

HB

193

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 18, 2009

FURTHER REFERRALS: Judiciary

Date of Committee Action: 3-26-09

The STATE AFFAIRS Committee considered:

HOUSE BILL NO. 193

"An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

HB 193 LEGISLATIVE ETHICS ACT

Recommends it be replaced with HCS or CS for HB 193 (STA)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG		X		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Johnson	X			
	Seaton	X			
	Gruenberg				✓
	WILSON	✓			
Chair:	LYNN W	X			
Chair:					

Nancy Manly

From: Nancy Manly
Sent: Sunday, March 29, 2009 1:32 PM
To: Jane Pierson
Subject: FW: HB 193 - Memo from Dan Wayne
Attachments: 3-26-09 Memo from Legal on HB 193.pdf

Jane – Attached is a memo from Dan Wayne that was transmitted to the Judiciary Committee in the Referral File. Mr. Wayne had expressed some concerns about the definitions in the bill and the subcommittee had asked that he restate his opinion in a memo to be transmitted with the bill.

A committee member expressed surprise about the definition of "constituent" in this memo. Mr. Wayne believes it was more accurate to say that a "constituent" means... an immediate family member of a person who resides in the state... But the concern here is that definition is too broad. An immediate family member of a person who resides in the state could live overseas and may never have lived in Alaska, yet that person would be a constituent?

The feeling is that definition needs more work. Just want to pass on those comments.

Nancy Manly, Chief of Staff and
House State Affairs Committee Aide *for*
Representative Bob Lynn
House District 31
907-465-2794 Fax: 907-465-4316

From: Nancy Manly
Sent: Friday, March 27, 2009 4:16 PM
Subject: HB 193 - Memo from Dan Wayne

This 3-26-09 Memo from Legal Services Dan Wayne concerning HB 193

Nancy Manly, Chief of Staff and
House State Affairs Committee Aide *for*
Representative Bob Lynn
House District 31
907-465-2794 Fax: 907-465-4316

papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984; am § 11 ch 113 SLA 1986; am § 38 ch 47 SLA 2007; am § 5 ch 94 SLA 2008)

Effect of amendments. — The 2007 amendment, effective July 10, 2007, added paragraphs (3) and (4) in subsection (a).

The 2008 amendment, effective September 14, 2008, substituted "annual" for "semi-annual" in paragraph (a)(2).

Sec. 24.60.155. Legislative ethics course. A person who is a legislator, legislative employee, or public member of the committee shall complete a legislative ethics course administered by the committee under AS 24.60.150(a)(4) within 10 days of the first day of the first regular session of each legislature. However, a person who first takes office or begins employment after the 10th day of the first regular session of a legislature shall complete the course required by this section within 30 days after the person's first day of service and, thereafter, as required by this section. The committee may grant a person additional time to complete the course required by this section. (§ 39 ch 47 SLA 2007)

Effective dates. — Section 79, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

Editor's notes. — Under § 75(e), ch. 47, SLA 2007, the committee is required to offer only one type of ethics course in 2008.

Sec. 24.60.158. Informal advice. The committee shall authorize and train its staff to give oral advice and provide a written informal nonbinding advice letter to persons seeking guidance as to the spirit or legal requirements of this chapter, provided that the advice is given with the express stipulations that

- (1) the opinions given are not necessarily those of the committee;
- (2) although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk; and
- (3) the advice is not binding upon the committee. (§ 26 ch 127 SLA 1992)

Good faith ethics course

Sec. 24.60.160. Advisory opinions. (a) On the request of the committee, the Alaska Public Offices Commission, a person to whom this chapter applies, or a person who has been newly elected to the legislature, the committee shall issue an advisory opinion within 60 days as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If it finds that it is advisable to do so, the committee may issue an opinion under this section on the request of a person who reasonably expects to become subject to this chapter within the next 45 days. The 60-day period for issuing an opinion may be extended by the committee if the person requesting the opinion consents.

(b) An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. An opinion issued under this section must be issued with sufficient deletions to prevent disclosing the identity of the person or persons involved. Advisory opinion discussions and deliberations are confidential, unless the requester and anyone else named in the request who is covered by this chapter waives confidentiality. The committee's final vote on the advisory opinion is a public record. (§ 1 ch 36 SLA 1984; am § 12 ch 113 SLA 1986; am § 27 ch 127 SLA 1992; am § 43 ch 74 SLA 1998; am § 40 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, rewrote this section.

The 2007 amendment, effective July 10, 2007, inserted "the committee, the Alaska Public Offices Com-

mission" and made stylistic changes in the first sentence of subsection (a), substituted the last three sentences of subsection (b) for the last sentence, which provided for the confidentiality of advisory opinions.

Sec. 24.60.165. Use of information submitted with request for advice. The committee may not bring a complaint against a person based upon information voluntarily given to the committee by the person in connection with a good faith request for advice under AS 24.60.158 or 24.60.160, and may not use that information against the

person in a proceeding und from acting on a complaint. A complaint is brought by an place after the advice is r information or evidence obt evidence was also submitte

Sec. 24.60.170. Proceeding amended note.]

of this chapter if the allege complaint is filed with the against all members of t legislature, or against a pe the person has terminated proceedings concerning a c nated legislative service if an employee or a legislator

(b) A complaint may be i signed under oath by the p that the complainant has r and describe any facts kno shall upon request provide : Upon receiving a complai committee or the subject of of the proceeding as to the violated this chapter. The co of a candidate for election accordance with (o) of this s conduct of a candidate for a campaign period in accorda provide a copy of the compl

(c) When the committee : the complaint to a staff pers of the complaint and advise true, constitute a violation indicate that a further inve: dation shall be based on th supplemented by the compl so by the staff member. The member, if any, and shall c constitute a violation of this proven, would not give rise t there is insufficient credibl investigation by the committ the face of the complaint, the complainant and the subject the complainant to provide decision under this subsecti the subject of the complaint obligated to provide the int documents that are part of confidential as provided in (confidentiality as provided in

Conceptual Amendment

“A legislator or legislative employee may request advice, in writing, from ethics committee staff. By doing so, the legislator or staff requesting the advice is entitled to advice whether the conduct addressed in the request is permissible or impermissible under this title in the opinion of staff.”

“If the Committee is concerned about the accuracy of the staff advice, it may issue a formal binding opinion under AS 24.60.159. However, a legislator or staff is entitled to rely upon the informal advices provided under this section until that time, provided the legislator or staff acts in good-faith to provide what the legislator or staff reasonably believe is all material information to committee staff, and all information requested by Committee staff.”

Representative Bob Lynn
March 26, 2009
Page 2

that an individual legislator owes each person in the state a duty of representation. If the intent of the bill's definition of "constituent" is that a legislator's constituent is every person who is in or of Alaska, then it might be more accurate to say:

"constituent" means a person who resides in the state, is registered to vote in the state, or is licensed by the state to do business, or a person who is an immediate family member of a person who resides in the state or is registered to vote in the state.

A definition of the term "legislative purpose" is necessary to the bill in order to support the bill's definition of "non-legislative purpose," a term that is prominent in AS 24.60.030(a)(2). However, the definition of "legislative purpose" provided in this bill is unclear because it describes action, not purpose.

DCW:ljw
09-184.ljw

LEGAL SERVICES

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

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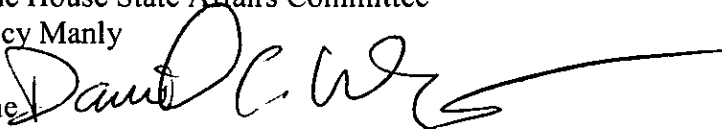
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2009

SUBJECT: Legislative Ethics Act changes (CSHB 193(STA),
Work Order No. 26-LS0656\T)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Dan Wayne 
Legislative Counsel

At the March 25, 2009, meeting of the House State Affairs subcommittee that reviewed this bill, I expressed some concerns about the definitions in the bill and the subcommittee asked that I restate them in a memo to be transmitted with the bill when it leaves your committee.

In the course of drafting or reviewing advisory opinions I have observed that certain undefined terms are very difficult to interpret and apply. Among them are the terms "constituent" and "non-legislative purpose."

The definition of constituent in this bill, "a person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska," leaves the meaning of the term subject to varying interpretation. Article XII, section 5 of the state constitution, requires all public officers to take an oath of office.¹ The language reads as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . [a legislator] to the best of my ability." This suggests that a legislator has, in addition to the general duty of a public officer to support and defend the state and federal constitutions, additional duties specific to that office. However, those duties are not further described in the state constitution.

Other than the requirement that a constituent be a "person," the meaning of constituent is wide open to interpretation under the definition in this bill. Every person in Alaska, including corporations and non-citizens, has rights under the state constitution. A legislator may owe every person in the state a duty in the sense that the legislator has sworn to uphold the state and federal constitutions, but that does not necessarily mean

¹ Legislators are further required, by AS 24.05.060, to take this oath before undertaking the duties of office.

Representative Bob Lynn

March 26, 2009

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that an individual legislator owes each person in the state a duty of representation. If the intent of the bill's definition of "constituent" is that a legislator's constituent is every person who is in or of Alaska, then it might be more accurate to say:

"constituent" means a person who resides in the state, is registered to vote in the state, or is licensed by the state to do business, or a person who is an immediate family member of a person who resides in the state or is registered to vote in the state.

A definition of the term "legislative purpose" is necessary to the bill in order to support the bill's definition of "non-legislative purpose," a term that is prominent in AS 24.60.030(a)(2). However, the definition of "legislative purpose" provided in this bill is unclear because it describes action, not purpose.

