HB

58

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB58-DOA-DOP-1-22-07
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: Exec Branch Ethics: Interests & Actions
RDU: Centralized Administrative Services
Component: Personnel
Sponsor: Representative(s) Gara, Gardner, Kawasaki.....
Requester: House State Affairs
Component No.: 56

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	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
Contractual	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
Equipment	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
Grants & Claims	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
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	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
1004 GF	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
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	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**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal.

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill will have no fiscal impact on the Division of Personnel. May require personnel board review.

Prepared by: Dianne Kiesel, Director
Phone: 465-4429
Division: Division of Personnel & Labor Relations
Date/Time: 1/22/07 8:25 AM
Approved by: Kevin Brooks, Deputy Commissioner
Date: 1/31/2007
Agency: Department of Administration

(Revised 9/18/2006 OMB)

ALASKA STATE LEGISLATURE

REPRESENTATIVE LES GARA
REPRESENTATIVE BERTA GARDNER
REPRESENTATIVE SCOTT KAWASAKI
REPRESENTATIVE MIKE DOOGAN
REPRESENTATIVE MAX GRUENBERG

Sponsor Statement

HB 58 – Executive Ethics

HB 58 is a responsible step towards making the Executive Branch Ethics Act clearer, easier to understand, and easier to follow.

Currently the Ethics Act does not spell out clearly what sorts of financial interests constitute a conflict of interest. The bill sets out a series of bright financial lines for executive branch employees. For example, current law provides no guidance whatsoever as to the size of investment that an executive branch employee may own and still take official state action that affects the investment. HB 58 declares that either $5000 worth of stock, or one percent of a company's stock, whichever is *less*, means that the executive branch employee must not be involved in state actions that impact that investment. While it seems like common sense to have such a concrete definition, current law does not provide one.

It is important to keep in mind that the key question is whether an executive branch employee owns the financial interest and then performs an official act that affects the financial interest. Either one without the other is not a violation.

The bill also describes with particularity other sorts of forbidden financial interests. An executive branch employee may not own a controlling interest in a business, may not own an equity interest in a business worth more than $5000, may not be a member of a company's board of directors and may not be an employee of a business.

The bill also expands the definition of "official action" to more clearly capture the day to day duties of our executive branch employees.

The state's ethics laws should be clear to executive branch employees, and to the public those employees serve. Please join me in supporting HB 58.

January-May: State Capitol • Juneau, AK 99801-1182 • (907) 465-2647 • Fax (907) 465-3518
June-December: 716 W. 4th Avenue • Anchorage, AK 99501 • (907) 269-0106 • Fax (907) 269-0109
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ALASKA STATE LEGISLATURE

REPRESENTATIVE LES GARA
REPRESENTATIVE BERTA GARDNER
REPRESENTATIVE SCOTT KAWASAKI
REPRESENTATIVE MIKE DOOGAN
REPRESENTATIVE MAX GRUENBERG

HB 58 – Executive Ethics

Sectional Analysis

Section 1

Line 10 replaces an "or" in the current statute with an "and". The effect of the change is to add the condition that the action taken or influence exerted by the officer have an insignificant or conjectural effect on the matter.

Line 11 and 12 adds some explanatory words to the current statute to make it clearer.

Page 1, lines 12 – 14, through page 2, lines 1-16 adds a list of business interests that would be forbidden under the executive act ethics code. The construction of the list is such that any single item possessed by an officer of a member of the officer's immediate family would be sufficient to preclude that officer from taking official action in connection with the interest.

Section 2

Lines 18 – 21 expand the definition of official action to include most of the day-to-day activities of executive branch employees.

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JUNEAU WEATHER

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Web posted January 27, 2005

Empire editorial: Dump Renkes, ethics code

Far from being the last word on Attorney General Gregg Renkes' ethics and standing as Alaska's top lawyer, Tuesday's release of a report about his actions in a state coal deal is only the start of needed change.

The end must bring both new ethics rules and a new attorney general.

Contracted by Gov. Frank Murkowski to probe Renkes' negotiations on a deal to sell Cook Inlet coal to Taiwan, former U.S. Attorney Robert Bundy found that the attorney general should have requested an ethics determination but otherwise did not break the law. That's because Alaska's law is so vague, not specifying a dollar figure that pushes a public official's investment portfolio into the realm of a conflict. Renkes' $100,000-plus investment in and close ties to KFx, the Denver company that stood to gain from the coal agreement, apparently doesn't rise to the state's legal definition of a conflict. It should and, once state lawmakers are done, it probably will.

In the meantime, Murkowski is wrong to insist that this, along with his reprimand, closes the matter and that a state personnel board inquiry should end. Where many ethics considerations hinge on an elusive perception of cozy relations, the attorney general's sizable stake in KFx cannot be viewed as anything but a conflict. Bundy finds the conflict insignificant because Renkes' shares represented no more than .02 percent of the company's total. But the issue isn't how Renkes' shares affected the company; it's how they stood to affect him. Bundy's recommendation that the state adopt a $10,000 investment limit for any government official potentially influencing a company's standing with the state says it all: $100,000 is a lot of money. That much is apparent to most Alaskans, whose median income in a family of four is some $30,000 less.

Regardless of where Renkes' investment and active promotion of KFx and the coal deal stood with the law, it is unfathomable that he would not have understood that his involvement could affect him financially. Knowing this, it was reckless to get involved officially in the first place, and it was unpardonable not to at least ask for an official opinion about that involvement. If this behavior brings only a slap on the wrist, Alaskans will be right to doubt the integrity of their government. The governor should demand the attorney general's resignation since Renkes hasn't had the integrity to offer it himself.

Further, it is imperative that this Alaska Legislature remedy the lax ethics code. The state's reliance on and support of natural resource industries and the companies

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that fuel them makes it doubly important that the law spell out right and wrong and assure citizens that their officials are acting on Alaskans' behalf, and not for their own bank accounts.

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America's Newspapers

Opinion
Anchorage Daily News (AK)
February 8, 2005
Author: Staff
Estimated printed pages: 4

Renkes' right move

Resignation relieves governor of unreasonable burden

Gregg Renkes did the right thing Saturday by resigning his office as attorney general. Living under an ethical raincloud for his deep involvement in both a state coal deal and a company that would have benefited from it, his credibility and effectiveness had simply washed away. Gov. Frank Murkowski lost a loyal aide and confidant, but he will not have to carry any further the burden of Mr. Renkes' continued tenure in office.

Stability and principled leadership for the Department of Law now become the governor's first priority. This is a time when old-fashioned conservative restraint will serve best. Whoever the governor appoints as attorney general must be respected across the board (in order to dampen undue partisanship), principled beyond reproach (to rehabilitate public confidence in the administration), experienced in Alaska's key policy matters (to maintain momentum on natural gas and other issues) and prudent in his or her personal conduct (to make the attorney general once again a standard-setter in the rule of law).

The next priority must be to clear up the murky waters of Alaska's executive branch **ethics** law. Robert Bundy, the special investigator who found that Mr. Renkes violated the **Ethics Act** but not the Code of **Ethics**, also found too many "close calls" for comfort. The governor has asked Mr. Bundy to develop clear new language to guide public employees. That language should protect the public trust first of all and public officials' financial liberties secondarily.

