of how AS 24.60.080 regulates gifts from lobbyists to legislators and legislative employees.

### Questions presented

The following questions involve hypothetical persons and situations.

1. Does AS 24.60.080 prohibit a person who is a legislator or legislative employee from accepting a gift from a lobbyist who is a family member of the person?

2. Does AS 24.60.080 prohibit a legislator or legislative employee from accepting from a lobbyist a gift of hospitality at the lobbyist's residence, including, for example, food and beverage for immediate consumption, or a gift of incidental transportation, like a ride to or from the airport?

3. May a legislator or legislative employee accept a gift of travel provided by the lobbyist's employer for a legislative fact-finding purpose, where the gift is facilitated by the lobbyist?

### General Discussion

AS 24.60.080 is the principal statute governing acceptance of gifts by persons subject to the code of legislative ethics. Effective July 10, 2007, as amended by sec. 27, ch. 47, SLA 2007, subsection (a) of that statute says, in relevant part:

> (a) Except as otherwise provided in this section, a legislator or legislative employee may not . . .
>
> (2) solicit, accept, or receive during a legislative session a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except
>
> (A) food or beverage for immediate consumption; or
>
> (B) tickets for a charity event at any time. . . .

In addition, as amended by sec. 28, ch. 47, SLA 2007, subsection (c) was narrowed so that exceptions for certain gifts by lobbyists and their immediate family members that were formerly allowed are now disallowed. The changes prohibit legislators and legislative employees from accepting a gift of any monetary value, other than a gift of food or beverage for immediate consumption or a ticket for a charity event, from a lobbyist, an immediate family member of a lobbyist, or person acting on behalf of a lobbyist.

There is one more exception to the general rule restricting gifts from lobbyists and immediate family members of lobbyists that is found outside of AS 24.60.080. As part of the broad revision of the Legislative Ethics Act made by ch. 47, SLA 2007, and effective July 10, 2007, the legislature adopted AS 24.60.075, the "compassionate gift exemption." A "compassionate gift" is one that is "intended to aid or comfort a recipient or a member of the recipient's immediate family in contending with a catastrophe, a tragedy, or a health-related emergency." AS 24.60.075(e). The exemption establishes that, notwithstanding AS 24.60.080 (limiting acceptance of gifts by legislators and legislative employees) and AS 24.45.121 (limiting the activities of lobbyists), a legislator or legislative employee may accept, receive, and solicit a compassionate gift from any person, including a lobbyist, if the gift is pre-approved by the chair of Legislative Council and the chair or vice-chair of this committee has "approved in writing" the decision of the Legislative Council chair. Certain limitations and disclosure requirements apply. In effect, as it relates to gifts by lobbyists, the compassionate gift exemption operates as an exception to the prohibition against accepting gifts from lobbyists that is set out in AS 24.60.080(a)(2).

Lastly, note that the special definition of "immediate family" formerly applicable to AS 24.60.080 found in subsection (k) was repealed by sec. 74, ch. 47, SLA 2007. Therefore, as it relates to the prohibition against gifts from a lobbyist or a lobbyist's immediate family member, the definition under AS 24.60.990(a)(6) now applies.

**1. <u>Does AS 24.60.080 prohibit a person who is subject to it from accepting a gift from a lobbyist who is a family member of the person</u>?**

As AS 24.60.080 was revised in 2007, except for food and beverage for immediate consumption and tickets to a charity event, that section broadly prevents a person who is subject to it from accepting any other gift from a lobbyist, regardless of whether the lobbyist is a family member of the person. The former exception for gifts from immediate family members contained in AS 24.60.080(c)(5) before its 2007 amendment no longer applies if the gift giver is a lobbyist.

**2. <u>Does AS 24.60.080 prohibit a person who is subject to it from accepting from a lobbyist a gift of hospitality at the lobbyist's residence, including, for example, food and beverage for immediate consumption or a gift of incidental travel such as a ride to the airport</u>?**

AS 24.60.080(a)(2) prohibits a legislator or legislative employee from accepting any gift of monetary value from a lobbyist, but subparagraph (a)(2)(A) makes an exception for food and beverage that is for immediate consumption, whether at the lobbyist's residence

or elsewhere. Former exceptions under AS 24.60.080(c) that may have allowed additional types of gifts of hospitality or incidental travel no longer apply when the gift giver is a lobbyist.

**3. <u>May a legislator or legislative employee accept a gift of travel provided by the lobbyist's employer for a legislative fact-finding purpose, where the gift is facilitated by the lobbyist</u>?**

AS 24.60.080(c)(4) allows the legislator or legislative employee to accept a gift of travel if the travel is primarily for the purpose of obtaining information on a matter of legislative concern. However, AS 24.60.080(c) no longer applies to lobbyists. AS 24.60.080(a)(2) prevents a person subject to the section to accept a gift from a lobbyist "with any monetary value." Consequently, if the service of facilitating travel has a monetary value and the service is deemed to be provided to the legislator or legislative employee, rather than to the lobbyist's employer, the legislator or legislative employee may not accept the gift. (<u>See also</u>, AS 24.45.121(a)(9), which prohibits a lobbyist from "facilitating" a gift "to or on behalf of a person covered by AS 24.60.")

Adopted by the Select Committee on Legislative Ethics on September 28, 2007.

Members present and concurring in this opinion were:
Dennis "Skip" Cook, Chair
Senator Gary Stevens
Senator Con Bunde
Representative Bob Roses
H. Conner Thomas, public member
Ann Rabinowitz, public member
Gary J. Turner, public member
Herman G. Walker, public member

Members dissenting from this opinion were: None.

Member absent was:
Representative Berta Gardner

DCW:ljw:lmb
07-335.ljw

# 2008 STANDARDS OF CONDUCT HANDBOOK

## GIFTS

**AS 24.60.080**

A legislator or legislative employee may not solicit or accept **(whether directly or indirectly)** any gift worth $250 or more, or a series of gifts from the same person or entity which total $250 or more in a calendar year. Gifts may be in the form of money, services, loans, travel, entertainment, hospitality, promise or other form.
**AS 24.60.080(a)(1)**

A legislator or legislative employee may not solicit, accept or receive, a gift with any monetary value from a lobbyist or from an immediate family member of a lobbyist or from a person acting on behalf of a lobbyist, WITH THE EXCEPTION OF food or beverage for immediate consumption OR tickets to a 501(c)(3) charity event pre-approved by Legislative Council. **AS 24.60.080(a)(2)(A) and AS 24.60.080(a)(2)(B)**

1. Food and Beverage: Legislators and legislative employees may accept food and beverage for immediate consumption from a lobbyist at any time.
    a. Under AS 24.45.051 a lobbyist must report to APOC the cost of food and beverage for immediate consumption that exceeds $15.00 per person if provided for a legislator or legislative employee.
    b. AS 24.45.051 expands the reporting requirements to include the spouse/domestic partner of a legislator or legislative employee.
    c. If the food and beverage is provided as part of an event open to all legislators or employees, no disclosure is required.

2. Charity Event: Legislators and legislative employees may accept a ticket to a pre-approved charity event from a lobbyist at any time.
    a. The Alaska Legislative Council must approve the charity event in advance.
    b. The value of the ticket(s) may not be worth more than $250 aggregate from the same lobbyist in a calendar year.