DCW:ljw
09-184.ljw

Alaska State Legislature



Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

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

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A Communication From

REPRESENTATIVE BOB LYNN
District 31 Anchorage

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

FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 1

Phone: 907-465-4931

Fax: 907-465-4316

Re HB 193 26-LS0656\C

3/26/09

House State Affairs Committee passed out HB 193 26-LS0656\C amended. Please draft a final CS with the following changes:

Amendment #1 (Gruenberg for Gara)

Failed

Conceptual Amendment #2 (Seaton)

Page 5 Line 7 following the word "matter" insert "or responding to an inquiry from an administrative officer"

Amendment #3 (Johnson offered Gruenberg Amendment)

Withdrawn

26-LS0656\C
Wayne
3/25/09

CS FOR HOUSE BILL NO. 193()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to representation by a legislator or legislative employee of another**
2 **person in an administrative hearing; relating to prohibitions on the use of state**
3 **resources under the Legislative Ethics Act; relating to charity events under the**
4 **Legislative Ethics Act; requiring compensation of public members of the Select**
5 **Committee on Legislative Ethics; exempting certain information from disclosure**
6 **requirements of the Legislative Ethics Act; relating to the selection of alternate members**
7 **and the participation of members and alternate members in formal proceedings of the**
8 **Select Committee on Legislative Ethics and its subcommittees; and defining**
9 **'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and**
10 **'private benefit' for the purposes of the Legislative Ethics Act."**

11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 *** Section 1. AS 24.60.030(a) is amended to read:**

1 (a) A legislator or legislative employee may not

2 (1) solicit, agree to accept, or accept a benefit other than official
3 compensation for the performance of public duties; this paragraph may not be
4 construed to prohibit lawful solicitation for and acceptance of campaign contributions,
5 solicitation or acceptance of contributions for a charity event, as defined in
6 AS 24.60.080(a)(2)(B), or the acceptance of a gift [LAWFUL GRATUITY] under
7 AS 24.60.075 or 24.60.080 [AS 24.60.080];

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

13 (A) limited use of state property and resources for personal
14 purposes if the use does not interfere with the performance of public duties and
15 either the cost or value related to the use is nominal or the legislator or
16 legislative employee reimburses the state for the cost of the use;

17 (B) the use of a legislator's legislative mailing list for
18 campaign purposes, or the use of mailing lists, computer data, or other
19 information lawfully obtained from a government agency and available to the
20 general public for nonlegislative purposes;

21 (C) the legislative council, notwithstanding AS 24.05.190, from
22 designating a public facility for use by legislators and legislative employees for
23 health or fitness purposes; when the council designates a facility to be used by
24 legislators and legislative employees for health or fitness purposes, it shall
25 adopt guidelines governing access to and use of the facility; the guidelines may
26 establish times in which use of the facility is limited to specific groups;

27 (D) a legislator from using the legislator's private office in the
28 capital city during a legislative session, and for the 10 days immediately before
29 and the 10 days immediately after a legislative session, for nonlegislative
30 purposes if the use does not interfere with the performance of public duties and
31 if there is no cost to the state for the use of the space and equipment, other than

1 utility costs and minimal wear and tear, or the legislator promptly reimburses
2 the state for the cost; an office is considered a legislator's private office under
3 this subparagraph if it is the primary space in the capital city reserved for use
4 by the legislator, whether or not it is shared with others;

5 (E) a legislator from use of legislative employees to prepare
6 and send out seasonal greeting cards;

7 (F) a legislator from using state resources to transport
8 computers or other office equipment owned by the legislator but primarily used
9 for a state function;

10 (G) use by a legislator of photographs of that legislator;

11 (H) reasonable use of the Internet by a legislator or a legislative
12 employee except if the use is for election campaign purposes;

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

16 (J) a legislator from sending any communication in the form of
17 a newsletter to the legislator's constituents, except a communication expressly
18 advocating the election or defeat of a candidate or a newsletter or material in a
19 newsletter that is clearly only for the private benefit of a legislator or a
20 legislative employee; or

21 (K) full participation in a charity event approved in advance by
22 the Alaska Legislative Council;

23 (3) knowingly seek, accept, use, allocate, grant, or award public funds
24 for a purpose other than that approved by law, or make a false statement in connection
25 with a claim, request, or application for compensation, reimbursement, or travel
26 allowances from public funds;

27 (4) require a legislative employee to perform services for the private
28 benefit of the legislator or employee at any time, or allow a legislative employee to
29 perform services for the private benefit of a legislator or employee on government
30 time; it is not a violation of this paragraph if the services were performed in an
31 unusual or infrequent situation and the person's services were reasonably necessary to

1 permit the legislator or legislative employee to perform official duties;

2 (5) use or authorize the use of state funds, facilities, equipment,
3 services, or another government asset or resource for the purpose of political fund
4 raising or campaigning; this paragraph does not prohibit

5 (A) limited use of state property and resources for personal
6 purposes if the use does not interfere with the performance of public duties and
7 either the cost or value related to the use is nominal or the legislator or
8 legislative employee reimburses the state for the cost of the use;

9 (B) the use of a legislator's legislative mailing list, or the use
10 of mailing lists, computer data, or other information lawfully obtained from a
11 government agency and available to the general public for nonlegislative
12 purposes;

13 (C) storing or maintaining, consistent with (b) of this section,
14 election campaign records in a legislator's office;

15 (D) a legislator from using the legislator's private office in the
16 capital city during a legislative session, and for the 10 days immediately before
17 and the 10 days immediately after a legislative session, for nonlegislative
18 purposes if the use does not interfere with the performance of public duties and
19 if there is no cost to the state for the use of the space and equipment, other than
20 utility costs and minimal wear and tear, or the legislator promptly reimburses
21 the state for the cost; an office is considered a legislator's private office under
22 this subparagraph if it is the primary space in the capital city reserved for use
23 by the legislator, whether or not it is shared with others; or

24 (E) use by a legislator of photographs of that legislator.

25 * Sec. 2. AS 24.60.030(i) is amended to read:

26 (i) A [EXCEPT FOR SUPPLYING INFORMATION REQUESTED BY THE
27 HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH
28 AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN
29 RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR
30 THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE
31 THE FINAL DECISION IN THE CASE, A] legislator or legislative employee may

1 not attempt to influence the outcome of an administrative hearing by directly or
2 indirectly contacting or attempting to contact the hearing officer assigned to the
3 hearing or the individual, board, or commission with authority to make the final
4 decision in the matter [CASE] unless [THE]

5 (1) the contact is made in the presence of all parties to the hearing or
6 the parties' representatives while the legislator or legislative employee is acting as a
7 party or a witness in the matter and the contact is made a part of the record; or

8 (2) the contact is inadvertent and ex parte and the fact and
9 substance of the contact are [IS] promptly disclosed by the legislator or legislative
10 employee to all parties to the hearing and [THE CONTACT IS] made a part of the
11 record.

12 * Sec. 3. AS 24.60.080(a) is amended to read:

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

15 (1) solicit, accept, or receive, directly or indirectly, a gift worth \$250
16 or more, whether in the form of money, services, a loan, travel, entertainment,
17 hospitality, promise, or other form, or gifts from the same person worth less than \$250
18 that in a calendar year aggregate to \$250 or more in value;

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

22 (A) food or beverage for immediate consumption;

23 (B) a contribution to a charity event, [FROM ANY PERSON
24 AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME,
25 EXCEPT THAT TICKETS TO OR] gifts received in connection with [AT] a
26 charity event; however, tickets to a charity event and gifts received in
27 connection with a charity event that are not included in the price of the
28 ticket [UNDER THIS SUBPARAGRAPH] are subject to the calendar year
29 limit on the value of gifts received by a legislator or legislative employee in (1)
30 of this subsection; in this subparagraph, "charity event" means an event the
31 proceeds of which go to a charitable organization with tax-free status under 26

1 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in
2 advance; the tickets may entitle the bearer to admission to the event, to
3 entertainment, to food or beverages, or to other gifts or services in connection
4 with [INVOLVED IN] the charity event;

5 (C) a gift that is unconnected with the recipient's legislative
6 status and is from a member of the legislator's or legislative employee's
7 immediate family;

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

10 (E) a compassionate gift under AS 24.60.075.

11 * Sec. 4. AS 24.60.080(c) is amended to read:

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

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

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

19 (B) at a social event or meal;

20 (2) discounts that are available

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

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

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

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

29 (5) gifts from the immediate family of the person; in this paragraph,
30 "immediate family" means

31 (A) the spouse of the person;

- 1 (B) the person's domestic partner;
- 2 (C) a child, including a stepchild and an adoptive child, of the
- 3 person or of the person's domestic partner;
- 4 (D) a parent, sibling, grandparent, aunt, or uncle of the person;
- 5 (E) a parent, sibling, grandparent, aunt, or uncle of the person's
- 6 spouse or the person's domestic partner; and
- 7 (F) a stepparent, stepsister, stepbrother, step-grandparent, step-
- 8 aunt, or step-uncle of the person, the person's spouse, or the person's domestic
- 9 partner;

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

11 (7) a discount for all or part of a legislative session, including time

12 immediately preceding or following the session, or other gift to welcome a legislator

13 or legislative employee who is employed on the personal staff of a legislator or by a

14 standing or special committee to the capital city or in recognition of the beginning of a

15 legislative session if the gift or discount is available generally to all legislators and the

16 personal staff of legislators and staff of standing and special committees; this

17 paragraph does not apply to legislative employees who are employed by the

18 Legislative Affairs Agency, the office of the chief clerk, the office of the senate

19 secretary, the legislative budget and audit committee, the office of victims' rights, or

20 the office of the ombudsman;

21 (8) a gift of legal services in a matter of legislative concern and a gift

22 of other services related to the provision of legal services in a matter of legislative

23 concern;

24 (9) a gift of transportation from a legislator or a legislative employee to

25 a legislator or a legislative employee if the transportation takes place in the state on or

26 in an aircraft, boat, motor vehicle, or other means of transport owned or under the

27 control of the donor; this paragraph does not apply to travel described in (4) of this

28 subsection or travel for political campaign purposes; or

29 (10) a contribution to a charity event from any person at any time, or a

30 ticket to a charity event from a person who is not a lobbyist, an immediate family

31 member of a lobbyist, or acting on behalf of a lobbyist; in this paragraph, "charity

1 event" has the meaning given in (a)(2)(B) of this section.