(In the end, Mr. Bundy's report substantially damaged Mr. Renkes in two unforeseen ways: First, it crafted a too-clever legal analysis to reach the conclusion that $126,000 in company stock was legally "insignificant" -- a view the average person on the street just wouldn't buy. And second, it revealed that the attorney general deleted thousands of e-mails from his work computer on the very day that damaging news reports first appeared while denying he even knew of the reports -- a story that went beyond all credibility.)

Mr. Renkes was undone by his own conduct and poor judgment. The Alaska attorney general, being in an appointed position beholden to the governor, has always been a hybrid creature: part governor's attorney, part Cabinet officer, part department manager, part policy analyst and adviser, part people's lawyer. Alaska attorneys general succeed when they leave partisan politics to others (even while remaining cognizant of the Capitol's hazardous political currents) and give sound legal advice to both the governor and the people of Alaska. The job requires diligence and sure footing. Ordinarily it goes without saying that the attorney general's personal example and judgment must uphold impeccable standards of trust. With his personal lack of restraint, Mr. Renkes crossed a line that is deliberately very restrictive.

Alaska's attorney general must, in the end, personify the ethic of public service. The position is a privilege, a burden and a duty -- and, for Gov. Murkowski at this moment, an exercise in governing wisely. Finding a new attorney general who radiates public trust and good judgment -- and who can do so without breaking a sweat -- is job one.

BOTTOM LINE: Gregg Renkes did the right thing by resigning Saturday; now the focus is on the governor to find

'a high-quality replacement.

Alaska ethics laws fall short, need revision, lawmakers say

■ CONCLUSION: Renkes broke law by not asking for ethical determination.

By MATT VOLZ
The Associated Press

JUNEAU — An outside investigator shined a light on a murky area of Alaska ethics law when he found that the attorney general's potential to profit from a state business agreement did not rise to the standard for lawbreaking.

Alaska law does not say how much is too much when a state employee has a financial stake in a company.

That lack of a standard is what caused former U.S. attorney Robert Bundy to conclude that Attorney General Gregg Renkes' role in a trade agreement between Alaska and Taiwan could have benefited KFx Inc. — a company in which Renkes owned more than $100,000 in stock — but wasn't an illegal conflict of interest.

Bundy's report to Gov. Frank Murkowski concluded, however, that Renkes broke the law by failing to ask for an ethical determination before playing a major role in the coal deal that involved technology by KFx Inc.

The lack of standards muddied Renkes' case and made it a close call, Bundy said.

"This controversy could have been avoided had a statute or regulation provided specific standards on when stock ownership constitutes a conflict of interest," Bundy's report said. "Accordingly, we recommend that the governor take steps to establish these standards."

Lawmakers agreed that changes need to be made.

"I think Bundy did a good job of outlining the black hole," said Rep. Beth Kerttula, D-Juneau. "It's incumbent upon us to get this fixed and get this fixed quickly."

House Majority Leader John Coghill, R-North Pole, said the Legislature needs to address what he called a gray area of the law.

"The answer is yes. When, I don't know," he said. "The first thing we want to consider is that this thing runs its course before taking it up. We want to let the news die down, so we can be a little more deliberate."

Renkes owned 0.02 percent of KFx's outstanding shares, the value of which peaked at more than $126,000.

Bundy used a 1989 attorney general's opinion to determine whether Renkes owned enough stock to be considered a conflict. That opinion measured excessive personal interest at owning 1 percent or more of a company's outstanding shares.

Bundy's findings hinged on that standard.

Several states — including Connecticut, Delaware, Florida, Massachusetts, New Jersey, Ohio and Pennsylvania — use a percentage of a company's outstanding shares to draw the line for conflict of interest, Bundy's investigation found. Others — Idaho, Oregon, Washington — draw the line at a certain dollar value of the stock.

And others use a combination, such as Kentucky's law of $10,000 or 5 percent of the shares in a company.

At a news conference on Tuesday, Bundy said he would recommend $10,000 or 1 percent as the standard for Alaska.

Murkowski has asked Bundy to draft legislation that would create a standard for Alaska. That legislation is introduced as soon as possible, regardless of the furor over Renkes, he said.

"Politics, in my opinion, shouldn't conflict with reasonable ethical review to make sure that other folks are not caught in this kind of dilemma," Murkowski said.

House Judiciary Committee member Les Gara, D-Anchorage, said the law should set limits on the dollar value of the investment, and not be based on percentage of outstanding shares.

The places that use the latter standard are protecting the interests of business, not the state, Gara said.

"Those are the states that want to let the fox guard the chicken house," Gara said.

He said under the standard used in Bundy's report, a lawmaker hypothetically could own $15 million in Conoco Phillips stock and still be in compliance with ethics laws when deciding who builds a gas pipeline from the

DAVID J. SHEARLEY / The Associated Press

Gregg Renkes talked about the allegations of ethics violations in Juneau on Tuesday. An investigator cleared him of some wrongdoing.

> *"I think Bundy did a good job of outlining the black hole."*
>
> — Rep. Beth Kerttula, D-Juneau

DORSEY

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February 17, 2005

The Honorable Frank Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re. Proposed Revisions to the Code of Ethics

Dear Governor Murkowski:

Thank you for asking us to propose improvements to the Code of Ethics to better provide guidance on those issues raised by our investigation. Building upon our research and investigation in the Renkes matter, we have reviewed the statutory schemes from a variety of states. Although no language from any one state's statutory scheme addresses completely the issues we see, we started with language and ideas from several different statutes as the basis for our proposed revisions.

First, we would add language to AS 39.52.110 to clarify when a public officer's interest in a specific matter is insignificant. As was the case in the Renkes matter, a public officer's interest in a specific matter may derive from that officer's interest in a corporation or other organization. We believe the following language would provide additional guidance and direction for evaluating the significance of such interests.

> (c) For purposes of section (b)(1), a public officer's personal or financial interest in a matter is not insignificant if a business entity may realize a reasonably foreseeable material benefit or detriment as a result of the action of the official, and the public officer--
>
> (1) has a controlling interest in the business entity;
>
> (2) owns more than one percent (1%) of the voting and/or equity interest in the business entity;
>
> (3) owns more than $10,000 of the fair market value of the business entity;
>
> (4) is a member of the board of directors or other governing board of the business entity;

(5) serves as an elected officer of the business entity; or

(6) is an employee of the business entity.

Thus, if an officer has an interest in, or relationship with, a business entity, he or she must determine whether that business entity has a material interest in the matter. We do not recommend attempting to define "material." Materiality is a well-recognized legal concept that allows for the myriad of situations encountered in the real world.

This language would best fit in subsection (c) to AS 39.52.110. The current subsection (c) would then become subsection (d). We have attached a red-lined version of this statute showing our suggested changes.

Second, we recommend further clarifying the exception for "large class of persons to which the public officer belongs" in subsection (b)(1). Mirroring the language used in the Legislative Ethics Act, AS 24.60.990(b)(1), we would add "as a member of a profession, occupation, industry, or region" to the end of this subsection such that it would read:

> (b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's
>
> (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs as a member of a profession, occupation, industry, or region;

Thank you for the opportunity to provide our proposed revisions to you. Please do not hesitate to call if you have any questions or concerns. Of course, at your direction, we will make our research on these issues available to any state agency working on this matter.

