

SB

19

Alaska State Legislature



Senator Hollis French

SB 19 – 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.



Senator Hollis French

Sponsor Statement

SB 19 – Executive Ethics

SB 19 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. SB 19 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 SB 19.

From: RayinAK@aol.com [mailto:RayinAK@aol.com]

Sent: Wednesday, January 17, 2007 11:58 PM

To: undisclosed-recipients

Subject: Legislative proposal for "Open Honest Ethical Government.".. By Ray Metcalfe.

Setting a foundation for Open Honest Ethical Government. Proposed By Ray Metcalfe. January 17, 2007.

APOC IS BROKEN BEYOND REPAIR
APOC NEEDS TO BE DISCARDED AND REPLACED

The sheer magnitude of the improprieties of Ben Stevens, VECO, and Fish Marketing Board, which APOC allowed to persist for years, and in some cases defended, makes clear that now it is time to devise a new political watchdog. Think of the proposal below as a new framework for defining and enforcing of the dozens of new ideas that are likely to be proposed over the next few months.

- I propose that APOC be discarded and replaced with a new commission. I recommend a new commission, (at a minimum, those who set in judgment of complaints), be created within the Judiciary branch of government. I recommend this for two reasons.
 1. APOC is dependent on funding from the legislators they are expected to police and their funding appropriations are subject to the Governor's veto. Every time APOC did the right thing, whether the complaint involved the Governor or a member of the majority in the legislature, their funding was either threatened or cut.

Once moved to the Judiciary, the Court would decide what portion of the Judiciary's budget APOC's replacement would receive and how much staff they required. I would expect it to include record keeping staff, staff to review and advise filers of incomplete filings, and at least one investigator unless an investigator in the judiciary it is determined to be in conflict with the constitutionally required separations of powers.

2. Currently, two of APOC's five Commissioners are hand picked by that standard bearer of Republican ethics Randy Ruedrich. Another two are picked by the leaders of the Democratic Party. All but one of the five Commissioners has a vested interest in protecting their fellow party members from accusations of improprieties. Future Commissioners should be picked by a majority vote of the Alaska Supreme Court, from a list of qualified applicants recommended by the Judicial Council.

- I propose that all responsibilities currently in the purview of the Legislative Ethics Committee be transferred to a newly formed Commission in the Judiciary and the existing Legislative Ethics Committee also be disbanded.
 1. In May of 2006, the State Senate passed a bill that would impose a \$5,000 fine on anyone who talks about filing or intending to file an ethics complaint against a Legislator. Former State Senate President Ben Stevens not only served on the ethics committee, he sat in judgment of himself and he voted in favor of the proposed \$5,000 fines mentioned above.
- The New Commission should be empowered to address all public corruption in whatever form it takes. I propose that all restrictions concerning what statutes APOC's replacement has the authority to enforce be lifted.
 1. APOC's most frequent excuse for not perusing a remedy for Ben Stevens' obvious fraud was to say "Not My Job." In example, when I brought clear evidence of bribery to the attention of APOC staff, I was told to take it up with the Legislative Ethics Committee on which Ben Stevens sat.
- I propose the creation of an "Anti-Public Corruption Unit" of not less than three "non-exempt" officer positions (non-exempt meaning they cannot be fired for investigating a powerful public official). Such an office should be within the State Troopers and filled by officers trained in the investigation of public corruption.
 1. Reducing public corruption will pay for its cost many times over. Given the opportunity to address an audience willing to listen long enough to understand the issues, I can prove beyond the shadow of a doubt that our failure to police public corruption has cost this state tens of billions of dollars due to unnecessary losses resulting from legislators and former governors who gave away our oil for a pittance of its real value to Alaska.
 2. If the FBI can find enough work cleaning up our act to busy dozens of agents for a couple of years, certainly we can find enough work for three new Troopers.
- I propose adding a forty-eighth title to Alaska's statutes, titled: "Open Honest Ethical Government."
 1. Alaska currently has forty-seven titles in its statutes. Alaska's statutes currently have a motley assortment of toothless disclosure, ethics, and campaign requirements that are strewn throughout our statutes and selectively enforced, depending on who's in power and who's asking for enforcement.
 2. Alaska's statutes need to be rewritten from top to bottom and consolidated under a single easy to understand "Title 48, Open Honest Ethical Government." Not only do such statutes need to be armed with serious criminal penalties, they need to include workable mechanisms for citizens' enforcement, to include an abbreviated mechanism of recall for legislators who refuse to comply.