2 * Sec. 5. AS 24.60.080(d) is amended to read:

3 (d) A legislator or legislative employee who accepts a gift under (c)(4) of this
4 section that has a value of \$250 or more or a ticket to a charity event under
5 (c)(10) of this section that has a value of \$250 or more shall disclose to the committee,
6 within 30 days after receipt of the gift, the name and occupation of the donor and the
7 approximate value of the gift. A legislator or legislative employee who accepts a gift
8 under (c)(8) of this section that the recipient expects will have a value of \$250 or more
9 in the calendar year shall disclose to the committee, within 30 days after receipt of the
10 gift, the name and occupation of the donor, a general description of the matter of
11 legislative concern with respect to which the gift is made, and the approximate value
12 of the gift. The committee shall maintain a public record of the disclosures it receives
13 relating to gifts under (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward
14 the disclosures to the appropriate house for inclusion in the journal. The committee
15 shall forward to the Alaska Public Offices Commission copies of the disclosures
16 concerning gifts under (c)(4), (c)(8), (c)(10), and (i) of this section that it receives
17 from legislators and legislative directors. A legislator or legislative employee who
18 accepts a gift under (c)(6) of this section that has a value of \$250 or more shall, within
19 30 days after receiving the gift, disclose to the committee the name and occupation of
20 the donor and a description of the gift. The committee shall maintain disclosures
21 relating to gifts under (c)(6) of this section as confidential records and may only use,
22 or permit a committee employee or contractor to use, a disclosure under (c)(6) of this
23 section in the investigation of a possible violation of this section or in a proceeding
24 under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the
25 record of a proceeding under AS 24.60.170, the confidentiality provisions of that
26 section apply to the disclosure.

27 * Sec. 6. AS 24.60.105 is amended by adding a new subsection to read:

28 (d) A person may refrain from making a disclosure that is required by this
29 chapter if making the disclosure would violate the United States Constitution, the
30 Constitution of the State of Alaska, or other state or federal law. However, at the
31 request of the committee or a person authorized to act on behalf of the committee, a

1 person who refrains from making a disclosure under this subsection shall provide the
2 committee with justification in writing, and the committee may review the written
3 justification to determine whether it is sufficient.

4 * Sec. 7. AS 24.60.130(f) is amended to read:

5 (f) The committee may contract for professional services and may employ
6 staff as it considers necessary. A committee employee, including a person who
7 provides personal services under a contract with the committee, may not be a
8 legislator, an elected or appointed official of a state or local governmental entity, an
9 officer of a political party, a candidate for public office, or a registered lobbyist. The
10 legislative council shall provide office space, equipment, and additional staff support
11 for the committee. The committee shall submit a budget for each fiscal year to the
12 finance committees of the legislature and shall annually submit an estimated budget to
13 the governor for information purposes in preparation of the state operating budget.
14 Public members of the committee shall receive [SERVE WITHOUT] compensation
15 of \$150 a day while attending committee meetings and [FOR THEIR SERVICES,
16 BUT] are entitled to per diem and travel expenses authorized for boards and
17 commissions under AS 39.20.180.

18 * Sec. 8. AS 24.60.130(n) is amended to read:

19 (n) A member who participates at the commencement of a proceeding
20 under AS 24.60.170 shall participate for the duration of the proceeding unless
21 disqualified or unable to continue participating for any reason; however,
22 provision shall be made for service by alternate members on the committee or on
23 a subcommittee, as follows:

24 (1) when [WHEN] appointing members of the legislature to serve on
25 the committee, the speaker of the house or the president of the senate, as appropriate,
26 shall appoint an alternate member for each regular member; an [. AN] alternate must
27 have the same qualifications as the regular member for whom the alternate stands as
28 alternate and is subject to confirmation as required for the regular member;

29 (2) when selecting public members to serve on the committee, the
30 Chief Justice of the Alaska Supreme Court shall also select one alternate public
31 member; the alternate public member's selection is subject to ratification as

1 **required for selection of the regular public members;**

2 **(3) if, except as to a proceeding under AS 24.60.170,** [. IF] a regular
 3 [LEGISLATIVE] member of the committee or a subcommittee is unable to
 4 **participate in** [ATTEND] a meeting, the chair of the committee or a subcommittee
 5 shall designate the regular member's alternate to **participate** [SERVE] in place of the
 6 regular member at the meeting, and the designated alternate, **unless for any reason**
 7 **unable to participate,** shall **participate for the duration of that meeting; if**
 8 [SERVE UNLESS UNABLE TO SERVE FOR ANY REASON. IF] a regular
 9 [LEGISLATIVE] member of the committee or a subcommittee is disqualified under
 10 (h) of this section from **participating in** [SERVING ON THE COMMITTEE OR
 11 THE SUBCOMMITTEE CONCERNING] a proceeding under AS 24.60.170 or if the
 12 regular member is unable to **participate** [ATTEND], the chair of the committee or a
 13 subcommittee shall designate the regular member's alternate to **participate** [SERVE]
 14 in place of the regular member **for the duration of** [IN] the proceeding unless the
 15 alternate is [ALSO] disqualified **or is for any reason unable to participate; the**
 16 [FROM SERVING. THE] designation shall be treated as confidential to the same
 17 extent that the identity of the subject of a complaint is required to be kept confidential.

18 * **Sec. 9.** AS 24.60.990(a) is amended by adding new paragraphs to read:

19 (17) "constituent" means a person to whom a legislator owes a duty of
 20 representation under the Constitution of the State of Alaska; ✓

21 (18) "constituent service" means assistance, including representation
 22 other than legal representation and advice other than legal advice, that is provided by a
 23 legislator or a legislator's staff to a constituent;

24 (19) "legislative purpose" means legislative action or providing
 25 constituent service; ✓

26 (20) "nonlegislative purpose" means a purpose other than a legislative
 27 purpose;

28 (21) "private benefit" means a benefit to a person as a result of a
 29 legislative, administrative, or political action of which benefit to that person in
 30 particular is a substantial goal and that is greater than the benefit of the legislative,
 31 administrative, or political action to a substantial class of persons to which the person

1 belongs by law, choice, legal entitlement, legal privilege, profession, occupation,
2 industry, or region.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO CSHB193 v. C

Page 5 line 7 following "or witness in the matter" insert "or responding to an interrogative from an administrative officer"

inquiry

Paul -

Teri Thurman, chief office of administrative hearings believes this amendment is not necessary. She says there is no gray area if you are a witness or not. ~~There~~ is any other type of contact from an administrative officer would be inadvertent and covered on page 5 lines 8-11.

Paul

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AMENDMENT

OFFERED IN THE HOUSE
TO: HB 193

BY: REPRESENTATIVE GRUENBERG

Page 1, line 12 insert:

(i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 193(), Draft Version "S"

1 Page 1, line 7, following "subcommittees;":

2 Insert "establishing that persons who are subject to the Legislative Ethics Act may
3 rely without prejudice on certain advice from employees of the Select Committee on
4 Legislative Ethics;"

5

6 Page 7, following line 22:

7 Insert a new bill section to read:

8 "* Sec. 8. AS 24.60.158 is repealed and reenacted to read:

9 **Sec. 24.60.158. Informal advice.** (a) The committee shall authorize and train
10 at least one committee staff employee to respond to requests from legislators,
11 legislative employees, or public members of the committee for advice about the legal
12 requirements of this chapter, including advice as to whether the facts and
13 circumstances of a particular case constitute a violation of ethical standards under this
14 chapter. However, the advice provided by staff is not binding on the committee except
15 as provided under (b) of this section.

16 (b) A person who is a legislator, legislative employee, or public member of the
17 committee may request a written staff opinion as to whether the facts and
18 circumstances of a particular case constitute a violation of ethical standards under this
19 chapter, and committee staff shall respond to a request made under this subsection in a
20 writing entitled "staff advisory opinion." If the person who requests the opinion
21 provides with the request all information that the person reasonably believes is
22 material to the request, and all information the staff requests, and if the information
23 provided is accurate to the best of the person's understanding, then the person may rely

1 on the written opinion without prejudice unless it is rescinded by the committee.

2 (c) The committee is bound by a staff advisory opinion under (b) of this
3 section to the same extent it is bound by an advisory opinion under AS 24.60.160;
4 however, a staff advisory opinion may be rescinded by a majority vote of the
5 committee. An opinion under (b) of this section, whether or not it is rescinded, is
6 subject to the redaction and confidentiality requirements of AS 24.60.160(b)."
7

8 Renumber the following bill section accordingly.

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AMENDMENT

OFFERED IN THE HOUSE
TO: HB 193

BY: REPRESENTATIVE GRUENBERG

Page 1, line 12 insert:

(i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100

papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984; am § 11 ch 113 SLA 1986; am § 38 ch 47 SLA 2007; am § 5 ch 94 SLA 2008)

Effect of amendments. — The 2007 amendment, effective July 10, 2007, added paragraphs (3) and (4) in subsection (a).

The 2008 amendment, effective September 14, 2008, substituted "annual" for "semi-annual" in paragraph (a)(2).

Sec. 24.60.155. Legislative ethics course. A person who is a legislator, legislative employee, or public member of the committee shall complete a legislative ethics course administered by the committee under AS 24.60.150(a)(4) within 10 days of the first day of the first regular session of each legislature. However, a person who first takes office or begins employment after the 10th day of the first regular session of a legislature shall complete the course required by this section within 30 days after the person's first day of service and, thereafter, as required by this section. The committee may grant a person additional time to complete the course required by this section. (§ 39 ch 47 SLA 2007)

Effective dates. — Section 79, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

Editor's notes. — Under § 75(e), ch. 47, SLA 2007, the committee is required to offer only one type of ethics course in 2008.