Very truly yours,

Robert C. Bundy

BEFORE THE STATE OF ALASKA PERSONNEL BOARD

IN THE MATTER OF:

INVESTIGATION OF
ETHICS COMPLAINT
AGAINST
GREGG D. RENKES

RECOMMENDATION OF INDEPENDENT COUNSEL

Thomas M. Daniel, Esq.
Perkins Coie LLP
1029 West Third Avenue, Suite 300
Anchorage, Alaska 99501

I. Introduction

In the settlement agreement between former Attorney General Gregg Renkes and the Alaska Personnel Board, the parties agreed, amo. _ other things, that,

> The Independent Counsel shall be permitted to complete its legal analysis of whether Renkes' ownership of stock in KFx, Inc., constituted an "insignificant" financial interest in the coal negotiations between Alaska and the Republic of China within the meaning of section 39.52.110(b)(1) of the Ethics Act.

I have not conducted an independent factual investigation regarding former Attorney General Renkes' participation in the coal negotiations between the State of Alaska and the Republic of China because I terminated my investigation after his resignation and the subsequent settlement agreement. Consequently, this legal analysis is based upon the factual information contained in the Report to Governor Frank Murkowski Regarding Investigation of Alaska Attorney General Gregg Renkes, dated January 22, 2005, prepared by attorney Robert C. Bundy ("the Bundy Report").

This has not been an easy task because the Ethics Act itself, the regulations adopted under it, and the Attorney General opinions interpreting it, do not provide any clear guidelines for determining when a public officer's financial interest in a matter is "insignificant." In my analysis of the legal question presented, I examined Alaska law regarding the interpretation of statutes, the legislative history of the Ethics Act, previous Attorney General opinions interpreting the Ethics Act, the Ethics Acts of other states, and relevant rules of professional conduct for lawyers. I have attempted to apply the Ethics Act provisions to the facts of this matter, keeping in mind that one of the purposes of the Act is to insure that "public officers conduct the public's business in a

manner that preserves the integrity of the governmental process and avoids conflicts of interest." *See* AS 39.52.010(a)(4).

For the reasons explained below, I have concluded that the former Attorney General's ownership of 12,000 shares of KFx stock, ranging in value from approximately $70,000 to $125,000, while negotiating and drafting the Alaska/Taiwan Memorandum of Understanding for the development of Alaska coal using KFx technology to process the coal, constituted a significant financial interest in the matter within the meaning of section 39.52.110(b)(1) of the Alaska Executive Branch Ethics Act.

II. Summary of the Facts

From late 2003 until the fall of 2004, former Attorney General Gregg Renkes actively participated in efforts on behalf of the State of Alaska to encourage the sale of Alaska coal to customers in Taiwan, formally known as the Republic of China. As part of those efforts, Renkes arranged for delegations of Taiwan government officials and industry representatives to visit Alaska and meet with potential suppliers and processors of coal. He also played a significant role in negotiating a Memorandum of Understanding between the State of Alaska and Taiwan that provided a formal statement of the two governments' intention to encourage Taiwan purchases of Alaska coal.

Coal from the Beluga and Chuitna fields on the west side of Cook Inlet has been largely undeveloped because the coal is sub-bituminous, a lower grade coal with a relatively low energy content and a high moisture content. One method for addressing the problem of the high moisture content of this coal is the "K-fuel process," thus

making it more commercially attractive. The K-fuel process is owned by KFx, Inc., a Denver, Colorado based corporation. KFx is in the process of constructing the first commercial-size coal processing facility to reduce the moisture content of sub-bituminous coal. By late 2003, the K-fuel process was the only coal beneficiation process approaching commercial viability.

In November 2003, Taiwan president Chen Shui-bien and a delegation of Taiwanese government and business officials met with Governor Murkowski in Anchorage to discuss Taiwan's purchase of coal from Alaska. As a result of that meeting, Governor Murkowski designated Attorney General Renkes and Margy Johnson, Director of the Office of International Trade of the Office of the Governor, as the principal contacts on further coal development discussions. Governor Murkowski also asked Renkes to contact representatives of KFx to see if they had any interest in educating the Taiwanese about KFx technology. In December 2003, Renkes contacted John Venners, one of the founders and a principal in KFx. Renkes was a personal friend of Venners as a result of his work on Senator Frank Murkowski's staff in Washington, D.C. during the time that Venners was a consultant and lobbyist on energy matters. John Venners is the brother of Ted Venners, President and CEO of KFx.

At the time Renkes contacted Venners about the possible participation of KFx in a trade agreement between the State of Alaska and the Taiwanese, Renkes owned stock in KFx. Renkes had first acquired 12,000 shares of KFx stock at $2 per share in 2000. When Renkes contacted KFx to determine if it was interested in playing a role in the coal negotiations, his KFx stock had a market value of around $70,000. Over the

following year it would climb to a high of $124,680.[1] His shares represented .02 % of KFx's 54,000,000 outstanding shares.

In January 2004, while on a trip to Taiwan, Renkes met with Taiwan National Security Advisor Kang Ning-Hsiang, one of the people he had met during the Taiwan President's trip to Anchorage in November 2003. They discussed a possible trip to Alaska to further discuss development of Alaska coal. After Renkes returned to Alaska, he began actively working to put together a visit from the Taiwan delegation. Among other things, he drafted a letter for Governor Murkowski's signature addressed to Secretary General Kang, formally inviting "a team of experts from Tai Power and China Steel Corporation" to travel to Alaska to visit a potential coal mine and discuss the possibility of development. The date of the visit was set for March 2004.

During this same period of time, Renkes was regularly communicating with John Venners, his contact at KFx. Venners also was involved with Kanturk Partners, an investment group of Americans and Asians, who, among other things, were

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[1] According to the Bundy Report, Renkes' stock broker purchased additional shares of KFx stock beginning in November 2003, in an account over which Renkes had no control, and without the knowledge of Renkes. Apparently the broker purchased 3,500 shares of KFx but then sold them again in the period from mid-January 2004 to late March 2004. The broker purchased 900 additional shares of KFx stock in April through June 2004, and another 200 shares in August 2004, for a total of 1,100 shares. Because of the conclusion in the Bundy Report that Renkes was not aware that his broker was purchasing KFx stock in this account, I have assumed for purposes of my legal analysis that Renkes was only aware that he owned 12,000 shares of KFx stock during the time he was representing the State of Alaska in the Taiwan trade negotiations. The value of the 12,000 shares during the period from the beginning of the trade negotiations in November 2003 until the stock was sold in October 2004, ranged from $71,880 to a high of $124,680.

interested in using the KFx process to beneficiate coal mined in Mainland China. Kanturk Partners drafted a letter for Renkes to send to the Taiwan representatives extolling the virtues of the K-fuel process. Renkes made some minor changes in the letter and sent it to the Taiwan representatives.

During the March 6-12, 2004, Taiwan delegation visit, Renkes represented the State of Alaska as the senior representative of the Murkowski administration. On the last day of the conference, the representatives of KFx made a presentation on the technical aspects of the K-fuel process and hosted a dinner for the Taiwan delegation.