(Abbreviated meaning a lower bar for recall. Signatures of 5% of those who voted in their last election, accepting that the question of whether or not they failed to comply should be appealable to the Courts. An abbreviated mechanism should not be available unless noncompliance can be demonstrated.

(Note: Contrary to Speaker Harris's assertion that "our current statutes appear to be working," they clearly are not. When enough signatures had been collected to begin the recall of Ben Stevens, the Division of Elections said we had no proof and tossed our petition. When we challenged the Division of Elections in Superior Court, the State provided Ben Stevens and the Division of Elections with seven attorneys to oppose us. The Court once again said "we had no proof." When the Superior Court ruled against us, Ben Stevens tried to shackle the volunteers for his recall with his attorney's fees. (We were not investigators and should not have been held to the proof standard nor should we have been expected to prove our case within the statutory limit of a 200 word complaint. I suspect the eventual proof of Ben Stevens' skullduggery will fill a filing cabinet.

Believing that Ben Stevens' term of office would be over before we could get a ruling from the Supreme Court, we elected to take our complaints to APOC, who tossed our complaints and/or recommended "no penalty" over and over again. When we took our evidence to the Attorney General, his three page reply could have been summed up in three words. "Go Screw Yourself." We may have won in the Court of Public Opinion, but had it not been for the FBI, the "Good Old Boy System" may well have saved Ben's Senate Seat. Clearly our current laws do not work.)

3. In addition to appropriate criminal penalties for Courts to consider, compliance with "Title 48" needs to be a condition of holding any elected office or appointed position.
4. It needs to be clear that the New Commission has the authority to remove any elected or appointed official who has refused to come into compliance, or in the Commission's opinion, attempted to conceal substantive information that should have been disclosed, or if they attempted to deceive the public. This authority should be subject only to a review of the Courts, and in the case of a member of the Legislature, subject to over rule only by the Courts or a majority vote of both houses of the Legislature.
5. Just as it is a crime for people of authority to remain silent over child abuse, it needs to be a crime for a fellow Legislator to remain silent when he or she possesses knowledge of bribery or other criminal infractions of the newly created "Title 48 Open Honest Ethical Government: AS:48:01-99"

(I provided every legislator with several packets of information demonstrating evidence of Ben Steven's bribery. I received two responses. (1.) We in the Senate Minority can't afford to rock the boat; we need to preserve what little working relationship we have with the Senate Majority. (2.) A note from a Member of the House Majority reading "Not in this office Ray")

- I propose a constitutional amendment barring all closed door meetings of the Legislature and all other forms of secrecy in the discussion, and/or conduct of Alaska's economic interests.
 1. As a legislator I was a reluctant to participant in closed door meetings. In hindsight, I cannot think of a single subject we ever debated behind closed doors, that wouldn't have better served the public's interest if it had been discussed in the light of day for all to see and hear.
 2. Any legislator who says the subjects discussed in closed caucus meetings "are restricted to strategy and procedural questions" is lying.

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See same as above attached in an MS Word document.

Personnel board calls for ethics act revision**RENKES: Statement calls probe by Bundy appropriate.**

By PAULA DOBBYN
Anchorage Daily News

(Published: March 12, 2005)

Alaska's executive branch ethics act is vague about what a governor should do when confronted with a possible ethics violation by his attorney general, and the law should be clarified, members of the state personnel board said Friday.

"Anytime you can have a law that you can get three or four different opinions about, it needs to be revised," said Debra English, chairwoman of the three-member board.

The matter arose earlier this week when the personnel board unveiled a settlement with former Alaska Attorney General Gregg Renkes, who resigned last month amid conflict-of-interest allegations involving his stock ownership in a company he promoted as a state official. By settling with Renkes, the board dismissed a complaint by Rep. Eric Croft, D-Anchorage, and former Wasilla Mayor Sarah Palin, a Republican.