Gifts to immediate family members of legislators and legislative employees must be reported to the committee. IF the gift was given because of the family member's connection to the legislator or legislative employee and the value of the gift(s) is $250 or more.

An immediate family member of a legislator or legislative employee may not receive a gift prohibited under this section.

**IMMEDIATE FAMILY MEMBER** is defined in AS 24.60.990 as:

- Spouse or domestic partner
- Parent, child (including stepchild and adoptive child) or sibling IF financially dependent on the legislator or legislative employee OR shares a substantial financial interest

Political contributions reported to APOC are not gifts under this section.

**EXCEPTIONS TO THE $250 GIFT LIMIT:** There are exceptions to the prohibitions in AS 24.60.080(a)(1) which limits a gift to less than $250. The exceptions are defined below. Keep in mind the following exceptions do not apply to AS 24.60.080(a)(2) which are gifts received from a lobbyist, an immediate family member of a lobbyist or a person acting on behalf of a lobbyist.

The **exceptions** are:

- **gift of hospitality in another person's home** and travel to reach the home. Note: a vacation home located outside the state is not considered a residence under this subparagraph. **AS 24.60.080(c)(1)**

- **gift of hospitality at a social event or meal.** **AS 24.60.080(c)(1)**

- **discounts available to the public** or to a large class of people to which the legislator or employee belongs or **discounts accepted while on official business if the discount benefits the state.** **AS 24.60.080(c)(2)**

- **gift of food that is native to the state** and is shared as part of a normal cultural or social pattern. **AS 24.60.080(c)(3)**

- **gift of travel and hospitality to obtain information on matters of legislative concern.**
  A person who accepts a gift worth $250 or more under this exception must disclose the gift to the Ethics Committee within 30 days.
  DISCLOSURE REQUIRED **AS 24.60.080 (c)(4)**

- **gift(s) from the recipient's immediate family.**
  In this section only, immediate family includes the spouse, (or domestic partner) parents, children, siblings, grandparents, aunts and uncles as well as in-laws and step-relations. No limit on the value of the gift and no disclosure is required.
  **AS 24.60.080(c)(5)**

- **gifts not connected with the recipient's legislative status.**
  A person who accepts a gift worth $250 or more under this exception must disclose the gift to the committee within 30 days of receipt of the gift. The disclosure is kept **confidential**. The disclosure must include the name and occupation of the donor and, if the value exceeds $250, a description of the gift.
  CONFIDENTIAL DISCLOSURE REQUIRED **AS 24.60.080(c)(6)**

- **gifts other than money from another government or government official.**
  Gifts of this nature are allowable if the recipient accepts the gift on behalf of the legislature and delivers it to Legislative Council within 60 days. **AS 24.60.080(f)**

- **discounts and welcoming gifts offered during session in the capital city to legislators and their personal staff (but not other legislative employees).**
  These are gifts offered to all legislators and their staff, such as parking passes.
  **AS 24.60.080(c)(7)**

- **gift of legal services related to a matter of legislative concern and other services related to a matter of legislative concern.**

This exception is for a gift of services and not a monetary gift. This exception does not relate to private matters.

DISCLOSURE REQUIRED **AS 24.60.080(c)(8)**

- **gift of transportation from a legislator or legislative employee to a legislator or a legislative employee.**
  This exception relates to travel within the state and only to a mode of transportation owned or under the control of the donor (i.e., aircraft, boat, motor vehicle, etc.). **AS 24.60.080(c)(9)**

- **gift received by immediate family member because of legislative connection.**
  A spouse/domestic partner or dependent parent, child or sibling must disclose receipt of a gift with a value of $250 or more that is given because of the family member's connection with the legislator or legislative employee.
  DISCLOSURE REQUIRED **AS 24.60.080(i)**

- **prohibited gifts to immediate family members**
  The list of prohibited gifts a legislator or legislative employee may accept extends to gifts to immediate family members. **AS 24.60.080(i)**

*REMEMBER: If a gift exceeds $250 in value or if the cumulative value in a year exceeds $250, you will have to say "No thank you" to the donor and return the gift unless the gift falls within one of the exceptions listed in (c)(1) through (c)(9) and (i).*

If a person covered by the ethics code receives a gift of unknown value that may exceed the $250 limit, that person should use caution and explain the $250 limit to the donor. If the donor states the value to be greater than $250, the gift would need to be returned unless it falls into one of the exceptions listed in AS 24.60.080(c)(1) through (c)(9).

**May a legislator or legislative employee accept a waiver of conference fees, when the purpose of attending the conference is to obtain information on matters of legislative concern?**

Yes. The gift of "waived fees" may be accepted but, if over $250, the gift must be disclosed to the Ethics Committee within 30 days.

**May a legislator or legislative employee accept airfare to a meeting paid for by another branch of state government?**

Yes but, if over $250, the gift must be disclosed to the committee within 30 days.

**May a person covered by the ethics code accept a loan exceeding $250 from a personal friend who is not connected with the loan recipient's legislative status?**

Loans are gifts. The loan may be accepted because the friendship is not related to legislative status. The gift must be disclosed because the value is over $250. The disclosure is confidential and not published in the Legislative Journal. See Advisory Opinion 03-02. Commercial loans do not require disclosure.

**May a legislator accept the services of a JTPA (Job Training Partnership Act) volunteer in his or her legislative office?**

Yes. Volunteers in a legislative office are allowed so long as the volunteer is not paid by another source. Only the JTPA program and the University Legislative Intern program are exempted from this "outside payment" restriction. The legislator is expected to take responsibility for the ethical conduct of volunteers.

**Are volunteers in a legislative office subject to the ethics code?**

Volunteers are generally required to comply with the ethics code, with the exception of the sections addressing: contracts and leases, state programs and loans, close economic associations, nepotism, and representation before state agencies.

**May a legislator's spouse (or other immediate family member) accept travel and hospitality to a conference the legislator is also attending?**

Yes but the acceptance of the gift must be disclosed within 30 days to the Ethics Committee if $250 or more in value.

**May a legislator or legislative employee solicit contributions in excess of $250 for a nonpolitical charitable organization?**

Yes, the organization must have either a 501(c)(3) tax exemption or have an extended history in the community. The committee notes that lobbyists could be approached for contributions to charitable nonpolitical organizations but urges extreme caution in doing so as this may lead to the appearance of impropriety.

**May a person subject to the ethics code accept payment of golfing greens fees or tournament fees that exceed $250?**

No, unless the gift is not related to legislative status or if from an immediate family member as defined in AS 24.60.080(c)(5). If not related to legislative status, the gift may be accepted. Because the gift exceeds the $250 limit, the gift must be disclosed within 30 days.

**Does receipt of a prize in a raffle require disclosure of a gift to the Ethics Committee?**

No, assuming the raffle was open to the public and the chance to win the prize was purchased.

**May a legislator or legislative employee accept a gift of lodging in excess of $250 at a hotel grand opening?**

Generally no, unless the purpose of attending relates to matters of legislative concern. If so, the gift must be disclosed.