After the meeting had concluded, Secretary General Kang sent a letter to Governor Murkowski thanking him for the State's hospitality but mentioning that the quality of Alaska coal was still an issue. Renkes forwarded that letter to John Venners of KFx. Subsequently, Secretary General Kang requested a letter from the Governor directed to the technical and security issues of developing Alaska coal. Kanturk drafted a letter touting the virtues of the K-fuel process and explaining that the development of the Beluga coal field entailed little or no risk to Taiwan customers, as that risk would be borne by the sellers and processors in Alaska. Renkes edited the letter and presented it to Governor Murkowski, who signed it.

Governor Murkowski subsequently traveled to Taiwan for the inauguration of President Chen upon his reelection. While there, Governor Murkowski, the Taiwan representatives, and V nners discussed a potential "agreement to proceed" which would commit the government of Taiwan and the State of Alaska to encourage the development of the Beluga coal reserve. Venners drafted a proposed outline of an agreement to proceed under which Taiwan would agree to purchase a minimum of four

million tons per year of KFx-processed Beluga coal, the State of Alaska would undertake to facilitate the project with infrastructure development, and Kanturk/KFx would finance and construct the K-fuel facility and secure the coal resources for its feed stock. Venners provided a copy of the outline to the Governor and to Taiwan Deputy Minister of Economic Affairs Chen.

Subsequently, at the invitation of Governor Murkowski, another Taiwan delegation visit to Alaska was arranged. It was anticipated that the visit would conclude with the signing of a Memorandum of Understanding on the purchase of coal from Alaska. On September 7, 2004, former Secretary General Kang, who had been promoted to Senior Advisor to President Chen, sent a draft Memorandum of Understanding between the State of Alaska and the Minister of Economic Affairs of the Republic of China regarding the prospective purchase of coal. The Kang draft did not mention KFx or the K-fuel process. The Governor's office forwarded the draft to Attorney General Renkes and to John Venners. Venners expressed concern about the omission of KFx/Kanturk, but Renkes advised that this was a government-to-government agreement which should not include private parties.

Renkes then undertook to revise the draft of the Memorandum of Understanding. Among other changes, he added a specific reference to the K-fuel process although he did not add Kanturk or KFx as parties.

The final draft of the Memorandum of Understanding was signed at a ceremony on September 16, 2004, in Alaska. It included the reference to K-fuel that had been inserted by Renkes. Renkes had been asked to sign the MOU, rather than the

Governor, but declined because he did not think it was appropriate, given his relationship with KFx.

In sum, the facts as developed by Mr. Bundy reveal that former Attorney General Renkes actively participated in the negotiation and drafting of the Memorandum of Understanding between the State of Alaska and the Republic of China for the development of Alaska coal that would be processed by KFx. A KFx principal and personal friend of Renkes, John Venners, also was actively involved in the negotiations leading to the Memorandum of Understanding. During the entire time of the negotiations and the drafting of the MOU, Renkes knew that he owned 12,000 shares of KFx stock, which ranged in value from $71,880 to $124,680.

III. Legal Analysis

A. The Applicable Ethics Act Provisions

The Alaska Executive Branch Ethics Act provides that a public officer may not "use state time, property, equipment, or other facilities to benefit personal, or financial interests," nor may he "take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest." AS 39.52.120(b)(3) and (4). A financial interest is defined broadly, as including "ownership of an interest in a business." AS 39.52.960(9)(A). Thus, the literal interpretation of these provisions would preclude a public officer from engaging in public business when he intends or knows that his action will benefit any financial interest, no matter how small. However, in a section entitled, "Scope of the code," the Ethics Act provides the following guidance to enforcement of the Act:

> Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, *a public officer's (1) personal or financial interest in the matter is insignificant*, ...

AS 39.52.110 (b)(1) (emphasis added). No provision of the Act, nor any of the regulations under it, offer guidance for determining when a financial interest is "insignificant."

B. General Rules of Statutory Interpretation

The goal of statutory interpretation is to give effect to the intent of the Legislature, with due regard for the meaning that the language of the statute conveys to others. Statutory interpretation includes consideration of the statute's language, purpose and its legislative history.[2]

Here, the term "insignificant" in AS 38.52.110(b) has no defined meaning, and is given no plain meaning by its context. Thus, a court construing this statute would readily refer to sources other than the language of the statute in order to determine legislative purpose and intent.[3] These sources include statements made in legislative

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[2] *Alyeska Pipeline Service Co. v. DeShong*, 77 P.3d 1227, 1234 (Alaska 2003). *See also Curran v. Progressive Northwestern Ins. Co.*, 29 P.3d 829, 831 (Alaska 2001); *Bullock v. State*, 19 P.3d 1209, 1214 (Alaska 2001); *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999) ("We interpret . . . Alaska law according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.").

[3] "Because of this inherent ambiguity [in the language of the statute] we turn to the purpose of the statute and its accompanying legislative history . . . ." *Alyeska Pipeline Service Co.*, 77 P.3d at 1234.

hearings and floor debates.[4] Unfortunately, the legislative history of the Ethics Act provides no guidance either. In interpreting a statute, Alaska courts will also consider similar statutes from other jurisdictions, and cases analyzing and applying those statutes.[5] Ultimately, the court will adopt the interpretation of the statute that is most reasonable in light of precedent, reason and policy.[6]

A court interpreting this statute would also consider opinions issued by the Alaska Attorney General interpreting the statute. In general, Alaska courts interpreting a statute consider relevant opinions by the Attorney General, but the courts exercise their independent judgment on the appropriate construction. However, courts give additional deference to the interpretation of a statute by an agency or official who has discretion to enforce the statute, on matters that involve agency expertise or fundamental policy questions. *E.g.*, *Wendte v. State*, 70 P.3d 1089 (Alaska 2003); *Denuptiis v. Unocal Corp.*, 63 P.3d 272 (Alaska 2003); *see also Myers v. AHFC*, 68

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[4] *See Alyeska Pipeline Service Co.*, 77 P.3d at 1235-37; *AHFC v. Salvucci*, 950 P.2d 1116, 1125 (Alaska 1997); *Halo v. Anchorage*, 927 P.2d 728, 732 (Alaska 1996); *Gossman v. Greatland Directional Drilling, Inc.*, 973 P.2d 93, 96-7 (Alaska 1999); *Beck v. Dep't of Transportation & Public Facilities*, 837 P.2d 105, 117 (Alaska 1992). Statements by sponsors may be particularly significant. *AHFC*, 950 P.2d at 1125; *Beck*, 837 P.2d at 117; *Lagos v. City & Borough of Sitka*, 823 P.2d 641, 643-44 (Alaska 1991); *APEA v. State*, 525 P.2d 12, 16 (Alaska 1974). Statements by legislators after passage of the statute are not relevant. *Lynden Transp. Inc. v. State*, 532 P.2d 700, 716 (Alaska 1975); *APEA*, 525 P.2d at 16.

[5] *Gossman*, 973 P.2d at 97.

[6] When interpreting a statute, the court may consider public policy, but "public policy cannot override a clear and unequivocal statutory requirement." *Curran*, 29 P.3d at 833.