Croft and Palin argue that the governor should have referred the Renkes matter to the personnel board in October, immediately after a newspaper story reported Renkes' stock holdings, rather than waiting until December, when he received a formal complaint from Palin and Croft. The two said Murkowski should not have hired Anchorage attorney Robert Bundy to investigate, as he did in October.

The board appeared to agree initially.

In a written statement Tuesday, English said the ethics act is "quite clear that alleged ethics violations by the attorney general are to be investigated by an independent counsel selected by the state personnel board." She reiterated that position in an interview.

But Thursday, the board issued a second statement saying Gov. Frank Murkowski acted appropriately by hiring Bundy.

"There is nothing in the Act prohibiting the governor from hiring an independent investigator to investigate potential misconduct, before the formal complaint was filed," the board said.

The board decided it needed to clarify its position, said Ron Otte, a personnel board member and former state public safety commissioner.

"Our initial press release wasn't clear," Otte said Friday. "There was probably a fair amount of confusion."

Both Otte and English said Friday that Murkowski acted appropriately when Croft and Palin filed their complaint in December. As required by law, he referred it to the personnel board, which appointed Anchorage labor lawyer Tom Daniel to investigate the matter.

As far as what Murkowski should have done in October, upon first learning of Renkes' potential conflict from the newspaper, the law doesn't provide specific guidance, they said.

A governor could seek an advisory opinion from the attorney general under normal circumstances, but that wasn't an option in this case because Renkes, the state's top lawyer, was the subject of the allegation, Otte said.

But as Renkes' ethics supervisor, Murkowski was charged with determining if his attorney general violated the ethics act and he chose to do that by hiring Bundy to find out, which is reasonable, Otte said.

But the law doesn't say how or when Murkowski should have acted in such circumstances, and that should be clarified, he said. "It's not a well-written law."

In retrospect, it might have been better for the governor to refer the matter to the personnel board from the beginning, Otte said, but there is nothing in the law that required Murkowski to do so.

Palin on Friday again criticized the governor's initial response to the Renkes revelations and said she suspected that someone in the governor's office pressured the board to say explicitly that Murkowski had not violated ethics act procedures.

"It's patently false," responded Becky Hultberg, Murkowski's spokeswoman.

Daniel, the independent counsel hired by the personnel board, said he was not asked by anyone in the governor's office to change the board's position. He also took issue with Palin and Croft's contention that they helped negotiate the terms of the Renkes settlement, which included the release of thousands of pages of depositions.

Although the board has dismissed the Renkes complaint, the settlement requires Daniel to offer a legal opinion as to whether the former attorney general's \$126,000 investment in KFx Inc. was significant enough to constitute a conflict of interest. Bundy concluded that it was not.

Daily News reporter Paula Dobbyn can be reached at pdobbyn@adn.com or 257-4317.

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Report takes new view of Renkes**PERSONNEL BOARD: Ex-official's interest in trade deal is termed "significant."**

By MATT VOLZ

The Associated Press

(Published: April 16, 2005)

A report released Friday says former Attorney General Gregg Renkes' interest in a trade deal he helped broker was "significant," a finding that conflicts with an earlier investigation that cleared him of all but one violation of the state's ethics code.

Thomas Daniel, the state personnel board's independent counsel, concluded that Renkes' ownership of between \$71,880 and \$124,680 in KFx Inc. stock was significant as defined by Alaska law.

Daniel stopped short of saying Renkes violated ethics laws. A finding of legal significance is not the same as a conclusion that the law was broken, he wrote. A complete investigation and hearing would have to be conducted, which cannot happen because the case was settled in March, he wrote.

The finding contradicts the conclusion of an investigator hired by Gov. Frank Murkowski that said Renkes' holdings fell short of that "significant" interest and therefore he did not breach state ethics laws.

Renkes resigned in February in the midst of the scandal. No action will be taken against him as a result of the new findings because of the settlement.

Neither Renkes nor Daniel could be reached for comment Friday.

"This has not been an easy decision because of the absence of clear guidance in the Alaska Ethics Act and the regulations interpreting it," Daniel wrote in his report. "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."

Daniel urged a clarification of the state's ethics laws.

Daniel's conclusions were based on the report by former U.S. Attorney Robert Bundy, the investigator hired by Murkowski.