Sec. 24.60.158. Informal advice. The committee shall authorize and train its staff to give oral advice and provide a written informal nonbinding advice letter to persons seeking guidance as to the spirit or legal requirements of this chapter, provided that the advice is given with the express stipulations that

- (1) the opinions given are not necessarily those of the committee;
- (2) although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk; and
- (3) the advice is not binding upon the committee. (§ 26 ch 127 SLA 1992)

Sec. 24.60.160. Advisory opinions. (a) On the request of the committee, the Alaska Public Offices Commission, a person to whom this chapter applies, or a person who has been newly elected to the legislature, the committee shall issue an advisory opinion within 60 days as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If it finds that it is advisable to do so, the committee shall issue an opinion under this section on the request of a person who reasonably expects to become subject to this chapter within the next 45 days. The 60-day period for issuing an opinion may be extended by the committee if the person requesting the opinion consents.

(b) An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. An opinion issued under this section must be issued with sufficient deletions to prevent disclosing the identity of the person or persons involved. Advisory opinion discussions and deliberations are confidential, unless the requester and anyone else named in the request waive confidentiality. The committee's final vote on the advisory opinion is a public record. (§ 1 ch 36 SLA 1984; am § 12 ch 113 SLA 1986; am § 127 SLA 1992; am § 43 ch 74 SLA 1998; am § 40 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, rewrote this section. The 2007 amendment, effective July 10, 2007, inserted "the committee, the Alaska Public Offices Commission" and made stylistic changes in the language of subsection (a). The 2008 amendment, effective September 14, 2008, substituted the last sentence of subsection (b) for the last sentence provided for the confidentiality of advisory opinions.

Sec. 24.60.165. Use of information submitted with request for advice. The committee may not bring a complaint against a person based upon information confidentially given to the committee by the person in connection with a good faith request for advice under AS 24.60.158 or 24.60.160, and may not use that information against

person in a proceeding from acting on a complaint is brought to place after the advice information or evidence evidence was also subr

Sec. 24.60.170. Prohibited amendment no of this chapter if the all complaint is filed with against all members legislature, or against the person has terminated proceedings concerning nated legislative servic an employee or a legisl

(b) A complaint may signed under oath by t that the complainant h and describe any facts shall upon request prov Upon receiving a com committee or the subje of the proceeding as to violated this chapter. Th of a candidate for ele accordance with (c) of th conduct of a candidate campaign period in acco provide a copy of the co

(c) When the commit the complaint to a staff; of the complaint and ac true; constitute a violat indicate that a further i dation shall be based c supplemented by the co to by the staff member member, if any, and sh constitute a violation of proven would not give r there is insufficient cr investigation by the com the face of the complain complainant and the su the complainant to pro duction under this subs the subject of the compl obligated to provide th documents that are pa confidential as provided confidentiality as provid



ALASKA STATE HOUSE

House State Affairs Subcommittee Report Form

Date: March 25, 2009

Time Meeting Called to Order: 3:08 p.m.

Name of Chairman: Representative Paul Seaton

Members Present: Representative Seaton, Representative Craig Johnson, and Representative Max Gruenberg.

Subject of Meeting: Legislative Ethics

Relevant Legislation: House Bill 193 Legislative Ethics

Persons participating other than committee members: Representative Mike Doogan, Representative Berta Gardner, Dan Wayne (Legislative Legal), Joyce Anderson (Director, Select Committee on Legislative Ethics), and Rynniva Moss (Legislative Aide to Representative Coghill, sponsor of HB 193).

Subcommittee Recommendations: The subcommittee adopted a CS that made amendments to Section 1 and Section 8; they amended AS 24.60.030(a)(1) to replace the word "gratuity" with "gift" and added a reference to AS 24.60.075 (compassionate gift) to AS 24.60.030(a)(1).

AM #1: Page 8, lines 2, 3, & 4: Delete the word "financial"
Moved by Representative Gruenberg
Passed without objection

AM #2: Introduced and withdrawn by Representative Gruenberg

AM #3: Page 7, line 29: Delete "a goal of a" AND "a"
Insert after "action" the word "providing"
Moved by Representative Gruenberg
Passed without objection

AM #4: Page 7, line 24: Delete the word "natural"

AM #5: Introduced and withdrawn by Representative Gruenberg.

AM #6: Page 1, 12 through Page 2, line 16: Delete all language and insert:

(i) [EXCEPT WHEN REPRESENTING ANOTHER PERSON AS A LICENSED PROFESSIONAL IN THE STATE OF ALASKA IN THE CASE FOR COMPENSATION AND SUBJECT TO AS 24.60.100 FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE

HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] A legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives while the legislator or legislative employee is acting as a party or witness and the contact is made a part of the record; or

(2) in the event of an inadvertent ex parte contact and if the fact and substance of the contact are [IS] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

Moved by Representative Gruenberg

Passed: Yea – Johnson and Seaton

Nay - Gruenberg

AM #7: Amends AS 24.60.030(a)(1) as follows:

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a gift [GRATUITY] event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under AS 24.60.075 and AS 24.60.080 ;

Moved by Representative Gruenberg by request of Dan Wayne

Passed without objection

In addition the committee instructed Dan Wayne to check Title 24.60 to see if the assumption that it was ethical to use a legislative newsletter email database for campaign purposes. If AS 24.60 does not allow that prepare an amendment that would correct the problem.

Representative Seaton also asked Dan Wayne to prepare a legal opinion about the definition of “constituent” and what legal interpretation of “duty of representation under the Constitution of the State of Alaska” is.

Representative Seaton allowed Representative Gara to discuss an amendment he was attempting to have drafted that would basically allow for a person who submitted in writing a request for a determination by the director of the Select Committee on Legislative Ethics for an ethics issue to be exempt from a ethics violation if the committee met at a later date and found the action unethical if the person who receive the determination acted in good faith on the advice of the director. Representative Seaton said that was out of the scope of the purposes of the subcommittee and welcomed Representative Gara to present the issue to the full committee.

Time of Adjournment: 5:02 p.m.

Subcommittee of the
House State Affairs Committee
House Bill No. 193 (STA)
March 25, 2009

Chair Seaton recognized Reps Gardner, Doogan, Gruenberg,
Johnson, and Gara

Also present:

Rynniewa Moss, Legislative Aide to Rep John Coghill
Joyce Anderson, Director, Select Committee on Ethics
Dan Wayne, Legislative Legal

Rep Seaton stated that \S version is what has been adopted by
the committee and there were questions on that. There was
discussion on what version would be used as the changes were
addressed, it was finally decided that the committee would use
the \S version. Go to page 7 - on S version - Number 19
Legislative Purpose, the S version said *legislative action or
constituent service* - changed to *goal of legislative action or a
constituent service is a substantial goal.*

Rynniewa Moss recommended to only remove "a" and insert
"constituent service."

Dan Wayne stated that the P version had a lot of problems
because all the changes requested were not done; there just was
not enough time. S version is just wrong as it does not contain
changes in CS. Not sure if time is going to be very well spent.
Nothing the subcommittee was expecting

Rep Seaton - go back to S version and pull out financial in S
version.

Committee agrees.

Rep Gruenberg - stated he would like to make the change as an
amendment.

**Amendment No. 1 - \S version. Page 8 lines 2, 3 and 4, eliminate
the word [financial].**

Rep Seaton -no objection. Adopted.

Rep Seaton - Page 7 \S version - No. 19 - legislative purpose
the committee was concerned that what we have means a

constituent service and so we are changing that to a goal of legislative action or providing constituent service.

Rep Gruenberg - suggested goal of "a legislative action" - may be more than one action remove [a] and at the end of the line remove [a] and insert the word providing.

Legislative Action - A goal of legislative action or providing constituent service.

Rep Gardner - in what sense is constituent service not legislative action?

Rep Gruenberg - legislative action is passing laws or budget issues and constituent service is broader term. Is there some definition some where of legislative action?

Rynniva Moss read AS 24.60.990(a)(9) Legislative Action into the record. A constituent service could be assistance with a clerical error that does not result in legislative action - but sometimes it could result in legislative action because you find a flaw in the law and you introduce legislation to fix it.

Rep Seaton- problem was we have a series of definitions - you got into the goal or the want or desire of a constituent becomes the legislative purpose rather than the legislator providing the service.

Rep Gruenberg - Amendment No. 2 - strike [a] page 7 line 29 before legislative action and strike [a] after the word or and insert providing constituent service.

Legislative Purpose: Means a goal of legislative action or providing constituent service.

Dan Wayne - I think you might want to add before providing - a goal of [the action] - so it refers to the goal of legislative action or legislative service - to be clear.

Rynniva - do we need the word goal? Would not a legislative purpose be a legislative action or a constituent purpose?

Dan Wayne - I made these up these definitions originally. A purpose is not a thing not a service. A service is not a purpose it has a purpose.

Rep Gruenberg - purpose and goal are very similar. Amendment to amendment to delete [a goal of] on line 29 as an amendment to the amendment.

Rep Seaton - Amendment No. 2 and amendment - reads "legislative purpose means a legislative action or providing constituent service."

Rep Gruenberg stated that as amended would read "legislative purpose means legislative action or providing constituent service."

Rep Doogan - if you are saying a legislative purpose is a legislative action, it makes no sense. Your purpose is to hit a home run your action is to swing the bat therefore your purpose is to swing the bat. You have a confusion of goals and meanings.

Rep Gruenberg - What do think we should say?

Rep Doogan - if you are talking about the purpose you are talking about the goal of the action not the action itself.

Rep Gruenberg withdrew his second amendment to the amendment.

Rynniva stated that the definition of purpose out of Black's Law - objective, goal or end.

Rep Seaton - under legislative purpose we have to say something that this an attempt to work on legislative action or something like that in providing constituent service.

Rynniva - purpose is used because it is used in the statute and she highlighted where it is. We want legislative purpose to include action; not only legislative purpose but also constituent service though it is not yet defined in statute - we want to do that in this bill. One defined and one not.