P.3d 386, 392 (Alaska 2003). The Attorney General is charged with enforcing and interpreting the Ethics Act. On this basis, a court interpreting this statute would likely defer to the Attorney General's interpretation of this statute, as long as the Attorney General's opinion had a "reasonable basis."

C. Application of the Legal Principles to the Facts Here

1. Whether a Financial Interest is "Insignificant" Should be Determined on a Case-By-Case Basis

Turning to the question of whether Renkes' ownership of KFx stock was an insignificant financial interest in the Alaska/Taiwan coal negotiations, I first looked at prior Attorney General opinions for guidance. Contrary to the conclusion reached by Mr. Bundy, I conclude that in past cases, the Attorney General has evaluated the significance of an ownership interest on a case-by-case basis – not based solely on the percentage of stock ownership in a company.

For example, in Opinion No. 663-99-0232, 1999 WL 1454824 (Alaska A.G.), the public officer was a member of the Arts Council, which voted on the award of state grants. He also owned a fifty percent interest in a bulk mailing business, which sold bulk mail services to arts organizations that received state grant funds awarded by the Council. Thus, like Renkes here, the public officer did not have a direct financial interest in the state grants to arts organizations, but he might have benefited indirectly because of his business relationship with some of the grant recipients. In addressing the question of whether the public officer's indirect financial interest in the Arts Council grants was insignificant, the Attorney General stated,

> The scope limitations under AS 39.52.110 do offer a basis for finding that certain *de minimus* financial interests fall outside the prohibitions of

> AS 30.52.120, but those determinations must be made on a case-by-case basis and not through a general analysis which blends the review of many separate individual "matters" into a single determination. In examining each financial interest the Council is not seeking to determine whether [the public officer's] financial interest actually did affect his decisions in the grant process, but is rather asking *"whether a member of the public, who has no personal acquaintance with [the public officer] or the recipient organizations, could imply suggest that the financial interests are of a sufficient magnitude to affect a Council member's vote."*

Id. at 4. The Opinion went on to instruct that in determining whether a financial interest is insignificant, the Council should take into consideration not only the size of the public officer's business (in this case $2 million in gross annual receipts), but also the gross dollar amount of the receipts from each individual company receiving a state grant. *The Attorney General then noted that the public officer's account with one of the grant recipients in the amount of $21,000 would be considered a "significant financial interest," whereas accounts in the $3,000 to $4,000 range would not.* *Id.* at 5. *See also* Opinion No. 663-88-0145, 1987 WL 121180 (Alaska A.G.) ("Of course, the Ethics Act applies on a specific case-by-case basis, and all that this opinion may accomplish is to give an outline of where potential conflicts may arise.").

Applying the logic of this Attorney General opinion, Renkes' stock ownership in KFx was significant because a member of the public with no personal acquaintance with Renkes would most likely think that his $71,000 to $125,000 interest in KFx, even though an indirect interest in the coal negotiations, was of sufficient magnitude to affect his decisions. In addition, the value of Renkes' interest in KFx was substantially more than the $21,000 account at issue in the Arts Council case.

2. The Fact That Renkes Owned Less Than One Percent of KFx Stock Does Not Make His Interest in the Matter "Insignificant"

The Bundy Report relies on Opinion No. 663-89-0526, 1989 WL 266908 (Alaska A.G.), for the proposition that a public officer's ownership interest in a public corporation of less than one percent of the stock is insignificant for purposes of AS 39.52.110(b)(1). That opinion concerned whether a Permanent Fund trustee had to recuse himself from voting on the purchase of a building in Juneau because two of his children owned 200 shares of stock in a company that had an interest in the building. There, the Alaska Permanent Fund Corporation was considering the purchase of the Goldbelt Building in Juneau. According to the Permanent Fund's investment policy, its staff could only approve real estate investment proposals *over* $5 million (and less than $50 million). Consequently, the Fund's trustees would have to grant a waiver from its normal policy in order to allow the staff to even consider a less than normal investment.

The trustee raised the question of whether he had to recuse himself from voting on the waiver request because of his children's 200 shares of Goldbelt, Inc. (The ownership interest of the children was attributable to the trustee under the Ethics Act.) Goldbelt had loaned $8.1 million to the partnership that owned the Goldbelt building, which was secured by a deed of trust on the building. In addition, a Goldbelt subsidiary was the general partner of the partnership that owned the building and had a 1% interest in the operating cash flow of the partnership, but did not have an equity interest in the building. (All of the partnership units were owned by others.)

The Attorney General concluded that the trustee's financial interest in the matter was insignificant within the meaning of AS 39.52.110(b)(1):

> Our review of the particular circumstances of this case leads us to conclude that [the Trustee's] interest in the matter is insignificant. The impact on his children's shares even if the Alaska Permanent Fund Corporation actually invested in the property is *de minimus*.

The decision provides no other explanation for this conclusion. The opinion does not explain whether the Attorney General considered 200 shares of stock as insignificant, or whether, as the Bundy Report concludes, the 200 shares (of 272,200 total) represented less than one percent of the total Goldbelt stock, making it insignificant. The opinion simply does not explain its rationale.

The opinion does state that, "[t]o the extent [Permanent Fund] Bylaw 9.2(b) offers guidance in interpreting AS 39.52.110, it compels the same conclusion, since the threshold stock holding to constitute an "interest" prohibiting Trustee participation is one percent or more of the outstanding stock." But this statement cannot fairly be interpreted as standing for the proposition that less than one percent of stock ownership is, *per se*, an "insignificant" interest within the meaning of the Ethics Act.

3. The Fact that Renkes' Financial Interest in the Coal Negotiations was Speculative is Relevant but Not Determinative of Whether His Interest was "Insignificant"

In the Bundy Report, the insignificance determination rested in part on the fact that the effect of the coal negotiations on the value of Renkes' KFx stock was speculative. It is true that the effect of the use of K-fuel technology to process Alaska coal for Taiwan on the price of KFx stock was, and still is, highly speculative. In fact, as the Bundy Report notes, when the Alaska/Taiwan agreement was publicly announced, it had no immediate effect on the price of KFx stock.

The fact is, there is no way to know at this point in time what effect, if any, the Alaska/Taiwan coal agreement will have on the value of KFx stock. Whether the K-

fuel technology will be a commercial success is unknown. KFx is essentially a start-up company, which has not yet begun commercial processing of sub-bituminous coal, and has not earned a profit to date. It is not even expected to complete its commercial coal processing facility in Wyoming until sometime later this year. KFx's success ultimately will depend upon its ability to market its commercial coal processing technology to large numbers of high-volume customers. Thus, the current price of KFx stock is not based on a history of strong earnings, but is rather based on the expectation of investors that in the long term many large-scale users of coal will turn to KFx to process previously untapped coal resources.

As with most start-up companies, the ability of KFx to persuade those first few customers to purchase its technology is essential to persuading other customers to purchase the technology. Thus, the Alaska/Taiwan coal agreement could be extremely important to KFx's long-term success because it is one of KFx's first major "sales." On the other hand, the Alaska/Taiwan coal agreement may mean little to the overall success of KFx and therefore may have no effect on its stock price. The answer to this question is entirely speculative.