**May a legislator or legislative employee accept a gift of a fishing trip from a lobbyist?**

No, regardless of the value. Gifts of this nature from lobbyists are not allowed. A legislator or legislative employee may only solicit, accept and receive a gift of food and beverage for immediate consumption, a ticket to a pre-approved charity event or a compassionate gift pre-approved Legislative Council and the Ethics Committee chair from a lobbyist.

**May a legislator or legislative employee accept a gift of a round of golf from the spouse of a lobbyist?**

No, regardless of the value. A legislator or legislative employee may not accept a gift from an immediate family member of a lobbyist. A legislator or legislative employee may only solicit, accept and receive a gift of food and beverage for immediate consumption, a ticket to a pre-approved charity event or a compassionate gift pre-approved Legislative Council and the Ethics Committee chair from an immediate family member of a lobbyist.

**What if a legislator or legislative employee is in a dating relationship? May they accept gifts in excess of $250 from the person they are dating?**

Yes. However, a confidential gift disclosure is required.

**Sec. 24.60.080. Gifts. (effective July 10, 2007)**

**(a)** Except as otherwise provided in this section, a legislator or legislative employee may not

(1) solicit, accept, or receive, directly or indirectly, a gift worth $250 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 $250 that in a calendar year aggregate to $250 or more in value;

(2) solicit, accept, or receive a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except

(A) food or beverage for immediate consumption; or

(B) tickets for a charity event at any time, except that tickets to or gifts received at a charity event under this subparagraph are subject to the calendar year limit on the value of gifts received by a legislator or legislative employee in (1) of this subsection; in this subparagraph, "charity event" means an event the proceeds of which go to a charitable organization with tax-free status under 26 U.S.C. 501(c)(3) and the Alaska Legislative Council has approved in advance; the tickets may entitle the bearer to admission to the event, to entertainment, to food or beverage, or to other gifts or services involved in charity event.

**(b)** [Repealed, § 42 ch 127 SLA 1992.]

**(c)** Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept

(1) hospitality, other than hospitality described in (4) of this subsection,

(A) with incidental transportation at the residence of a person; however, a vacation home located outside the state is not considered a residence for the purposes of this subparagraph; or

(B) at a social event or meal;

(2) discounts that are available

(A) generally to the public or to a large class of persons to which the person belongs; or

(B) when on official state business, but only if receipt of the discount benefits the state;

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

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

(5) gifts from the immediate family of the person; In this paragraph "immediate family" means

(A) the spouse of the person;

(B) the person's domestic partner;

(C) a child, including a stepchild and an adoptive child, of the person or of the person's domestic partner;

(D) a parent, sibling, grandparent, aunt, or uncle of the person;

(E) a parent, sibling, grandparent, aunt, or uncle of the person's spouse or the person's domestic partner; and

(F) a stepparent, stepsister, stepbrother, step-grandparent, step-aunt, or step-uncle of the person, the person's spouse, or the person's domestic partner;

(6) gifts that are not connected with the recipient's legislative status.

(7) a discount for all or part of a legislative session, including time immediately preceding or following the session, or other gift to welcome a legislator or legislative employee who is employed on the personal staff of a legislator or by a standing or special committee to the capital city or in recognition of the beginning of a legislative session if the gift or discount is available generally to all legislators and the personal staff of legislators and staff of standing and special committees; this paragraph does not apply to legislative employees who are employed by the Legislative Affairs Agency, the office of the chief clerk, the office of the senate secretary, the legislative budget and audit committee, the office of victims' right, or the office of the ombudsman;

(8) a gift of legal services in a matter of legislative concern and a gift of other services related to the provision of legal services in a matter of legislative concern;

(9) a gift of transportation from a legislator or a legislative employee to a legislator or a legislative employee if the transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other means of transport owned or under the control of the donor; this paragraph does not apply to travel described in (4) of this subsection or travel for political campaign purposes; or

(10) a contribution to a charity event from any person at any time; in this paragraph, "charity event" has the meaning given in (a)(2)(B) of this subsection.

**(d)** A legislator or legislative employee who accepts a gift under (c)(4) of this section that has a value of $250 or more shall disclose to the committee, within 30 days after receipt of the gift, the name and occupation of the donor and the approximate value of the gift. A legislator or legislative employee who accepts a gift under (c)(8) of this section that the recipient expects will have a value of $250 or more in the calendar year shall disclose to the committee, within 30 days after receipt of the gift, the name and occupation of the donor, a general description of the matter of legislative concern with respect to which the gift is made, and the approximate value of the gift. The committee shall maintain a public record of the disclosures it receives relating to gifts under (c)(4), (c)(8) and (i) of this section and shall forward the disclosures to the appropriate house for inclusion in the journal. The committee shall forward to the Alaska Public Offices Commission copies of the disclosures concerning gifts under (c)(4), (c)(8) and (i) of this section that it receives from legislators and legislative directors. A legislator or legislative employee who accepts a gift under (c)(6)of this section that has a value of $250 or more shall, within 30 days after receiving the gift, disclose to the committee the name and occupation of the donor and a description of the gift. The committee shall maintain disclosures relating to gifts under (c)(6) of this section as confidential records and may only use, or permit a committee employee or contractor to use, a disclosure under (c)(6) of this section in the investigation of a possible violation of this section or in a proceeding under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the record of a proceeding under AS 24.60.170, the confidentiality provisions of that section apply to the disclosure.

**(e)** A political contribution is not a gift under this section if it is reported under AS 15.13.040 or is exempt from the reporting requirement under AS 15.13.040 (g). The use of a bulk mailing permit owned by a legislator's campaign committee or used in a legislator's election campaign is not a gift to that legislator under this section.

**(f)** Notwithstanding (a) of this section, a legislator or legislative employee may accept a gift of property worth $250 or more, other than money, from another government or from an official of another government if the person accepts the gift on behalf of the legislature. The person shall, within 60 days after receiving the gift, deliver the gift to the legislative council, which shall determine the appropriate disposition of the gift. In this subsection, "another government" means

a foreign government or the government of the United States, another state, a municipality, or another jurisdiction.

**(g)** Notwithstanding (a) of this section, a legislator or legislative employee may solicit, accept, or receive a gift on behalf of a recognized, nonpolitical charitable organization.

**(h)** A legislator, a legislative committee other than the Select Committee on Legislative Ethics, or a legislative agency may accept

(1) a gift of volunteer services for legislative purposes so long as the person making the gift of services is not receiving compensation from another source for the services; or

(2) the services of a trainee who is participating in an educational program approved by the committee if the services are used for legislative purposes. The committee shall approve training under a program of the University of Alaska and training under 29 U.S.C. 2801 – 2945 (Workforce Investment Act of 1998). A legislative volunteer or educational trainee shall be considered to be a legislative employee for purposes of compliance with this section, AS 24.60.030 - 24.60.039, 24.60.060, 24.60.085, 24.60.158 - 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative volunteer or educational trainee has violated the provisions of one of those sections, the person may file a complaint under AS 24.60.170 . The provisions of AS 24.60.170 apply to the proceeding.

**(i)** A legislator or legislative employee who knows or reasonably should know that an immediate family member has received a gift because of the family member's connection with the legislator or legislative employee shall disclose for publication under (d) of this section the receipt of the gift by the family member to the committee if the gift would have to be disclosed under this section if it had been received by the legislator or legislative employee. If receipt of the gift by a person who is a legislator or legislative employee would be prohibited under this section, a member of the person's immediate family may not receive the gift.