Rep Seaton - Dan do you think having the word goal there is legally explanatory enough or means working towards a legislative action.

Dan Wayne - I think that I had some other language to narrow it down, but this would mean constituent service is anything you would do for a constituent no matter what it is. So I said goal of legislative action is substantial - in order that it is substantial. Maybe use the word purpose.

Rep Doogan - attempting to define legislative purpose to have two parts, legislative action - already defined and constituent service - not defined in statute. So if what you want to say is legislative purpose is 2 things you legislative purpose and constituent action. Legislative purpose or goal are we trying to define. Are we saying the legislative purpose or goal we are trying to define: legislative purpose means having a goal of legislative action or providing constituent service.

Rynniewa - it is the end product. Legislative action or constituent service we have met a legislative purpose.

3:36:04 PM

Rep Gruenberg- sounds like what Mr. Doogan has said is a good idea, add to Amendment No. 2 - just add one word - between means and a also add word "having". Just what Rep Doogan suggested.
Amendment to amendment.

No objection to Amendment to Amendment adopted

Amendment No. 2 - Legislative purpose having a goal of legislative action or constituent service.

Dan - we have to define it so we know what it is not. AS 24.60.030(a)(2) read into the record.

Rep Seaton - we are defining non-legislative purpose - Line 31 on page 7 we are defining non-legislative purpose.

Dan - if you say a person has to have a goal - "having" is not the right word.

Rep Johnson - goal in there is intent and if you talk about intention it would be difficult to define. We are defining legislative purpose and all the time is your goal and it may not be constituent related.

Rep Doogan - the definition - legislative action was read into the record again by Rynniewa.

Rep Seaton - legislative purpose means legislative action or providing constituent service. So what I would like to do is amendment 2 withdrawn.

Rep Gruenberg withdrew Amendment No. 2.

Rep Seaton - being Amendment No 3 Page 7, Line 29, delete [a goal of a] [a]removing the word and inserting the word "providing" at the end of the line.

Rep Seaton stated Legislative purpose means legislative action or providing constituent service; and asked if there were any objections.

No objection - Amendment No. 3 has passed.

Rynniewa - Page 7, line 24 - delete under constituent [natural].

Rep Gruenberg - Amendment No. 4 constituent - does not have to be natural can be any other form of person.

Rynniewa read the definition of person into the record.

3:42:47 PM

Rep Gardner - do we have a duty currently to represent a business trust.

Rep Gruenberg - as a legislator these things all relate to people and a business is one or more people and they set it up in a trust. A few years ago we had a bill setting up a children's trust. We have had things dealing with trusts.

Rep Seaton - if you have a business in your community or not is there a constitutional duty of representation to those entities.

Dan Wayne - constitutionally - no duty. Talks about how the legislature is set up in Art 2 - but does not spell out duties.

Rynniewa said there is a duty to the constituent. There are plenty of constitutional duties to a constituent.

Rep Gardner - duty to the people leave natural in there.

Rep Doogan - small business in my district, interest of various sorts the people who run those businesses may or may not be constituents in the sense that they vote for me or even live in my district, but they may still come to me and say I don't want this or I do want that - if we were to leave the term natural person in this document, could I talk to them, go to bat for them where it was appropriate - since their interest is not as my constituent but as the owner of a business in my district.

Rep Seaton - legislative purpose is providing constituent service, but if you were talking to ConocoPhillips, they are not a natural person. Business is not a natural person. It would not get constituent service. Not a natural person and therefore it would not be constituent service.

Rep Gardner - do we not also have obligations - every Alaskan is a constituent.

Rep Gruenberg original version limited constituent to your district. We discussed elimination of natural in full committee.

Rep Gardner - if that is the case, what is the reason to have to whom the legislator owes a duty of representation.

Dan - there is no duty of representation owed by the legislator.

Rynniva - we believe when a legislator takes an oath he believes that he has a duty to protect the constitutional rights and that he does have a duty to protect those rights.

Dan - we are talking about a definition, there is an oath and I am not saying they don't have that responsibility but we are trying to define something - so maybe there does not need to be a definition.

Rep Seaton - if we take out natural. Who is the person that the legislator does not owe representation to that you would be working for or providing service too. Staffer in D.C. who is a resident in D.C. and not an Alaska resident anymore, and no permanent fund - could you provide constituent service to them.

Rynniva - the answer would be if the person was being deprived of something that the person was eligible for under the constitution.

Rep Gruenberg - people in Alaska they qualify, if all the other people in the world are the second class if they are dealing with an Alaskan issue they should get our representation. I think this focuses on the people and the representation. Read this and mentioned it in committee I thought it was a creative phrase. I think this says we have a duty and right of representation as to that permissible under the constitution. Leave it at that. Keep it in. Someone that would not qualify StateWatch people in Virginia - concerned about Wrangell Islands

- does not have anything to do with Alaska, there is no duty to represent them.

3:51:24 PM

Rep Seaton - what if there is a trip to Darfur - anyway - lets request a leg legal opinion on parameters to forward on with the bill.

Rep Gruenberg - Amendment No. 4 remove [natural] Page 7, line 24.

Rep Seaton - any objection.

Rep Gardner - remove natural then could we say a constituent it could include defenders of wildlife? Then we have a duty to represent?

Dan - might fit better to take out representation and leave duty. Maybe not a duty of representation to a particular person but certainly a duty. The duty to uphold the constitution.

Rynniva stated that would be acceptable.

Rep Seaton stated that Amendment No. 4 - deals with removing natural line 24 - Page 7 - any objections?

No objection - adopted.

Rep Gruenberg moved for Amendment No. 5 - delete [representation] Page 7, line 25.

Rep Gruenberg - to Dan - since you will be doing the legal opinion - you might want to substitute a phrase for representation or leave it in - if you are talking about duty. "of representation" - a little uncomfortable to take it out until we have a legal opinion. If we just ask for a legal opinion on that phrase.

Dan - researched it and it would say what has already been stated. Constitution would not provide any information about what duty of representation is. You are limiting the duty but there is no place to find out where that limit is.

Rep Gruenberg - only a duty of public safety or education, and this should be looked at - as a major thing that is the core of the legislature.

Rynniewa - let that word remain - and let it be discussed in Judiciary. It also could be that duty could include representation because it results in legislative action or constituent service.

Rep Gara - when you try and define the people you represent in two constrained a manner you are going to leave someone out and then you have an ethics violation. The people you are allowed to represent (constituents) that you are allowed to represent. The definition should be broad. The constituent should be who you are allowed to represent. Otherwise there will be people outside the line that you want to help but can't because of the definition and who you included in the definition.

Dan Wayne - said that is not what he said. It is the constitution that does not list any duties of representation. It does not mean you don't have a duty, it just means it is not listed. How do I tell if someone's actions are permissible when I don't know the definition of constituent? Constituent service is a service you do for someone.

Rep Seaton we need to know who a constituent is and who it is not. So we know who you can give service to.

Rep Doogan - it means the citizen of Alaska. That is about as limited as it gets. I am not here for the exercise, someone else is going to define it someone else is going to and I am not too happy with how they have done so far and some definitions have to have applicability in the real world. We want the definition to be as encompassing as possible. Don't want narrow definitions of who we can help and how we can help them. It may not be perfect but a long step to the goal I want to go. Helping people deal with the government and not have ethics come after me.

Rep Seaton - you work for all Alaska, work for people of your district, but is your duty to represent the people that elect you or everyone or the people that elect you.

Rynniewa - Rep Coghill feels it should be a very broad definition - sideboards in subparagraph 21 makes it clear. They share a class it is not helping someone to get a contract with the state. That is not constituent service, that is a crime already. But someone that has a right to be represented by their legislator.

Rep Doogan - we took a look at the oath of office and it did not say anything about House District 25 - it says the state of Alaska. Not strictly limited to the confines of my district.

Dan went over what the oath of office is. Not trying to be argumentative. But people that are not citizens have rights under our constitution. Business, corporations, have rights - and should be represented.

Rep Gara - make it as broad as possible. We don't make duty under the constitution clear. Make it any person in the state. Person in statute means business or anything. Legislative purpose if the person is here or not, and then you can represent anyone in the state. You would only help a person out of state if it is a legislative purpose, so then you would help them anyway. You can help them for a legislative purpose and then the rest you help because they are citizens of the state.

Rep Seaton - lots of state residents not living in the state. In the state is a tricky one too.

Rep Gruenberg - too narrow - if we stay within the state. Favors the broadest definition possible. Dealing with people who are Alaskan or people who are concerned about Alaskan issues. Whether it be BP or defenders of wildlife. There is a nexus between them and the state of Alaska. It should not be unethical to look at that person's interests.

Rep Seaton - who are we trying to cut out, who do we want to say a legislator can't call a constituent.

Rep Gruenberg - people who are not Alaskan's or someone trying to get us to take an issue on something that does not in any manner pertain to Alaska. Mid-East war, as most issues don't have a lot to do with Alaska.

Rynniva - defining constituents because - if you are helping someone who is not a constituent - then it is probably a crime already. The legislature feels that they are likely to be in trouble if they are helping someone when it is their duty to help Alaskans, but it might not be a constituent because there is not a definition of constituent.

Rep Seaton - helping someone that is not in Alaska, but it has a purpose within Alaska.

Rynniewa - but that would be a legislative issue so that would not be unethical.

4:12:33 PM

Rep Doogan - broadest possible interpretation inside Alaska, not outside of Alaska. Likes the language that was under the constitution. No representation for someone out of the state. Might be doing it for some other reason under duties under legislator but not under constituent service.

Rep Gruenberg - group a - wants to take trip to Alaska, please tell us how we get information and we should be able to do that. Going to withdraw my motion to delete "representation" from the bill.

Rep Seaton - we are asking for a legal opinion and if there is no duty of representation under the constitution - if there is or isn't. Because if there isn't then we have no constituents.

Dan it may be duty somewhere else. But the legislature has a state-wide constituency. It would never be my conclusion that you have no constituents.