However, the fact that the effect of Alaska/Taiwan coal agreement on the value of KFx stock was speculative does not necessarily mean that Renkes' stock ownership in KFx was insignificant within the meaning of the Ethics Act. If it were, Renkes could have owned $10 million worth of KFx stock and his "interest in the matter" would not have been significant because of the speculative effect of the coal deal on the value of his stock. Thus, the fact that Renkes could not accurately predict whether his official

actions would cause the value of his stock to rise surely cannot be the basis for determining whether his interest is insignificant.

It is no doubt true that the effect of a public officer's actions on a personal financial interest can be so remote and speculative that his judgment will not be influenced by it. But the larger the financial interest, the greater the risk that a public officer's judgment will be affected by it, even when the likelihood of financial gain is conjectural.

The overriding purpose of the restrictions in the Ethics Act is to insure that public decisions are made on the basis of sound public policy, not private financial gain. With this in mind, the ultimate issue is whether the potential gain to the public official from the transaction is significant. Several factors determine whether the potential gain is significant. The first is the nature of the public official's private financial interest. The second is the effect of the public action on the private financial interest. And the third is the likelihood that this potential effect will occur.

In the context of ownership in a corporation, the value of the stock is the starting point. If the value of the stock owned by the public official is small, and the public action will not have any significant effect on the stock's value, the potential gain is also small. Thus, if a public official owned $1,000 in stock, and the public action is likely to increase the price of the stock by 5%, the gain of $50 would be insignificant. But if the same public official owned $100,000 in stock, the same 5% gain in stock price would generate a $5,000 gain, and this could be regarded as significant.

Now suppose that the same public official owns $1,000 in stock. There is a very remote chance that the public action will increase the stock by 100%. Although

the possible gain is $1,000 (just as in the preceding example), the remote likelihood of gain may lead to the conclusion that the public official does not have a significant interest in the matter. On the other hand, if the public official started with $100,000 in stock, a very remote chance of a 100% increase in stock value may be a matter of public concern, because the size of the public official's potential gain is so much higher. Even though the likelihood of a 100% increase is speculative, the larger the public officer's interest, the more likely he is to "gamble" with the public's interest as well as his own when making a public decision.

Thus, the greater the amount of a public officer's interest in a matter, the more likely that his interest should be considered significant, even when the probability of financial gain is remote. Conversely, when the probability of financial gain is high, even a small financial interest in a public matter can be considered significant under the Ethics Act. For example, in Opinion No. 663-94-0034, 1993 WL 482056 (Alaska A.G.), the Attorney General addressed the question of whether a state employee, who was also part owner of a travel agency, could direct that his employees' tickets be purchased through his travel agency. Without even addressing the amount of the state employee's ownership interest in the travel agency or the dollar value of the tickets that would be purchased, the Attorney General concluded that the employee's financial interest in the matter was not insignificant under AS 39.41.110(b)(1). The reasonable inference is that the certainty of financial gain meant that even a small financial interest was significant within the meaning of the Ethics Act.

Therefore, when the introductory guide to interpretation of the Ethics Code states that there is no substantial impropriety if a public officer's "financial interest in

the matter is insignificant," the logical interpretation is that the first consideration is the size of the financial interest. The Arts Council opinion, discussed above, Opinion No. 663-99-0232, supports this interpretation. In deciding whether the Arts Council member had a significant interest in the arts grants he voted on, a two-step analysis was applied. The first question was whether the amount of his interest in the grant – based on an assessment of the dollar amount – was significant. *Id.* at 5. If it was, then a second analysis was required, asking whether the decision to award a specific grant would "significantly affect [the public officer's] financial interest and whether such affects are likely or merely conjectural." *Id.* If it was unlikely that the member's financial interest would be affected by the award of a grant, the Arts Council member could vote on the matter, because his financial interest was insignificant. *Id.*

4. Whether Renkes' Financial Interest was "Insignificant" is Determined by Examining the Risk That His Judgment Would Be Affected by That Interest

A public officer's judgment may be affected by a personal financial interest even when the effect of his official action on that financial interest is uncertain or speculative. When there exists the mere possibility that a public officer's official action could influence the value of a large stock holding, the public officer's judgment may be clouded. The larger the stock holding, the more likely it is that the public officer's judgment will be affected. Thus, in deciding whether a public officer has a conflict of interest, the size of his financial interest in the matter is an important consideration.

This concept is implicit in the literal wording of the Ethics Act, which provides that a public officer may not "take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest." *See*

AS 39.52.120(b)(4).[7] Under this provision, a public officer is flatly prohibited from taking official action on a matter in which he has a financial interest – regardless of how that financial interest may be affected. The only limitation on this interpretation is in the introductory guide to the Ethics Code, which states that there is no substantial impropriety if a public officer's "financial interest in the matter is insignificant." The logical interpretation of these provisions, when read together, is that the determination of significance is based primarily on the amount of the financial interest.

The Ethics Act does not directly address the principle that its conflict of interest prohibitions turn on the risk that a conflicting interest will affect one's judgment rather than the likelihood of financial gain. However, we can look by analogy to the ethics rules for lawyers. The Alaska Rules of Professional Conduct prohibit a lawyer's representation of a client where the representation of the client may be materially limited by the lawyer's own interests. *See* Alaska R. Prof'l Conduct R. 1.7(b). Under Rule 1.7(b), a conflict arises whenever the lawyer's representation of a client "*may be*" materially limited in the future – not if the lawyer is actually faced with a choice between furthering his own interests and furthering the interests of his client. *Id.*

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[7] AS 39.52.120(b)(2) does state that there is no substantial impropriety if the public officer's "action or influence would have insignificant or conjectural effect on the matter." Under this provision, however, the question is whether the effect on the matter is conjectural. Here, "the matter" was the Alaska/Taiwan coal negotiations – not the value of KFx stock. The Bundy Report agrees that this section is not applicable. *See* Bundy Report at 53-54.

A lawyer's representation of a client "may be materially limited" any time the lawyer's own interests are significant enough that there is a "substantial risk" that the lawyer's own interests might affect his judgment. *See* Alaska R. Prof'l Conduct R. 1.7, cmt. ("The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client."); *see also*, Restatement (Third) of the Law Governing Lawyers, § 121, cmt. c(iii) (2000) ("There is no conflict of interest . . . unless there is a "substantial risk" that a material adverse effect will occur."). *There is a "substantial risk" where "the risk is significant and plausible, even if it is not certain or even probable that it will occur."* Restatement (Third) of the Law Governing Lawyers, § 121, cmt. c(iii) (2000) (emphasis added).

By focusing on whether a risk is significant or plausible, the Restatement rejects the notion that the lawyer's judgment must be actually or probably affected by the competing interest in order for there to be a conflict of interest that requires client consent. Indeed, if the lawyer's judgment will actually or probably be affected by the lawyer's own interest, the lawyer may not even obtain the client's consent. Restatement (Third) of the Law Governing Lawyers, § 122 (2000); Alaska R. Prof'l Conduct R. 1.7(b)(1) (stating that the lawyer may only obtain consent to a conflict where the "lawyer reasonably believes the representation will not be adversely affected").