**(j)** In this section, the value of a gift shall be determined by the fair market value of the gift to the extent that the fair market value can be determined.

**Revisor's notes** — Subsections (g) — (j) were enacted as (h) — (k). Relettered in 1998, at which time former subsection (g) was relettered as (k).

**Effect of amendments** — The 1998 amendment, effective January 1, 1999, in subsection (a) added "Except as otherwise provided in this section," at the beginning, substituted "$250" for "$100" in three places, and added "Except for food or beverage for immediate consumption, a legislator or legislative employee" at the beginning of the last sentence; in subsection (c) rewrote paragraphs (1) and (2) and added paragraphs (7) and (8), rewrote subsections (d)-(f) and (k), and added subsections (g)-(j).

The first 2002 amendment, effective April 16, 2002, in subsection (c) added paragraph (9) and made related stylistic changes.

The second 2002 amendment, effective July 1, 2002, substituted reference to the Workforce Investment Act of 1998 for reference to the Job Training Partnership Act in the second sentence in subsection (h).

The first 2003 amendment, effective September 14, 2003, substituted "domestic partner" for "spousal equivalent" throughout subsection (k).

The second 2003 amendment, effective September 15, 2003, added paragraph (c)(10).

The 2006 amendment, effective March 31, 2006, added paragraph (11) of subsection (c), making corresponding stylistic changes.

**Related Advisory Opinions** 88-03, 88-05, 88-09, 89-01, 89-03, 89-04, 89-06, 90-01, 92-01, 92-03, 93-03, 93-04, 93-05, 93-06, 93-08, 93-09, 94-03, 94-09, 95-03, 96-03, 96-04, 96-05, 97-01, 98-01, 99-02, 00-01, 02-02, 03-02

Item 2

# Alaska State Legislature

**Select Committee on**
**Legislative Ethics**

716 W. 4th. Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510 1468

TO:

FROM: Joyce Anderson, Administrator

DATE:

RE: Fund Raising During Session

You have asked if it is permissible under AS 24.60 for a legislator to conduct fund raising activities during session for a campaign for an office other than a legislative office. Specifically, fund raising in Juneau during session.

First of all, I suggest you check with the Alaska Public Offices Commission to determine if AS 15.13, state election campaigns, imposes any restrictions on the activities you are contemplating. I will only address the ethical considerations in AS 24.60 in relation to your position as a legislator.

AS 24.60.031 addresses restrictions on fund raising for legislators and legislative employees. (See statute below.) The restrictions in AS 24.60.031 prohibit legislators from soliciting or accepting a contribution or a promise or pledge to make a contribution when either house is in regular or special session for a campaign for the state legislature. Additionally, legislators cannot accept money from an event held on a day when either house is in regular or special session if the substantial purpose of the event is to raise money on behalf of the legislator for state legislative political purposes.

The statute is clear in that only campaigns for the state legislature fall under the restrictions imposed in AS 24.60.031(a) and (b). Legislators running for statewide office are not restricted from accepting or soliciting campaign contributions during session. Further, legislators running for state office are not restricted from holding an event for the

purpose of raising funds for a statewide campaign. Since the legislative ethics code places no restrictions on fund raising for state office by a legislator this would include fund raising activities in Juneau during session.

Historical information: *In Advisory Opinion 94-04, the ethics committee answered the question of whether a legislator who is a candidate for statewide elective office may engage in fund raising activities for that office during the legislative session. The committee concluded AS 24.60.031(b) prohibited a legislator who is candidate for a statewide race from accepting money from an event held during the legislative session. The language in AS 24.60.031(b) also prohibited a legislator from accepting money from an event held during the legislative session for any elective office. AS 24.60.031(b) in 1994 read as follows: A legislator or legislative employee may not accept money from an event held during a legislative session if the substantial purpose of the event is to raise money on behalf of the member or legislative employee for campaign purposes* **or** *to raise money for state legislative political purposes; ...*

*AS 24.60.031(b) was changed in 1998 with the passage of Senate Bill 105. The restriction on accepting money from an event held during a legislative session was narrowly applied only to a legislator running for a state legislative office. The language 'for campaign purposes' (which was determined to include any elective office) was deleted. Attached is Advisory Opinion 94-04 for your information. AS 24.60.031 (b) has not had any further changes to date.*

Again, I would like to mention you should contact APOC for a review of AS 15.13.

Pursuant to AS 24.60.158 my advice is informal and not binding on the committee. However, I feel this statute is clear on its face and an advisory opinion is not necessary due to the accompanying documentation in Advisory Opinion 94-04 and 1998 legislative changes to the one section addressed in A.O. 94-04.

However, you have the option to request an advisory opinion from the committee if you so choose.

Enc. Advisory Opinion 94-04
AS 24.60.031

**Alaska State Legislature**

**Select Committee on**
**Legislative Ethics**

716 W. 4th. Suite 230
Anchorage, AK
(907) 258-8172
FAX: 258-2106

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510

January 24, 1994

# ADVISORY OPINION 94-04

**Subject: Campaigning During Session**

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

## Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(e). [1]

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

> Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not
>
> (1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

---

[1] AS 24.60.080(e) states:

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

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

**Conclusion**

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce

Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

TC:gc
94-038.glc

# Alaska State Legislature

## Select Committee on Legislative Ethics

716 W. 4th Suite 230
Anchorage, AK
(907) 269-0150
FAX 269-0152

Mailing Address
P.O. Box 101468
Anchorage, AK
99510-1468

December 12, 2007

**ADVISORY OPINION 2007-06**

RE: Campaign Endorsements and Fundraising During a Legislative Session

This opinion was initiated by the Select Committee on Legislative Ethics (the committee) in order to clarify its understanding of restrictions imposed by AS 24.60.031 on a legislator or legislative employee campaigning, during a legislative session, on behalf of a candidate for the state legislature.[1]

**Questions presented**

The following questions involve hypothetical persons and situations.

1. Does AS 24.60.031 of the Legislative Ethics Act prohibit a legislator or legislative employee from hosting or co-hosting a campaign fundraising event for a candidate for the state legislature during a legislative session?

2. Does AS 24.60.031 of the Legislative Ethics Act prohibit a legislator or legislative employee from endorsing a candidate for the state legislature during a legislative session?