Rep Seaton - for Joyce and the committee to have a definition when they are making decision. He asked Joyce Anderson - as far as serving for the Ethics Committee can a definition help make a decision.

Joyce - needs to see if there is a specific situation.

Rep Gruenberg - to Mr. Wayne - when you look at this - look in the broadest constitutional sense. We are looking at this really from the core of the constitutional perspective. What are we here to do.

Dan - to make legislation - the other things you do are tradition and there is no authority to do this.

Rep Gruenberg continued to discuss his concept of how the legislature serves and what it does.

Rynniewa stated she has wording that the Administrative Hearing Officer suggested for an amendment.

Rep Seaton - Amendment No. 6 - delete Page 1 line 12 through Page 2 line 16, insert new subsection i. and the rest of the page.

Rynniewa - when you are dealing with an administrative hearing unless you are a licensed officer, you are no longer involved in that constituent service. Page 1, Section 1. Line 11, runs through page 2 line 16 the rest of the amendment protects the legislator, or staff, if a constituent fails to reveal that the case is in an administrative hearing and the call is made to labor, the legislator or staff would be liable for a violation the way the statute presently reads.

Rep Gruenberg - typo on line 15, a couple of words left out - insert and if the before fact and substance of the contact [is]are. Make that a conceptual amendment and include it with the rest of Amendment No. 6.

4:28:14 PM

No objections to Amendment No. 6.

Rep Seaton objected to Amendment No. 6, he thinks that it needs to be looked at further. It could be a CPA or licensed person in some function and then a legislator could go before a body and that is what we would be allowing and that is line 1 and 2. Policy call is - are we going to look at this and say is the affect on a Department Director who is sitting across from a legislator is okay in the public interest and we are going to balance that with an officer and the public perception is that the legislator is subservient to representing himself in a license.

Rynniewa - this a policy call and I am going to let you all make that policy decision. Yu have to make the call.

Rep Seaton - Amendment No. 1 to Amendment No. 6 - deletes line 1 and 2 and would not allow them to be a for hire representation.

Rep Gruenberg objected.

Rep Seaton - lawyers and CPA's - anybody can be hired to go in and represent one side of a party in an administrative decision.

4:33:57 PM

Is public purpose of not having a legislator or legislative employee less?

Rep Doogan - there is no public purpose having them sit across the table unless you think that their job shapes the opinion of the person sitting across from them. Question is whether in a situation as part time legislators is if we can dictate how a person can make a living. Historically shied away from this, people have to eat, they go out of here and do their jobs. It is not clear to me that legislators get extra spin or (b) even if they do, you can tell someone that if they run for office a person can't make a living from what they have been doing. Pretty close call. It will be debated every step of the way.

Rep Seaton - the debate means it is questionable. It has a public perception. City council or whomever, as a legislator people react differently. Is that perception a problem.

Rep Johnson how far is the step from I am a legislator and if I represent you how far I can go because of power. It has happened and it is the step we are trying to avoid. If I decided to do it, I could make a good living representing people.

Rep Doogan - in Rep Johnson's statement, he already broke the law by getting clients because of your position. But as a living representing people, or going out and representing people because of who you are is something that could interfere with our livelihood.

Rep Gruenberg recommended that we adopt the practice that we did in the subcommittee and give it back to the full committee with the note and comments that the full committee had to make a decision.

Rep Johnson wants it in and then the committee can take it out if it wants.

Rep Gruenberg - Ms Thurbon wanted people who were representing someone would be able to respond to contacts and supply information. That would mean only people that could do it were not legislators. By taking the first two lines out you may have trouble getting information. A legislator or legislative employee may not attempt to influence the content of a hearing and that does not have anything to do with representation.

Rep Seaton if it is left in only licensed people could give the information. But language is substituting for the language we are taking out.

Rep Gruenberg reviewed again over the information and the what was happening to the bill in this section - meant that a legislator could not even speak to the issue, if not representing them.

Rep Seaton - only talks to someone with a license that is doing it for compensation. Taking out line 1 and 2 and starts on line 7.

Joyce - looked at this statute prior and it does not prevent even with what you are removing, from speaking at an administrative hearing if you are called. Just can't be initiated by the representative.

Amendment 6

Rep Johnson - yes,

Rep Gruenberg - no,

Rep Seaton - yes,

Amendment passed.

Split decision

4:49:16 PM

Rep Seaton - Non-legislative purpose Sub B - this paragraph does not prohibit information a(2)(B) -

Rynniewa - involves legislators using voter registration lists for their office and those lists used by legislators for non-legislative purposes.

Rep Seaton - mailing lists and news lists we generate since those are not available to the general public we would not be able to use those for campaign purposes. Not intended. But since it is here I would like clarification on it. Non legislative purpose.

Dan - two ways to read it. General public or non legislative purposes. It is okay to use the list if available for non legislative purposes.

Rep Seaton - The list for our mail outs are not available to the general public and if we use it- it is only legal if we make the list available to the general public.

Dan - another exception 5(B) says that a limitation does not prevent the use for non legislative purposes.

Rep Seaton - operating under the assumption we could use the list when we campaign but that is not consistent with the law.

Rynniewa - have Dan make a determination and come up with an amendment for tomorrow.

Rep Gruenberg - Page 2 sub paragraph A-5-B - you may not use.....for use in and he read it into the record.

Rep Seaton unless the mailing list was available to the general public we could not use it for a non legislative purpose. Wants a clarification.

Joyce - ethics made an advisory opinion and said if you take your constituent data base and you use it for campaign purposes it was a diminimus use of state resources and so it could be used for non legislative use. She will provide it to the committee.

Dan - look at 24.60.030 (a)(1) lawful gratuity - should say gift - under - conforming change.

Rep Seaton - prepare a conforming change.

Amendment No. 7 - to 24.60.030 - a.1 - change gratuity to gift under 24.60.075 or 24.60.080.

Without objection passed Amendment No. 7.

Rep Gruenberg - noticed that Rep Gara did have an issue and will offer it.

Rep Gara - present a problem in ethics law that deserves attention. I still do not have language. Right now we have a problem with the law. Situation with honest legislator will go to ethics staff and they get advice, but the law says you can't rely on the advice, but you can have a complaint filed against you and if the advice was wrong you get an ethics violation. And if you get a hearing and the advice was wrong you get an ethics violation. Your opponent uses it against you. So your option is to take informal advice you can't rely on or require a full hearing, unreasonable, expensive and wrong, but there is no middle ground. But if you ask in writing and give all the info they want and you get an opinion you rely on and if this is an

issue that is not that clear then hold a hearing but you are allowed to rely on the advice until the hearing is held. You have to get advice and rely on it. As for hearing it will take 60 days and you can't help constituents for 60 days. Proposal is to supply info to staff and if they decide a close issue, get a hearing, but you have some thing to have in the meantime. Right now the honest legislature can be held liable doing what they were told they could do.

Rep Seaton - a bit out of the bounds of what we were given as a subcommittee.

Rep Johnson said he would like to see this tomorrow and some examples. Deal with it tomorrow.

Rep Seaton - sounds like you are saying the ethics wants advice even though informal advice is given all the time.

5:05:19 PM

Tomorrow come when the committee gets together. Get to ethics committee tonight.

Adjourned 5:06p.m.

LEGAL SERVICES

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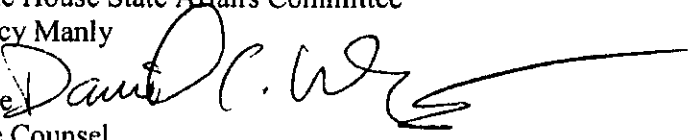
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MEMORANDUM

March 26, 2009

SUBJECT: Legislative Ethics Act changes (CSHB 193(STA),
Work Order No. 26-LS0656\T)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Dan Wayne 
Legislative Counsel

At the March 25, 2009, meeting of the House State Affairs subcommittee that reviewed this bill, I expressed some concerns about the definitions in the bill and the subcommittee asked that I restate them in a memo to be transmitted with the bill when it leaves your committee.

In the course of drafting or reviewing advisory opinions I have observed that certain undefined terms are very difficult to interpret and apply. Among them are the terms "constituent" and "non-legislative purpose."

The definition of constituent in this bill, "a person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska," leaves the meaning of the term subject to varying interpretation. Article XII, section 5 of the state constitution, requires all public officers to take an oath of office.¹ The language reads as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . [a legislator] to the best of my ability." This suggests that a legislator has, in addition to the general duty of a public officer to support and defend the state and federal constitutions, additional duties specific to that office. However, those duties are not further described in the state constitution.

Other than the requirement that a constituent be a "person," the meaning of constituent is wide open to interpretation under the definition in this bill. Every person in Alaska, including corporations and non-citizens, has rights under the state constitution. A legislator may owe every person in the state a duty in the sense that the legislator has sworn to uphold the state and federal constitutions, but that does not necessarily mean

¹ Legislators are further required, by AS 24.05.060, to take this oath before undertaking the duties of office.

Nancy Manly

From: Katie Koester

Sent: Wednesday, March 25, 2009 6:01 PM

To: Nancy Manly

Nancy,

From what I understand from the HSTA subcommittee meeting today the additional requests of legal outside of changes to the CS were:

- 1) A legal opinion explaining what "of representation" adds to AS 24.60.990(a)(17). Why is it in the section and what would be the change in interpretation if "of representation" was taken out?
- 2) A legal opinion discussing the prohibition of using mailing list for non legislative purposes, AS 24.60.030 (2)(B). Could this statute be interpreted to mean that legislators may not use a mailing or email list that they have collected as a legislator for a campaign purpose?