Rather, the Restatement looks to whether the lawyer's competing interest is of such a magnitude that it might affect his judgment. Restatement (Third) of the Law Governing Lawyers, § 121, cmt. d (2000). The critical question is whether the lawyer's

financial interest is so significant that it would cause an observer to question his impartiality. *See also, id.* at § 125, cmt. c (a conflict exists where a lawyer has a financial interest "other than one so insignificant that a person of normal sensibility would be unaffected by it.").

The Bundy Report cites to one of the three examples in Restatement § 125, cmt. C, to support the proposition that Renkes' stock ownership in KFx was insignificant. That example is where a lawyer owns stock in a publicly held mutual fund that carries a diversified portfolio that has less than one percent of a certain company, and the total value of the lawyer's interest in the company is less than $25.00. In that instance there is no conflict of interest because "the interest is so small, and the possibility of an effect on the lawyer's representation is so remote." *Id.* The analogy does not hold because Renkes' interest in KFx was considerably more than $25.00. In contrast, Renkes' financial interest in KFx was not "so insignificant that a person of normal sensibility would be unaffected by it." Or as the Attorney General's office put it in the Arts Council case "whether a member of the public, who has no personal acquaintance with [the public officer] or the recipient organizations, could simply suggest that the financial interests are of a sufficient magnitude to affect [the public officer's] vote." Opinion No. 663-99-0232, 1999 WL 1454824 (Alaska A.G.).

In sum, to determine whether a public officer's financial interest in a matter is significant, the initial focus should be on the size of the interest. If the interest is sizable, it can still be insignificant within the meaning of the Ethics Act where the impact of the public officer's actions or decision on his financial interest is so speculative that he is unlikely to be affected by it. The presumption should be,

however, that the larger the public officer's financial interest in a matter, the more likely it is that his official actions could be influenced by his financial interest rather than the public interest.

At the time Renkes was negotiating the coal agreement as the representative of the State of Alaska, he could not have known whether his negotiations and any subsequent agreement would affect the value of his stock holdings in KFx. However, Renkes reasonably might have expected that the announcement of one of the first major agreements to process coal using the K-fuel process would cause the KFx stock price to rise. If the value of KFx stock rose only a few points per share, the effect on 12,000 shares could result in a sizable increase in the value of Renkes' portfolio. In hindsight, we know that the stock price did not rise. But in determining whether Renkes' financial interest was significant, the focus should be on the time period when the coal agreement was being negotiated – not what we now know with hindsight. At the time the agreement was being negotiated, the potential impact of the agreement on the value of Renkes' stock was speculative, but because there was a realistic possibility of significant financial gain, his judgment could have been affected by his financial interest.

IV. Summary and Conclusions

In the absence of specific dollar limitations such as those contained in the ethics statutes of other states, we are left with assessing this matter under a reasonableness standard. Paraphrasing the words of the Restatement, the question is whether Renkes' financial interest in the Alaska/Taiwan negotiations was "so

insignificant that a person of normal sensibility would be unaffected by it." *Id.* at § 125, cmt. c.

Renkes' ownership of KFx stock, *ranging in value from $71,880 to $124,680,* was not "so insignificant that a person of normal sensibility would be unaffected by it." The KFx stock was his single largest stock holding. The coal negotiations that Renkes engaged in as a representative of the State of Alaska included negotiations and numerous contacts with KFx representatives. KFx was an active participant in the negotiations, to the point of pressing Renkes for explicit mention of KFx and the K-fuel process in the Memorandum of Understanding. A normal person who was actively involved in these negotiations while owning between $70,000 and $125,000 worth of KFx stock could not avoid thinking about his interest in KFx and how it might be affected by the negotiations. Indeed, Renkes himself implicitly acknowledged that he had a significant financial interest in the Alaska/Taiwan coal agreement when he refused to sign the agreement as the representative for the State of Alaska. In his words,

> . . . I was aware that before I was asked to – me signing something on behalf of the State would definitely constitute official action. And before I would do that, I would want an ethics advisor – you know, some kind of ethics opinion or some kind of advice about that, and I hadn't done that research. And so . . . I was – that left – made me uncomfortable.
>
> And I said, "No. Margy [Johnson], I don't think I can sign it. I don't think it would be appropriate."

Statement of Gregg Renkes, p. 231 (Dec. 10, 2004).

Therefore, I have concluded that there is probable cause to believe that the former Attorney General's ownership of stock in KFx, ranging in value from $71,880 to $124,680, was a significant financial interest in the Alaska/Taiwan coal negotiations between Alaska and the Republic of China within the meaning of Section 39.52.110(b)(1) of the Ethics Act.

This has not been an easy decision because of the absence of clear guidance in the Alaska Ethics Act and the regulations interpreting it. The fact that another well-respected lawyer has reached a different conclusion demonstrates that reasonable minds can differ about the application of the Act to the facts here. Therefore, I join Mr. Bundy in recommending that the Legislature seriously consider amending the Ethics Act by setting specific dollar amounts of stock in publicly held companies that will be treated as significant for purposes of the conflict of interest provisions in the Act.

I also want to stress that this conclusion is not tantamount to a finding that Renkes violated the Ethics Act, because (1) the conclusion that Renkes' KFx, Inc. stock ownership was significant would not by itself enable a finding or conclusion that he violated the Ethics Act, and (2) Renkes has other defenses to the charges in the complaint which the Board has not determined on their merits. Before a finding of a violation could have been made, I would have had to (1) complete an independent investigation (AS 39.52.310(g)), (2) conclude that there was probable cause to believe that a violation had been committed and issue a formal complaint (AS 39.52.350), (3) present the evidence in a hearing before an independent hearing officer, during which Renkes would have the opportunity to defend himself (AS 39.52.360), (4) the hearing

officer would have to conclude that a violation had been committed (AS 39.52.360(h)), and (5) the Personnel Board would have to accept the findings of the hearing officer (AS 39.52.370(c)). None of these steps have been taken because of the settlement agreement that was entered into following Renkes' resignation as Attorney General.

DATED: April 8, 2005.

PERKINS COIE LLP

By _____
Thomas M. Daniel

ALASKA STATE LEGISLATURE

REPRESENTATIVE LES GARA
REPRESENTATIVE BERTA GARDNER
REPRESENTATIVE SCOTT KAWASAKI
REPRESENTATIVE MIKE DOOGAN
REPRESENTATIVE MAX GRUENBERG

Sponsor Statement

HB 58 – Executive Ethics

HB 58 is a responsible step towards making the Executive Branch Ethics Act clearer, easier to understand, and easier to follow.

Currently the Ethics Act does not spell out clearly what sorts of financial interests constitute a conflict of interest. The bill sets out a series of bright financial lines for executive branch employees. For example, current law provides no guidance whatsoever as to the size of investment that an executive branch employee may own and still take official state action that affects the investment. HB 58 declares that either $5000 worth of stock, or one percent of a company's stock, whichever is *less*, means that the executive branch employee must not be involved in state actions that impact that investment. While it seems like common sense to have such a concrete definition, current law does not provide one.

It is important to keep in mind that the key question is whether an executive branch employee owns the financial interest and then performs an official act that affects the financial interest. Either one without the other is not a violation.