KFx has a patented drying process that was to be part of preparing Beluga coal for sale to Taiwanese utilities. Renkes helped put together an agreement between Alaska and Taiwan to promote the export of coal while owning the stock. The allegations against Renkes accused him of helping put the deal together knowing KFx, and his stock, would benefit.

Renkes denied a conflict of interest and said he resigned because of what he characterized as continued personal attacks.

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Experts question Renkes' large holding of KFx stock

PORTFOLIO: Shares were the biggest single portion of attorney general's investments.

By PAULA DOBBYN and BILL WHITE

Anchorage Daily News

(Published: October 31, 2004)

KFx Inc., a Denver company seeking to convert Alaska's low-grade Beluga coal into a high-energy fuel, represented an unusually large part of state Attorney General Gregg Renkes' investment portfolio, according to independent financial experts.

KFx -- Renkes' most actively traded stock -- was worth \$116,000, about 14 percent of the \$817,458 portfolio at the end of September. That sizable percentage made it the most important holding in the attorney general's account and gave him an "overweighted" position in KFx compared to a typical diversified portfolio, according to investment professionals. The second biggest holding, General Electric, was less than one-third the size of KFx, and at 4.5 percent of the total portfolio it represented a more typical size, the investment experts said.

KFx stands out as an obscure company in a 62-stock account packed with such Fortune 500 firms as Ford Motor Co., Procter & Gamble, Microsoft and McDonald's.

The attorney general's interest in KFx triggered a special investigation this month of whether he had a conflict of interest that pitted his personal finances against his official activities as attorney general.

Former U.S. Attorney Robert Bundy launched his investigation at Gov. Frank Murkowski's request after reports surfaced about Renkes' KFx holdings. The inquiry, which has an initial budget of \$25,000, is expected to focus on possible ethics violations and not insider trading, a question some analysts have considered since the information first came out.

KFx has a coal-drying technology it says could make the undeveloped Beluga coal deposits across Cook Inlet from Anchorage attractive to Taiwanese buyers. Renkes brought KFx to the attention of state trade officials, and he reviewed an agreement the state signed last month with Taiwan to promote the sale of Beluga coal processed with KFx technology.

Besides the stock holdings, it was revealed that Renkes was a former technical adviser and public affairs consultant for KFx and is a business partner with John Venners, brother of KFx's chief executive, Ted Venners.

Renkes has said he did not violate the state's ethics law. That law says in part: "A public officer may not use, or attempt to use, an official position for personal gain."

Renkes said he disclosed his stock ownership in public filings as required by law.

Renkes is a member of Gov. Murkowski's inner circle. The governor, through his spokesmen, has said he had no



Renkes (Photo by Marc Lester / Anchorage Daily News)

Click on photo to enlarge

knowledge of Renkes' holdings in KFx.

extent of Renkes' stock holdings is disclosed in documents filed with two sources. He files an annual financial statement with the Alaska Public Offices Commission. And, as one of six trustees overseeing the state's \$28 billion Permanent Fund, Renkes must report his buying and selling of stocks and bonds.

The disclosures show Renkes' buying and selling activity from Oct. 23, 2003, through Sept. 28. The documents reveal a busy investor.

During those 11 months, he bought or sold shares on 373 occasions -- more than once a day on average.

KFx was not only the single largest holding by far, Renkes traded no other stock more heavily. He bought or sold KFx shares on 11 occasions during the past year, boosting his holdings to 13,100 shares as of Sept. 28.

Because of the controversy, Renkes said last week, he sold all his KFx stock on Oct. 6 and is donating his profits to charity.

The attorney general has said his broker managed his stock account and bought and sold shares on his own. However, Renkes could trade stocks in his retirement account himself, and the disclosure statements place 12,000 of the KFx shares in that account. The disclosures don't reveal which account his trades were made in. Renkes' Juneau broker, Dale Anderson, has said the retirement account has had virtually no trading activity.

While Renkes and Anderson say the broker did the trading over the past year, some financial experts find that hard to believe.

"It would be highly unusual for a broker to be adding to an overweighted position without the consent of the client," said David Gottstein, an Anchorage investment adviser and owner of Dynamic Capital Management. "I suspect each one of these trades was directed by Renkes."