I also have 2 advisory opinions of my desk from Ethics, I trust that you got those as well and will provide them to the committee (2004-01 and 2005-01)

Katie Koester
Legislative Aide
Rep. Seaton
907.465.2028

Alaska State Legislature

Select Committee on Legislative Ethics

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November 9, 2005

ADVISORY OPINION 2005-01

Subject: Conflict of Interest – Legislative Contacts with Administrative Decision Maker

RE: AS 24.60.030(i) and legislative contacts with administrative decision makers

You are a legislator and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked several specific questions in regard to AS 24.60.030(i).¹ This subsection makes it a violation of the legislative ethics code for a legislator or legislative employee to "attempt to influence the outcome of an administrative hearing by directly or indirectly

¹ This new subsection of AS 24.60.030, "Prohibitions related to conflicts of interest and unethical conduct," became effective July 1, 2005. The office of administrative hearings, created effective July 1, 2004, began hearing administrative proceedings that began on or after July 1, 2005. Sec. 92(a), ch. 163, SLA 2004. No previous advisory opinions have discussed AS 24.60.030(i).

This new subsection provides:

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

contacting or attempting to contact" a decision maker in an administrative adjudication. Such communication is only permitted if the communication with the decision maker is made in the presence of all parties to the adjudication, and made a part of the record; or, if the fact and substance of the communication is promptly disclosed to all parties and made part of the record.

You ask how AS 24.60.030(i) will be applied in the following situations.

1. Can a legislator² contact a decision maker without trying to influence the outcome of the case by asking the decision maker:
 - a. if certain documents had been filed;
 - b. whether a file was complete; or
 - c. if there was other information that could be provided.
2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?
3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

Discussion

The provisions of AS 24.60.030(i) will only apply to an administrative matter that has progressed to a hearing. A legislator or legislative staff member may contact any administrative department with questions regarding a matter that is not the subject of a pending administrative adjudication.³

The ethical standards which prohibit ex parte contacts by legislators and legislative employees recognize that impartial fact finders and decision makers are an essential part of the due process of law.⁴ Administrative decision makers are required to be impartial

² All references in this opinion to a legislator also apply to legislative employees subject to AS 24.60.

³ It may be difficult to determine from a constituent whether the matter of concern has reached the stage that this ethical prohibition applies so care should be taken to avoid contacting any person or entity that has the authority to make a final decision. It may be prudent for a legislator to make a call to the department administering a matter, to determine the appropriate person to contact for the information, in order to avoid inadvertently contacting a decision maker.

⁴ Under the Alaska Constitution, a person may not "be deprived of life, liberty, or property, without due process of law." The Alaska Supreme Court has interpreted this provision as requiring an impartial fact finder. *In re Robson*, 575 P.2d 771 (Alaska 1978); *K & L Distributors, Inc. v. Murkowski*, 486 P.2d 351 (Alaska 1971). Questioning of a decision-maker while the case is pending impairs the impartiality of the judicial process. It may even invalidate the decision reached in the matter, causing the whole matter to be reheard. "To subject an administrator to a searching examination as to how

and may not engage in ex parte communications.⁵ An ex parte communication is a contact or communication (personal communications or some form of evidence) with the decision maker that takes place outside the presence of all parties to the proceeding.

I. Obtaining information on behalf of a constituent in regard to an administrative adjudication.

While a legislator or legislative staff member may contact an administrative department with questions regarding a matter, once that matter is assigned to a hearing officer or other decision maker there should be no direct contact with the decision maker.

Once a matter is in a hearing process, questions to the administrative unit should be limited to procedural matters and case information. The answers to those questions can most likely be answered by a person other than the decision maker. For example, if the office of administrative hearings has jurisdiction of the matter, that office will be able to provide information about the case file without impairing the impartial role of the hearing officer.⁶ If the adjudication is not within the jurisdiction of the office of administrative

and why he reached his decision in a case still pending before him, . . . sacrifices the appearance of impartiality - the *sine qua non* [essential condition] of American *judicial* justice" Pillsbury v. F.T.C., 354 F.2d 952, 963 (5th Cir Ct. of Appeals, 1966). "Legislative intervention which occurs during a pending decisional process of an agency endangers and may undermine the integrity of the ensuing decision, and it has been held that administrative decisions which are based in whole or in part on pressures emanating from the legislature may be invalid." 73 C.J.S. Sec. 31, Public Administrative Law and Procedure.

⁵ For example see AS 44.62.630 in the Administrative Procedure Act, also see AS 44.64.050(b) regarding the standard of conduct for hearing officers in the office of administrative hearings.

⁶ See AS 44.64.030 for the jurisdiction of the office of administrative hearings. Child support services and permanent fund dividend adjudications are under the jurisdiction of the office of administrative hearings.

AS 44.64.050 provides fundamental standards of conduct required of hearing officers. The chief administrative law judge is required to adopt regulations for a code of conduct.

. . . The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall

- (1) uphold the integrity and independence of the office;
- (2) avoid impropriety and the appearance of impropriety;
- (3) perform the duties of the office impartially and diligently;
- (4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and

hearings, the agency holding the hearings will have procedures to insulate the decision makers from improper contacts. Legislators subject to AS 24.60 will be expected to make every effort to obtain basic procedural or case file information about a matter under administrative adjudication by means other than contacting the hearing officer. Also, in response to your questions, it would not be the proper function of any administrator in the adjudicatory process to give advice in response to your questions, but only to provide information about the case file, parties, scheduling or other routine procedural matters.⁷

(5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

The proposed draft regulations at 2 AAC 64.030 provide:

(b) The following guidelines apply to any determination on whether a hearing officer or administrative law judge has adhered to the canons [of hearing officer conduct]:

(1) The requirement to uphold the integrity and independence of the office, and of the hearing function, dictates that a hearing officer or administrative law judge establish and personally observe high standards of conduct and avoid improper ex parte communications with private and agency parties on the subject of a hearing request; so that the integrity and independence of the office and hearing function will be preserved;

(3) The requirement to perform the duties of the office or of the hearing function impartially and diligently dictates that a hearing officer or administrative law judge . . .

(B) not initiate, permit, or consider improper ex parte communications, . . .

"improper ex parte communications" are defined at 2 AAC 64.990(13) as

a direct or indirect, oral or written communication between a decision maker and a party to a proceeding, or another person trying to influence the decision maker, which occurs outside the presence of the other parties, and without a notice and an opportunity to participate being given to the other parties.

⁷ You have asked "can a legislator contact a decision maker to ask if there was other information that could be provided." This would require the decision maker or the administrator in charge of the case file to advise the legislator on how to conduct the case or influence the outcome. This would not be appropriate, as it impairs the impartiality of the hearing process.

In the rare instance that a communication with a hearing officer occurs the legislator must comply with AS 24.60.030(i)(2): the "fact and substance of the contact [must be] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact [must be] made a part of the record." A failure by a legislator to properly make this disclosure may be held to be a violation of the legislative ethics code.

The committee is also concerned that ex parte contacts, by a legislator or legislative employee, with a decision maker creates an appearance of a violation of the ethics code. This is based on AS 24.60.010 which provides in pertinent part:

The legislature finds that

...
(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;
...

2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?

If contact with a decision maker does occur, a legislator or legislative employee must notify all parties and make the contact a part of the record. Complying with this requirement of disclosure to all parties is the responsibility of the legislator who initiated the ex parte contact, not the adjudicator hearing the matter. Information about the other parties to the matter can be obtained as discussed in the answer to the first question.

There is no obligation to contact all parties in regarding communications with administrative departments or personnel initiated by a legislator when a matter has not yet been assigned to a hearing officer.

3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

As discussed above, a legislator may advocate and communicate on an administrative matter on behalf of a constituent. AS 24.60.030(i) only applies once an administrative matter is assigned to an administrative decision maker. In the event that a legislator makes an ex parte contact with a decision maker, the requirements of AS 24.60.030(i)(2) apply. The ethics statute clearly places the responsibility for compliance with (i)(2) on the legislator making the ex parte contact, not the adjudication agency or the administrative agency who is a party to the matter.

Conclusion

For the reasons stated above, the committee finds that a legislator or legislative employee seeking information on an administrative matter that is assigned to a hearing officer, individual, board or commission should not attempt to contact the decision maker assigned to that matter.⁸ Information about the procedural aspects of the matter may be sought from the office administering the hearing, but not the decision maker directly. If a legislator or legislative employee makes an ex parte communication and fails to comply with the requirements of AS 24.60.030(i)(2), it could be considered a violation of the legislative ethics code.

AS 24.60.030 does not apply to contacts in regard to administrative matters that have not been assigned to an administrative decision maker.

Adopted by the Select Committee on Legislative Ethics on November 9, 2005.

Members present and concurring in this opinion were:

Herman G. Walker, Jr. Chair
Representative Max Gruenberg
Senator Hollis French
Senator Ben Stevens
Ann Rabinowitz, public member
Marianne Stillner, public member
H. Connor Thomas, public member

Members dissenting from this opinion were:

Members absent were:
Representative Bruce Weyhrauch
Dennis "Skip" Cook, public member

BRC:med
05-475.med

⁸ The only exceptions are described in AS 24.60.030(i):

[e]xcept for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case . . .

Alaska State Legislature

Select Committee on Legislative Ethics

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99510-1468

April 23, 2004

ADVISORY OPINION 2004-01

Subject: Conflict of Interest – Constituent Information

RE: Use of constituent information gathered by a legislator.

You are a legislator and therefore covered by the Legislative Ethics Code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked the following questions:

1. Can constituent information gathered by a candidate who is subsequently elected to office be used by the legislator during his or her term of office?
2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

You characterized the information referred to in the questions as:

- A. Voter information obtained from the Division of Elections for a small fee.
- B. Information obtained from public sources such as Permanent Fund recipients and corporation and business licenses databases which can be downloaded by anyone from public agency internet sites for free or for a small fee.
- C. Information gathered about individual constituents during a legislator's term, including email addresses, phone and fax numbers, and issue information.
- D. Similar constituent information as in C obtained during a candidate's campaign.

Discussion

In this document

- "constituent" means a natural person residing within a legislator's district;
- "information" means contact information including name and address as well as any other information and facts known about the contact such as issues and legislation the contact is interested in;
- "database" means an organized body of related information which is in a format read by computer database programs.