The bill also describes with particularity other sorts of forbidden financial interests. An executive branch employee may not own a controlling interest in a business, may not own an equity interest in a business worth more than $5000, may not be a member of a company's board of directors and may not be an employee of a business.

The bill also expands the definition of "official action" to more clearly capture the day to day duties of our executive branch employees.

The state's ethics laws should be clear to executive branch employees, and to the public those employees serve. Please join me in supporting HB 58.

January-May: State Capitol • Juneau, AK 99801-1182 • (907) 465-2647 • Fax (907) 465-3518
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ALASKA STATE LEGISLATURE

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HB 58 – Executive Ethics

Sectional Analysis

Section 1

Line 10 replaces an "or" in the current statute with an "and". The effect of the change is to add the condition that the action taken or influence exerted by the officer have an insignificant or conjectural effect on the matter.

Line 11 and 12 adds some explanatory words to the current statute to make it clearer.

Page 1, lines 12 – 14, through page 2, lines 1-16 adds a list of business interests that would be forbidden under the executive act ethics code. The construction of the list is such that any single item possessed by an officer of a member of the officer's immediate family would be sufficient to preclude that officer from taking official action in connection with the interest.

Section 2

Lines 18 – 21 expand the definition of official action to include most of the day-to-day activities of executive branch employees.

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Web posted January 27, 2005

Empire editorial: Dump Renkes, ethics code

Far from being the last word on Attorney General Gregg Renkes' ethics and standing as Alaska's top lawyer, Tuesday's release of a report about his actions in a state coal deal is only the start of needed change.

The end must bring both new ethics rules and a new attorney general.

Contracted by Gov. Frank Murkowski to probe Renkes' negotiations on a deal to sell Cook Inlet coal to Taiwan, former U.S. Attorney Robert Bundy found that the attorney general should have requested an ethics determination but otherwise did not break the law. That's because Alaska's law is so vague, not specifying a dollar figure that pushes a public official's investment portfolio into the realm of a conflict. Renkes' $100,000-plus investment in and close ties to KFx, the Denver company that stood to gain from the coal agreement, apparently doesn't rise to the state's legal definition of a conflict. It should and, once state lawmakers are done, it probably will.

In the meantime, Murkowski is wrong to insist that this, along with his reprimand, closes the matter and that a state personnel board inquiry should end. Where many ethics considerations hinge on an elusive perception of cozy relations, the attorney general's sizable stake in KFx cannot be viewed as anything but a conflict. Bundy finds the conflict insignificant because Renkes' shares represented no more than .02 percent of the company's total. But the issue isn't how Renkes' shares affected the company; it's how they stood to affect him. Bundy's recommendation that the state adopt a $10,000 investment limit for any government official potentially influencing a company's standing with the state says it all: $100,000 is a lot of money. That much is apparent to most Alaskans, whose median income in a family of four is some $30,000 less.

Regardless of where Renkes' investment and active promotion of KFx and the coal deal stood with the law, it is unfathomable that he would not have understood that his involvement could affect him financially. Knowing this, it was reckless to get involved officially in the first place, and it was unpardonable not to at least ask for an official opinion about that involvement. If this behavior brings only a slap on the wrist, Alaskans will be right to doubt the integrity of their government. The governor should demand the attorney general's resignation since Renkes hasn't had the integrity to offer it himself.

Further, it is imperative that this Alaska Legislature remedy the lax ethics code. The state's reliance on and support of natural resource industries and the companies

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that fuel them makes it doubly important that the law spell out right and wrong and assure citizens that their officials are acting on Alaskans' behalf, and not for their own bank accounts.

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Opinion
Anchorage Daily News (AK)
February 8, 2005
Author: Staff
Estimated printed pages: 4

Renkes' right move

Resignation relieves governor of unreasonable burden

Gregg Renkes did the right thing Saturday by resigning his office as attorney general. Living under an ethical raincloud for his deep involvement in both a state coal deal and a company that would have benefited from it, his credibility and effectiveness had simply washed away. Gov. Frank Murkowski lost a loyal aide and confidant, but he will not have to carry any further the burden of Mr. Renkes' continued tenure in office.

Stability and principled leadership for the Department of Law now become the governor's first priority. This is a time when old-fashioned conservative restraint will serve best. Whoever the governor appoints as attorney general must be respected across the board (in order to dampen undue partisanship), principled beyond reproach (to rehabilitate public confidence in the administration), experienced in Alaska's key policy matters (to maintain momentum on natural gas and other issues) and prudent in his or her personal conduct (to make the attorney general once again a standard-setter in the rule of law).

The next priority must be to clear up the murky waters of Alaska's executive branch **ethics** law. Robert Bundy, the special investigator who found that Mr. Renkes violated the **Ethics Act** but not the Code of **Ethics**, also found too many "close calls" for comfort. The governor has asked Mr. Bundy to develop clear new language to guide public employees. That language should protect the public trust first of all and public officials' financial liberties secondarily.

(In the end, Mr. Bundy's report substantially damaged Mr. Renkes in two unforeseen ways: First, it crafted a too-clever legal analysis to reach the conclusion that $126,000 in company stock was legally "insignificant" -- a view the average person on the street just wouldn't buy. And second, it revealed that the attorney general deleted thousands of e-mails from his work computer on the very day that damaging news reports first appeared while denying he even knew of the reports -- a story that went beyond all credibility.)

Mr. Renkes was undone by his own conduct and poor judgment. The Alaska attorney general, being in an appointed position beholden to the governor, has always been a hybrid creature: part governor's attorney, part Cabinet officer, part department manager, part policy analyst and adviser, part people's lawyer. Alaska attorneys general succeed when they leave partisan politics to others (even while remaining cognizant of the Capitol's hazardous political currents) and give sound legal advice to both the governor and the people of Alaska. The job requires diligence and sure footing. Ordinarily it goes without saying that the attorney general's personal example and judgment must uphold impeccable standards of trust. With his personal lack of restraint, Mr. Renkes crossed a line that is deliberately very restrictive.

Alaska's attorney general must, in the end, personify the ethic of public service. The position is a privilege, a burden and a duty -- and, for Gov. Murkowski at this moment, an exercise in governing wisely. Finding a new attorney general who radiates public trust and good judgment -- and who can do so without breaking a sweat -- is job one.

BOTTOM LINE: Gregg Renkes did the right thing by resigning Saturday; now the focus is on the governor to find

'a high-quality replacement.

Alaska State Legislature

House of Representatives

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Representative Les Gara

MEMORANDUM

DATE: January 24, 2007

TO: Rep. Bob Lynn, Chair
House State Affairs Committee

FROM: Rep. Les Gara

RE: Hearing Request for House Bill 58, Alaska Executive Ethics Act

I respectfully request that House Bill 58, relating to the Alaska Executive Ethics Act, be scheduled for a hearing in the House State Affairs Committee. Please feel free to contact me, or my aide Meagan Foster, with questions or thoughts at 465-2647.

Attached you will find a background packet for House Bill 58. This includes the current version of the bill, a sponsor's statement, and backup materials.

Thank you for your consideration.

E-mail: Representative_Les_Gara@legis.state.ak.us