Unless a broker has an extraordinary track record, it's unlikely that a client would have given him so much latitude to trade, said Richard Cohen, a University of Alaska Anchorage assistant professor of finance.

"If it were me, I would not let the guy do that much trading" without my input, Cohen said.

Renkes' ties to KFx date back to at least the late 1990s, when he was a consultant to the company.

KFx has a patented coal-drying technology called K-Fuel, designed to upgrade low-grade coal. The company has never commercialized the technology, has no operating plant and has some 20 years of losses. From 2001 through 2003, it posted only \$78,306 in revenue while amassing \$63.4 million in losses.

In October 2001, just over a year before he became Alaska attorney general, KFx gave Renkes 25,000 shares in payment for \$91,250 in professional services, according to filings with the U.S. Securities and Exchange Commission.

By the time he became attorney general in December 2002, Renkes had pared that stake to 12,000 shares, according to his financial disclosures.

But he grew his holdings while attorney general. Between Nov. 14, 2003, and last March 22, Renkes bought and then sold 3,500 shares of KFx.

In the following months, he went on a buying spree: 500 shares on April 6, 200 shares on May 4, 100 more on the same day, 100 shares on June 15 and 200 more on Aug. 3.

Between a rising stock price and the extra shares, the value of Renkes' KFx holdings mushroomed from \$31,000 in late 2002 to \$115,542 a month ago on Sept. 28.

During this last spate of buying, state trade officials who work in the governor's office were negotiating a Taiwanese trade deal that involved KFx's patented coal-drying process, called K-Fuel. The agreement envisioned a \$1 billion project in the Beluga coal field west of Anchorage, including the construction of a \$350 million coal-drying plant that would use K-Fuel.

After Renkes introduced KFx to the state officials, he publicly promoted the company in a news conference, reviewed the trade agreement for the state and appeared at a signing ceremony in Anchorage in late September.

In a Sept. 30 interview, the attorney general said he limited his involvement in the trade discussions because he "didn't think it was appropriate for me to be the deal person. But I'm knowledgeable about Asia. I'm familiar with our resources. I'm trying to help develop that relationship."

"I try to avoid all appearances of impropriety," Renkes said.

Since then, Renkes has declined interview requests. Both Renkes and the governor's office have repeatedly stated that they won't talk about anything related to KFx until Bundy's report is finished.

Financial analysts, including Gottstein, who studied Renkes' portfolio and trading activity at the Daily News' request, say several obvious questions arise.

"What did he know, and when did he know it? Did he have influence on KFx after he came into office, and did he have material, nonpublic information of KFx at any time? In either case, a submission on a financial report doesn't cut it," Gottstein said.

Noting the five separate KFx buys totaling 1,100 shares during the past six months, finance professor Cohen said, "The timing is interesting since the Taiwanese delegation conferred with Alaska state officials beginning in March."

A person could be liable for insider trading if they misappropriate confidential material information about a company and then use that information to trade in the market, said Richard Painter, a law professor at the University of Illinois and an insider trading expert.

"If the governor's office says 'We want to include you in these negotiations,' and then the person trades on it without informing the source of the information, in this case the governor's office ... then you have misappropriation of information for purposes of trading," said Painter, adding that he doesn't know the details of the Renkes-KFx affair.

"I'm not saying he could be tagged for insider trading," Painter said.

Diane Denis, associate professor of finance at Purdue University, said, "He has to be buying shares while he knows information that the public doesn't know yet that is likely to have a material impact on the price of the stock.

Denis noted that insider trading cases can be hard to prove and that there's lots of "gray area" in the law. It would be up to the federal Securities and Exchange Commission's enforcement unit to investigate and decide whether to bring an action, Denis said.

Given the size of Renkes' KFx position, his past relationship as an adviser and his business ties with at least one KFx insider, he certainly had motivation to try to help the company, Cohen said.

"There's definitely something that doesn't smell good," he said.

Answers to some of the questions surrounding Renkes' activities may lie in a stack of state documents on KFX under the control of Murkowski chief of staff Jim Clark.

Clark has delayed releasing those documents, sought under an Oct. 6 public records request, until sometime this week while he personally reviews them.

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