**Discussion**

**1. Does AS 24.60.031 of the Legislative Ethics Act prohibit a legislator or legislative employee from hosting or co-hosting a campaign fundraising event for a candidate for the state legislature during a legislative session?**

AS 24.60.031(a)(1) says a legislator or legislative employee may not

> (1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state

---

[1] This opinion is limited to consideration of AS 24.60.031 and does not consider other authority, including personnel policies, that may limit a legislator or legislative employee's campaign fundraising and endorsement activity.

legislature that occurs during the 90 days immediately preceding an election;[2]

The language of this paragraph seems to unequivocally ban all solicitation or acceptance of a campaign contribution by a legislator or legislative employee, for any campaign for the state legislature -- except for that which occurs outside of the capital city during the 90 days immediately preceding an election. The ban is not total, however, because of the way in which "contribution" is defined by a cross-reference in AS 24.60.031(b): The cross-referenced definition, in AS 15.13.400, says:

> (4) "contribution"
>
> (A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;
>
> (B) does not include
>
> (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;
>
> (ii) ordinary hospitality in a home;
>
> (iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;
>
> (iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;
>
> (v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or
>
> (vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

The ban on fundraising in AS 24.60.031(a)(1) only bans solicitation or acceptance of contributions that fall within this definition of "contribution," and therefore anything listed as an exception in this definition would be allowed. For example, notwithstanding the prohibition set out in AS 24.60.031(a)(1), a legislator or legislative employee could

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[2] "Election" is not defined by the Act, and for the purpose of this opinion we interpret it to mean a general, special, or primary election for membership in the state legislature.

still solicit or accept, on behalf of any candidate, contributions of *certain kinds* of (i) volunteer campaign services; (ii) hospitality in a home; (iii) mass mailings by a political party; (iv) poll results not related to a particular candidate; (v) newsletters from a legislator to the legislator's constituents; or (vi) fundraising lists provided without charge. This list of exceptions from what legally constitutes a contribution does not include contributions of money, and therefore hosting or co-hosting a legislative campaign fundraising event during a legislative session would violate the prohibition in AS 24.60.031(a), unless the fundraiser is held outside of the capital city and within the 90 days immediately preceding an election.

**2. Does AS 24.60.031 of the Legislative Ethics Act prohibit a legislator or legislative employee from endorsing a candidate for the state legislature during a legislative session?**

AS 24.60.031 does not prohibit a legislator or legislative employee from endorsing a candidate for the state legislature, at any time, unless the endorsement is part of a solicitation for a contribution in violation of AS 24.60.031(a)(1). The following examples illustrate the difference between an endorsement that is in compliance with AS 24.60.031, and one that is not:

1. A legislator endorses a candidate in a signature ad that solicits votes for the candidate but does not solicit contributions to the campaign. This endorsement does not violate AS 24.60.031(a)(1), because the statute does not prohibit a solicitation for votes.

2. A legislator endorses a candidate by allowing the legislator's name to appear in a fundraising event's invitation or advertisement. This endorsement would violate AS 24.60.031(a)(1) because it is a solicitation for a money contribution to the candidate. Even if the name merely appears on a long list of other candidate supporters or campaign officers, if the legislator allows it to be used in a fundraising event's invitation or ad at a time and place when AS 24.60.031(a)(1) prohibits the legislator from soliciting campaign contributions, there is a violation.

**Conclusion**

For the reasons stated above, the committee finds that directly or indirectly hosting, co-hosting, or soliciting participation in a fundraiser for a legislative candidate during a legislative session is prohibited by AS 24.60.031, unless the fundraiser is held outside of Juneau in the 90-day period immediately preceding an election.

Adopted by the Select Committee on Legislative Ethics on December 12, 2007.

Members present and concurring in this opinion were:
Dennis "Skip" Cook, Chair
Representative Bob Roses
Representative Berta Gardner
Senator Hollis French (alternate for Senator Gary Stevens)
Senator Con Bunde
H. Conner Thomas, public member

Gary J. Turner, public member
Herman G. Walker, public member

Members dissenting from this opinion were: None.

Member absent were:
Senator Gary Stevens
Ann Rabinowitz, public member

DCW:med
07-437.med

**ALASKA STATUTE**

**Sec. 24.60.031. Restrictions on fund raising.**

**(a)** A legislator or legislative employee may not

(1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for the state legislature; however, a legislator or legislative employee may, except in the capital city, solicit or accept a contribution, promise, or pledge for a campaign for the state legislature that occurs during the 90 days immediately preceding an election;

(2) accept money from an event held on a day when either house of the legislature is in regular or special session if a substantial purpose of the event is to raise money on behalf of the member or legislative employee for state legislative political purposes; however, this paragraph does not prohibit a legislator or legislative employee from accepting money from an event held in a place other than the capital city during the 90 days immediately preceding an election; or

(3) in a campaign for the state legislature, expend money that was raised on a day when either house of the legislature was in a legislative session by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city during the 90 days immediately preceding an election.

**(b)** In this section, "contribution" has the meaning given in AS 15.13.400.

## 2008 STANDARDS OF CONDUCT HANDBOOK

### FUNDRAISING FOR POLITICAL CAMPAIGNS DURING SESSION

**AS 24.60.031**

**Please contact APOC to discuss additional restrictions within the Campaign Disclosure Law.**

A legislator or legislative employee may not request or accept a contribution, or a promise to make a contribution, for any state legislative campaign while the legislature is in *regular or special* session.

This rule prohibits legislators and legislative employees from raising funds for other legislative candidates. There is one exception for special sessions, which is called the "90 day window". If the special session falls within the period 90 days immediately preceding an election, legislators and legislative employees may solicit and accept contributions in a place other than the capital city.

A legislator or legislative employee on behalf of another) may not accept money from a fundraising event held during session if a substantial purpose of the event was to raise money for the legislator's campaign or for state legislative political purposes, with the exception of the "90 day window" for special sessions.

A legislator or legislative employee may not circumvent these prohibitions by failing to declare that a seat in the Legislature is his or her campaign goal. Specifically, a legislator or legislative employee may not *spend* money for a legislative campaign that was raised in the following manner: 1) filing a letter of intent or declaration of candidacy which does not specify which public office will be sought; 2) raising money under that letter of intent; then 3) declaring as a candidate for the Legislature after the legislative session ends. (Also, see Candidacies of Legislative Employees, page 17.)

The prohibitions in AS 24.60.031 do not apply to legislators who have filed for the office of *governor, lt. governor or a federal office.*

**May a legislator keep a campaign contribution that was received prior to a regular session but not opened and acknowledged until after session began?**

No, the committee has determined that a contribution in the form of a check or cash is 'accepted' when the legislator, or someone the legislator has given authority to deal with contributions, has physically received the contribution, knows that it is a contribution and has decided to keep it rather than return it.

**May a legislator *expend* campaign funds, during a session, that were legitimately raised during the interim?**

Yes. This would not be a violation of the ethics code, however, the legislator would need to comply with all APOC requirements.

**May a legislator *mail, during a regular session*, an invitation to a fundraiser for his/her campaign, which would be held after session?**

No, this would be considered a solicitation during session and be prohibited.

**May a legislator or legislative employee host a fundraiser during session for a non-incumbent candidate for a legislative seat?**

No. The prohibition extends to *any* state legislative campaign.

**May a legislator accept funds raised from an event that had been scheduled well in advance but fell on a date during a special session?**

Generally no, unless the event falls within the "90 day window", which is the 90 days immediately preceding an election and so long as the event is not held in the capital city of Juneau. If the event does not fall within the "90 day window", the event must either be canceled or campaign contributions must be turned down at the event and the legislator may not say anything about "accepting contributions after the special session is over."

# Other States, fines imposed for late filing

| State | Who's Covered | Late Fine – Structure | Criminal |
|---|---|---|---|
| Alabama | Public Official<br>Public Employee | $10 a day<br>$1,000 max | |
| Arizona | Public Official<br>Public Employee<br>Candidate | $50 a day<br>$500 max | |
| Arkansas | Public Employee | $25 a day<br>$1,000 max | (civil penalties in the form of public caution, warning, reprimand, fines) |
| Delaware | Public Officer | min - letter of reprimand<br>max - guilty of class B misdemeanor – fail to file<br>max - guilty of class A misdemeanor – false information | |
| Hawaii | Legislator<br>Employees | Bill pending before Council to authorize the Commission to impose civil fines on elected officers.<br>$50 penalty, $10 each day with not maximum | |
| Kansas | Legislator | $10 a day<br>$300 maximum<br>Also possible civil fine up to $5,000 | |
| Louisiana | Legislator | $100 a day - $2,500 max | |
| Maine | Legislator | $10 a day<br>(campaign finance report is subject to percentage of total Contributions or expenditures, whichever is greater 1% 1st Violation, 3% 2nd violation, 5% 3rd or more violation) | |
| Maryland | Filers of Financial Disclosures – subject to fines up to $250<br>Ethics Comm. can go to court to seek civil fines up to $5,000 per violation | | |
| Massachusetts | Elected St Officials<br>County Officials<br>Candidates for such office<br>St Employees in policy-making positions | 1 – 10 days $50<br>11 - 20 days $100<br>21 - 30 days $200<br>over 30 days?<br>civil penalties up to $2,000 per violation | up to $1,000<br>and or imprisonment of up to 3 yrs for each violation |

| | | |
|---|---|---|
| Minnesota | Individual | up to $3,000 and guilty of gross misdemeanor for false or omitted information |
| New Jersey | Employees | (Admin Civil Criminal) Jt Cmte may: impose fines between $500 and $10,000 order employees removed from office, refer legislator violations to appropriate House for further action |
| Pennsylvania | Public Officials<br>Public Employees<br>Candidates | $25 a day<br>$250 max |

**June 11, 2007 Ethics Committee Meeting**
Minutes from Agenda Item #5, Disclosures

**5. Chair/Staff Report:**
**a. Disclosures:** Ms. Anderson reported the disclosure list in the packet is current as of May 31, 2007. Six late disclosures were received. No fines were issued as these were the first late disclosures received from these individuals: Sen Lyman Hoffman, Mary Katherine Shows, Rep Mike Chenault, Rep Mike Kelly, Sen Kim Elton, and Sen Gary Stevens.

Letters were sent to six former legislators asking for clarification of previous ethics disclosures. Five of the six filed updated disclosures forms. No fine was assessed. Former Rep Jim Holm has not responded to two letters to file "final day of service" disclosures. He previously submitted disclosures for an AIDEA loan and membership on a board of directors. Pursuant to AS 24.60.260 his fine would be $100 for each late disclosure. Senator Bunde asked what options are available for collecting fines. Staff reported there are no options or language in the new statute for collecting fines from those no longer in office. Chair Cook stated the committee's options are to waive the fine or keep it in place even if it is not paid. Chair Cook asked Ms. Anderson to follow up on options available for securing the fine and also what is in statute regarding APOC fines. Senator Bunde made a motion to keep the fine in place and notify Mr. Holmes. Staff will send a certified letter notifying Mr. Holm the disclosures are required and a fine of $100 for each late disclosure is imposed. Hearing no objection, motion passed. Member Turner asked to add to a future agenda the subject of reviewing our fine structure.

**September 28, 2007 Ethics Committee Meeting**
Minutes from Agenda Item # 4, Disclosures

**4. CHAIR/STAFF REPORT:**
**a. Disclosures:** Ms. Anderson stated the disclosure list in the packet is current as of September 28. There are more disclosures then usual because of the awareness of ethics.

Staff reported a certified letter was sent to former Representative Jim Holm on June 15, 2007 per committee action at the June 11, 2007 meeting. The letter notified Mr. Holm of his duty to complete ethics disclosures upon leaving office and of the committee's action to impose a fine of $200 for failure to file the disclosures in a timely manner. The letter was unclaimed and another letter was sent on July 15, 2007. Staff talked to Mr. Holm on July 20, 2007 and he stated he would not file the disclosures, would not pay the fine and hung up in the middle of the conversation.

Staff was asked at the June 11 meeting to check to see what options are available to collect the fine. Karla Schofield, Assistant Director LAA, stated if the individual was still employed by the legislature, the fine could be taken out of their last paycheck. APOC's process is similar to ours in that they send out certified letters. They have worked out payment schedules as well if the fine is significant or the individual cannot pay the entire amount up front. If an individual does not pay a fine, they refer the matter to the Attorney General's office. Their understanding is that the AG's office does not follow up unless the fine is $500 or greater. Staff reported our policy has been to publish the names of individuals who do not pay their fines.

Committee discussed the options available: include Mr. Holm's name in the ethics newsletter and forward the matter to the AG. Member Turner indicated it would be troubling if the committee did not take any action and what kind of message would the committee be sending on the importance of filing disclosures. What about garnishing their PFD? Staff reported in order to do this a judgment is required. Representative Roses asked what about small claims court? Representative Roses agrees that the committee would be setting a precedent in whatever action is taken. Perhaps the answer is to increase the amount of fines so it would be worth going after. Senator Stevens stated the point is to file the disclosure, which Mr. Holm did, what is the point in pursuing the fine for so little an amount. Member Walker stated we do have a responsibility to follow up on the fine otherwise the fact disclosures are required could be ignored. Senator Bunde moved to refer the matter to the AG (after confirmation the AG is proper authority). The committee would be following the letter of the law and thus taking responsibility for pursuing unpaid fines. Staff will draft for the next meeting language for the committee's Rules of Procedure on this subject. Roll call vote taken: NO – Senator Stevens; YES – Senator Bunde, Representative Roses, Members Rabinowitz, Turner, Thomas, Walker and Chair Cook. Motion carried.

# Article 4. Required Annual Financial Disclosure.



**Administrative Code.** — For legislative financial disclosure, see 2 AAC 50, art 5.

**Sec. 24.60.200. Financial disclosure by legislators, public members of the committee, and legislative directors.**

**(a)** A legislator, a public member of the committee, and a legislative director shall file a disclosure statement, under oath and on penalty of perjury, with the Alaska Public Offices Commission giving the following information about the income received by the discloser, the discloser's spouse or domestic partner, the discloser's dependent children, and the discloser's nondependent children who are living with the discloser:

(1) the information that a public official is required to report under AS 39.50.030 , other than information about gifts;

(2) as to income in excess of $5,000 received as compensation for personal services, the name and address of the source of the income, and a statement describing the nature of the services performed; if the source of income is known or reasonably should be known to have a substantial interest in legislative, administrative, or political action and the recipient of the income is a legislator or a legislative director, the amount of income received from the source shall be disclosed;

(3) as to each loan or loan guarantee over $1,000 from a source with a substantial interest in legislative, administrative, or political action, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists.

**(b)** The Alaska Public Offices Commission may request the information required under AS 24.60.200 — 24.60.260 to be submitted electronically but shall accept any information required under AS 24.60.200 — 24.60.260 that is typed in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission and that is filed with the commission. The commission shall print the forms provided under this section so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page. (§ 31 ch 127 SLA 1992; am § 58 ch 74 SLA 1998; am §§ 30, 31 ch 108 SLA 2003; am § 3 ch 155 SLA 2004)

**Effect of amendments.** — The 1998 amendment, effective January 1, 1999, rewrote the introductory language and paragraph (1) and deleted former paragraph (4).

The 2003 amendment, effective September 14, 2003, in subsection (a), substituted "domestic partner" for "spousal equivalent" in the introductory language and "$5,000" for "$1,000" in paragraph (2), and added subsection (b).

The 2004 amendment, effective October 1, 2004, rewrote subsection (b).

**Sec. 24.60.210. Deadlines for filing of disclosure statements.**

**(a)** A person required to file a disclosure statement under AS 24.60.200 shall file an annual report with the Alaska Public Offices Commission, covering the previous calendar year, containing the disclosures required by AS 24.60.200, on or before March 15 of each year.

**(b)** Notwithstanding (a) of this section, a public member and a public member nominee of the committee shall file an annual report with the Alaska Public Offices Commission, covering the previous calendar year, containing the disclosures required by AS 24.60.200, on or before the second Monday in January of each year. (§ 31 ch 127 SLA 1992; am § 59 ch 74 SLA 1998; am § 1 ch 127 SLA 2002)

**Effect of amendments.** — The 1998 amendment, effective January 1, 1999, substituted "A person required to file a disclosure statement under AS 24.60.200" for "A legislator and legislative director" at the beginning and "March 15" for "April 15."

The 2002 amendment, effective October 3, 2002, added subsection (b).

**Sec. 24.60.220. Administration of AS 24.60.200 - 24.60.260.**

The **Alaska Public Offices Commission** shall

(1) **adopt regulations to implement and interpret the provisions of AS 24.60.200 - 24.60.260;**

(2) prepare standardized forms on which the statements required by AS 24.60.200 shall be filed; and

(3) examine, investigate, and compare all reports and statements required under AS 24.60.200, and report all possible violations of this chapter it discovers to the committee. (§ 31 ch 127 SLA 1992)

**Sec. 24.60.230. Statements as public records.**

A statement filed with the Alaska Public Offices Commission under AS 24.60.200 is a public record. A person is not required to comply with AS 24.60.200 to the extent that a court of competent jurisdiction of the state determines that legally privileged professional relationships or constitutional privacy considerations would be violated by compliance. (§ 31 ch 127 SLA 1992)

**Sec. 24.60.240. Civil penalty for late filing.**

A person required to file a disclosure statement under AS 24.60.200 who fails to file a properly completed report under AS 24.60.200 is subject to a **civil penalty of not more than $10 a day for each day the delinquency continues as the Alaska Public Offices Commission determines, subject to appeal to the superior court.** An affidavit stating facts in mitigation may be submitted to the Alaska Public Offices Commission by the person against whom the civil penalty is assessed. However, the **imposition of the penalties prescribed in this section does not excuse the person from filing reports required by AS 24.60.200.** (§ 31 ch 127 SLA 1992; am § 60 ch 74 SLA 1992)

**Effect of amendments.** — The 1998 amendment, effective January 1, 1999, substituted "A person required to file a disclosure statement under AS 24.60.200" for "A legislator and legislative director" at the beginning.

**Sec. 24.60.250. Effect of failure to file.**

**(a)** In addition to the sanctions described in AS 24.60.260, if the Alaska Public Offices Commission finds that a candidate for the legislature who is an incumbent legislator has failed to file a report under AS 24.60.200 by March 15, the commission shall notify the candidate that the report is late. If the candidate fails to file the report within 30 days after it is due,

(1) the commission shall notify the lieutenant governor;

(2) the candidate shall forfeit nomination to office and may not be seated in office;

(3) the lieutenant governor may not certify the person's nomination for office or election to office; and

(4) nomination to the office shall be certified as provided in AS 39.50.060(b).

**(b)** In addition to the sanctions described in AS 24.60.260, if the Alaska Public Offices Commission finds that a member of the committee has failed or refused to file a report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify the presiding officer of the appropriate legislative body. In the case of a public member of the committee, the commission shall notify both presiding officers.

**(c)** In addition to the sanctions described in AS 24.60.260, if the Alaska Public Offices Commission finds that a legislative director has failed or refused to file a report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify the Alaska Legislative Council or the Legislative Budget and Audit Committee, as appropriate. For the ombudsman, the Alaska Legislative Council shall be notified. (§ 31 ch 127 SLA 1992; am § 14 ch 63 SLA 1998; am § 61 ch 74 SLA 1998)

**Cross references.** — For the text of this section as it read on and after the amendment effective June 2, 1998 made by § 14, ch. 63 SLA 1998 (which was made retroactive to March 15, 1998) but before the amendment effective June 4, 1998 made by § 61, ch. 74 SLA 1998, see § 14, ch. 63 SLA 1998 in the 1998 Temporary and Special Acts. For provisions of the Legislative Financial Disclosure Grace Period relating to the June 2, 1998 amendment § 14, ch. 63 SLA 1998, see § 15, ch. 63 SLA 1998 in the 1998 Temporary and Special Acts.

**Effect of amendments.** — The 1998 amendment, effective June 4, 1998, rewrote this section.

**Editor's notes.** — This section was amended by § 14, ch. 63 SLA 1998 with an effective date of June 2, 1998 and retroactive to March 15, 1998 under § 14, ch. 63, SLA 1998. The section was also amended by § 61, ch. 74, SLA 1998, with a later effective date of June 4, 1998. The section as amended by § 14, ch. 63, SLA 1998, with the earlier effective date, is identical to subsection (a) of the section as amended by § 61, ch. 74, SLA 1998, with the later effective date. Only the section as amended by § 61, ch. 74, SLA 1998 has been printed.

**Sec. 24.60.260. Prohibited conduct relating to disclosures.**

**(a)** A person required to make a disclosure under this chapter may not knowingly make a false or deliberately misleading or incomplete disclosure to the committee or to the Alaska Public Offices Commission. **A person who files a disclosure after a deadline set by this chapter or by a regulation adopted by the committee or by the Alaska Public Offices Commission has**

**violated this chapter and may be subject to imposition of a fine as provided in (c) of this section or AS 24.60.240.**

**(b) A person who violates this section is subject to a proceeding under AS 24.60.170, in addition to penalties that may be imposed by the Alaska Public Offices Commission under AS 24.60.240 and to the penalty set out in AS 24.60.250.**

**(c)** The committee may impose a fine on a person who files a disclosure after a deadline set by this chapter. The amount of the fine imposed under this subsection may not exceed $2 for each day to a maximum of $100 for each disclosure for a late disclosure. However, if the committee finds that a late filing was inadvertent, the maximum fine the committee may impose under this subsection is $25. (§31 ch 127 SLA 1992; am §§ 62, 63 ch 74 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective January 1, 1999, in subsection (a) substituted ". A person who files" for ",or filed" near the middle and added "has violated this chapter and may be subject to imposition of a fine as provided in (c) of this section or AS 24.60.240" at the end; and added subsection (c).

# [redacted] HOUSE COMMITTEE REPO[redacted]

(7)
**Date Referred to Committee: February 27, 2008** **FURTHER REFERRALS: Finance**

**Date of Committee Action:** 3/10/08

**The JUDICIARY Committee considered:** **HB 368**

**HOUSE BILL NO. 368** **ETHICS: LEGISLATIVE & GOV/LT GOV**

**"An Act modifying the limitations on political fund raising during legislative sessions by candidates for governor or for lieutenant governor, and amending the Legislative Ethics Act to modify the limitation on political fund raising by legislators and legislative employees during legislative sessions, to allow legislators and legislative employees to accept certain gifts from lobbyists within their immediate families, to clarify the Legislative Ethics Act as it relates to legislative volunteers and educational trainees, to reduce the frequency of publication of summaries by the Select Committee on Legislative Ethics, to revise procedures and penalties related to the late filing of disclosures required by the Legislative Ethics Act, and to add a definition to that Act."**

**Recommends it be replaced with** | | HCS *or* |✓| CS *for* HB368 (JUD)
*For Senate Bills with new title:* | | *Technical Title* | | *New Title: HCR*_____ | | Same Title |✓| New Title

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____ Committee

*List of Abbrev for Depts:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
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| ***NEW*** **FISCAL NOTES** *Assigned by Chief Clerk's Office | | | | |
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| **Signing with recommendations** | Printed Last Name | DP | DNP | NR | AM |
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| | GRUENBERG | – | | | |
| | LYNN | X | | | |
| | Coghill | | | – | |
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| | SAMUELS | | | X | |
| | Holmes | X | | | |
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| Chair: | KAUFMAN | X | | | |
| Chair: | | | | | |

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM** January 25, 2008

**SUBJECT:** Legislators who are candidates for federal office (HB 305)

**TO:** Representative Kevin Meyer
Attn: Mike Pawloski

**FROM:** Alpheus Bullard
Legislative Counsel

In a memorandum to your office dated December 13, 2007, I had advised that AS 15.13 could not be amended to include the regulation of the solicitation and acceptance of contributions for federal office, but that AS 24.60.031 could be so amended.

When I drafted the bill (that became HB 305), it was my understanding that while a state law that sought to directly regulate candidates running for federal office would be preempted, that the state had a sufficient interest in shielding its legislative processes from corruption and the appearance of corruption to allow the state to regulate the conduct of its legislators and legislative employees who might be also incidentally running for federal office. My understanding was in error.

In Tepper v. Miller, 82 F.3d 989 (1996), the United States Court of Appeals for the Eleventh Circuit affirmed an injunction against the enforcement of a Georgia law[1] that prohibited Georgia General Assembly members from accepting contributions for federal election campaigns while the General Assembly was in session, holding that the statute was preempted by the Federal Election Campaign Act of 1971 (FECA) (as amended), 2 U.S.C. § 431 et seq.

FECA includes a specific preemption provision, 2 U.S.C. § 453, which reads: "*the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.*" (emphasis added) The House Committee that drafted the provision stated that the intention was "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal Office and that the Federal law will be the sole authority under which such elections will

[1] The Georgia Ethics in Government Act, O.C.G.A. § 21-5-35(a), provided "[n]o member of the General Assembly or that member's campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session."

be regulated." See Tepper, 82 F.3d 989, 994 (1996), quoting from H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

The Federal Election Commission (FEC), which is vested with "primary and substantial responsibility for administering and enforcing [FECA]" (Buckley v. Valeo, 424 U.S. 1, 109 (1976)), has also consistently expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept campaign contributions.[2]

The express language of FECA's preemption provision, the provision's legislative history, and the FEC's interpretation[3] make plain that a state law operating to regulate the period in which a category of citizens can accept contributions for a campaign for federal office is preempted.

TLAB::med
08-046.med

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[2] See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions).

[3] See Orloski v. FEC, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").

HOUSE STATE AFFAIRS
COMMITTEE
Amendment # 5

To Bill Number HB 368

Sponsor: Gruenberg

Withdrawn

Date: 3/26/08 Logged By: VM

* **Section 1.** AS 11.56.130 is amended to read:

**Sec. 11.56.130. Definition.** In AS 11.56.100 - 11.56.130, "benefit" has the meaning ascribed to it in AS 11.81.900 but does not include

(1) political campaign contributions reported in accordance with AS 15.13 unless the contribution is made or received in exchange for an agreement to **affect** [ALTER] an elected official's or candidate's vote or position on a matter the elected official has, or the candidate on election would have, the authority to take official action on; in this paragraph, "official action" means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction;

(2) concurrence in official action in the cause of legitimate compromise between public servants; or

(3) support, including a vote, solicited by a public servant or offered by any person in an election.

HOUSE STATE AFFAIRS
COMMITTEE
Amendment # 6

To Bill Number HB 368

Sponsor: Gruenberg

Date: 2/26/08 Logged By: VM

Withdrawn

* **Sec. 2.** AS 15.13.040(e) is amended to read:

(e) The report required under (d) of this section must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures, **with expenditures paid for by debit or credit card itemized individually, regardless of amount**. The report shall be filed with the commission **not** [NO] later than 10 days after the expenditure is made.

HOUSE STATE AFFAIRS
COMMITTEE
Amendment # 7

To Bill Number HB 368

Sponsor: Gruenberg

Date: 2/26/08 Logged By: AM

Withdrawn

* **Sec. 3.** AS 15.13.074(b) is amended to read:

(b) A person or group may not **reimburse another person or group for a contribution made by that person or group or** make a contribution anonymously, using a fictitious name, or using the name of another.

# HOUSE COMMITTEE REPC T

(7)
**Date Referred to Committee: February 19, 2008**

**FURTHER REFERRALS: Judiciary**
**Finance**

**Date of Committee Action:** 2-26-08

**The STATE AFFAIRS Committee considered:** **HB 368**

**HOUSE BILL NO. 368** **ETHICS: LEGISLATIVE & GOV/LT GOV**

"An Act modifying the limitations on political fund raising during legislative sessions by candidates for governor or for lieutenant governor, and amending the Legislative Ethics Act to modify the limitation on political fund raising by legislators and legislative employees during legislative sessions, to allow legislators and legislative employees to accept certain gifts from lobbyists within their immediate families, to clarify the Legislative Ethics Act as it relates to legislative volunteers and educational trainees, to reduce the frequency of publication of summaries by the Select Committee on Legislative Ethics, to revise procedures and penalties related to the late filing of disclosures required by the Legislative Ethics Act, and to add a definition to that Act."

**Recommends it be replaced with [ ] HCS *or* [X] CS for** HB368 (STA)
***For Senate Bills with new title:* [ ] *Technical Title* [ ] *New Title: HCR*_____ [ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

*List of Abbrev for Depts.:*
ADM
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HSS
LWF
LAW
LEG
MVA
DNR
DPS
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***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

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***PREVIOUS* FISCAL NOTES**

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| Signing with recommendations | Printed Last Name | DP | DNP | NR | AM |
|---|---|---|---|---|---|
| Craig Johnson | Johnson | | | X | |
| Bob Roses | Roses | X | | | |
| Kyle Johansen | Johansen | | | X | |
| Mark Gruenberg | Gruenberg | ~ | | | |
| John Coghill | Coghill | | | ~ | |
| Al Dill | Dill | | | ~ | |
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| Chair: Lynn | Lynn | X | | | |
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