1. Can constituent information gathered by a candidate who is subsequently

elected to office be used by the legislator during his or her term of office?

This question involves a legislator using, for legislative purposes, information gathered in the course of an election campaign, described in D above. This information was obtained using private resources. There is no prohibition in the ethics code on a legislator using private resources for legislative purposes, so a legislator may use for legislative purposes information gathered during non-legislative time without the use of legislative resources.

2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

It is assumed in this answer that "information gathered by a legislator" is information collected for the legislator, described in C above, with the help of legislative staff employed to handle constituent concerns using legislative equipment. This information is being gathered for the benefit of the legislator in performing public duties. As long as the purpose is to assist the legislator in performing current legislative duties, the building and maintenance of a database containing constituent information is permitted using legislative resources. As is the case with the files maintained by a legislator's office for legislative use, a database is considered to be the confidential property of the legislator.¹

There is a general prohibition against using legislative resources for non-legislative purposes:

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

AS 24.60.030(a)(2). However there is an exemption for a de minimis use:

[AS 24.60.030(a)(2)] does not prohibit (A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

We find that it is considered to be a de minimis use of public assets under AS 24.60.030(a)(2)(A) for a legislator to make a copy of a database created or maintained in the legislator's own office for personal or campaign use.²

¹ When the legislator leaves office, the files and information belong to the legislator. A legislator's files, including information such as databases on a legislator's office computers are considered confidential.

² This opinion does not condone the unauthorized copying of copyright protected information.

In regard to voter information and other publicly available databases, the information described in A and B above, a legislator may obtain this information for legislative purposes. This information would probably be combined into the legislator's constituent database. As discussed above, a legislator can make a copy of the legislator's own database for personal or campaign purposes.

In the case of purchased databases, there may be copyright issues if a person copies a database rather than purchasing another license for separate use. If the legislator wants another copy of a commercial database, a separate license, if required, should be purchased with personal funds.

Conclusion

For the reasons stated above, the committee finds that constituent information gathered by a candidate using private resources can be used by that person if subsequently elected to serve as a legislator, and that constituent information gathered by a legislator using legislative resources such as staff time and equipment for legislative purposes may be copied and used for personal or campaign use by a legislator as a de minimis use of public assets under AS 24.60.030(a)(2)(A).

Adopted by the Select Committee on Legislative Ethics on April 23, 2004

Members present and concurring in this opinion were:

H. Connor Thomas, Chair
Representative Mary Kapsner
Representative Norman Rokeberg
Senator Kim Elton
Senator Ben Stevens
Dennis "Skip" Cook, public member
Ann Rabinowitz, public member
Marianne Stillner, public member

Member present & abstained from voting because not present for entire discussion:

Herman G. Walker, public member

BRC:mdr:lmb
04-164.mdr

L

ALASKA STATE HOUSE OF REPRESENTATIVES



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Session

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Room 204

REPRESENTATIVE JOHN COGHILL

Handwritten signature: J.A.S. working draft

Date: March 24, 2009
To: Dan Wayne, Legal Counsel
From: Rynnieva Moss, Legislative Aide *RW Moss*
Re: HB 193 LS 0656\E

A subcommittee has been formed to discuss a CS for HB 193. Rep. Seaton is the chair and Representatives Johnson and Gruenberg are the other two members.

Here is a summary of the proposed amendments and requested information:

Amendment recommended by Terry Thurbon, Chief Administrative Law Judge for the Office of Administrative Hearings:

Sec. 1.¹

- (i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100 [FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE.] a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing

Representative Seaton has concerns this section allows a legislator or legislative aide to solicit clients for administrative hearings in this section. I explained we are trying to limit the involvement of legislators and staff with an administrative hearings. I don't know if the licensed professional will ease his concerns. so please review this and see if there is a way to make this clearer.

or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives while the legislator or legislative employee is acting as a party or witness and the contact is made a part of the record; or

(2) in the event of an inadvertent ex parte contact fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

***Sec. 8.**

OK (17) "constituent" means a [NATURAL] person whom a legislator owes a duty of representation under the Constitution of the state of Alaska

ok? (19) "legislative purpose" means a goal of a legislative action or [A] providing a constituent service.

good (21) "private benefit" means a [FINANCIAL] benefit to a person as a result of a legislative, administrative, or political action of which [FINANCIAL] benefit to that person in particular is a substantial goal and that is greater than the [FINANCIAL] benefit of the legislative, administrative, or political action to a substantial class of persons to which the person belongs by law, choice, legal entitlement, legal privilege, profession, occupation, industry, or region.

I am not asking for a CS at this time but would ask you be available for the subcommittee meeting tomorrow from 3 to 5 p.m. tomorrow. I believe it is being held in the Speaker's Chambers.

ALASKA STATE HOUSE OF REPRESENTATIVES



Contact:

Interim Address:
3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Handwritten notes:
M.H.
work by draft

Date: March 24, 2009

To: Dan Wayne, Legal Counsel

From: Rynniva Moss, Legislative Aide *RW Moss*

Re: HB 193 LS 0656\E

A subcommittee has been formed to discuss a CS for HB 193. Rep. Seaton is the chair and Representatives Johnson and Gruenberg are the other two members.

Here is a summary of the proposed amendments and requested information:

Amendment recommended by Terry Thurbon, Chief Administrative Law Judge for the Office of Administrative Hearings:

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Pg 1 Line 12 delete Line 12:
Pg 2 delete lines 1-16
and insert conceptual
→ AMENDMENT #6

BY

a licensed professional in the state
of Alaska

1 (i) Except when representing another person as ~~an attorney in the case~~ for
2 compensation and subject to AS 24.60.100 [FOR SUPPLYING INFORMATION
3 REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD,
4 OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION
5 IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE
6 HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH
7 AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] a legislator or
8 legislative employee may not attempt to influence the outcome of an administrative
9 hearing by directly or indirectly contacting or attempting to contact the hearing officer
10 assigned to the hearing or the individual, board, or commission with authority to make
11 the final decision in the case unless the
12 (1) contact is made in the presence of all parties to the hearing or the parties'
13 representatives while the legislator or legislative employee is acting as a party or
14 witness and the contact is made a part of the record; or
15 (2) in the event of an inadvertent ex parte contact ^{Comma after 'contact' insert and if the (conceptual amendment) are} fact and substance of the contact is
16 promptly disclosed by the legislator or legislative employee to all parties to the hearing
17 and the contact is made a part of the record.

Rynniva Moss

From: Thurbon, Terry L (DOA) [terry.thurbon@alaska.gov]
Sent: Monday, March 23, 2009 4:46 PM
To: Rynniva Moss
Subject: HB 193

Rynniva:

Per our discussion, here is a markup of AS 24.60.030(i). The changes in the first two lines are what I was suggesting when we spoke. As I reviewed the subsection in light of our conversation, a few other possible changes occurred as well that I think would have the effect of preserving the *ex parte* contact principles I am concerned about losing while achieving your goal of cutting off case-related contacts altogether except when the legislator/legislative employee is appearing as the attorney in the case. Frankly, I cannot think of a situation in which it would be appropriate for a hearing officer or final decisionmaker to be asking a legislator or legislative employee for information to be considered in connection with a specific case unless the legislator or legislative employee has become a fact witness and the testimony/affidavits become part of the record, with the party who did not call the person as a witness having the right to cross examine, or is a party him/herself.

(i) Except **when representing another person as an attorney in the case for compensation and subject to AS 24.60.100 [FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,]** a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

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(2) **in the event of an inadvertent ex parte contact** fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

I will drop in for the hearing tomorrow morning and, as we discussed, I may submit formal written comments for Judiciary since I might be unavailable when the matter comes before that committee.

Terry L. Thurbon
 Chief Administrative Law Judge
 Office of Administrative Hearings
 P.O. Box 110231
 Juneau, Alaska 99811-0231
 (907) 465-1886
 (907) 465-2280 (fax)
 terry.thurbon@alaska.gov

ative history reports. — For governor's
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see 2007 House Journal 109 — 110.

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The legislature finds that
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- (1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless a provision of this chapter specifically states that it applies;
- (2) a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature or a legislative employee. This chapter does not supersede or repeal provisions of the criminal laws of the state. This chapter does not exempt a person from applicable provisions of another law unless the law is expressly superseded or incompatibly inconsistent with the specific provisions of this chapter. (§ 1 ch 36 SLA 1984; §§ 2, 3 ch 113 SLA 1986; am § 1 ch 167 SLA 1988; am § 2 ch 127 SLA 1992; am § 18 ch 47 SLA 2007)

Effect of amendments. — The 2007 amendment, effective July 10, 2007, substituted "a provision of this chapter" for "the provision" in paragraph (a)(1).

Article 2. Standards of Conduct.

Section	Section
30. Prohibitions related to conflicts of interest and unethical conduct	75. Compassionate gift exemption
31. Restrictions on fund raising	80. Gifts
33. Restrictions on employee candidacies	85. Restrictions on earned income and honoraria
35. Protection of whistle blowers	90. Nepotism
37. Open meetings guidelines	100. Representation
39. Discrimination prohibited	105. Deadlines for filing disclosures
40. Contracts or leases	112. Applicability to volunteers and educational trainees
50. State programs and loans	115. Disclosure required of a legislator, legislative employee, or public member of the committee after final day of service
60. Confidential information	
70. Disclosure of close economic associations	

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct. (a) A legislator or legislative employee may not

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

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

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

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

(C) the legislative council, notwithstanding AS 24.05.190, from designating a public facility for use by legislators and legislative employees for health or fitness purposes; when the council designates a facility to be used by legislators and legislative employees for health or fitness purposes, it shall adopt guidelines governing access to and use of the facility; the guidelines may establish times in which use of the facility is limited to specific groups;

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately

§ 24.60.030

after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others;

(E) a legislator from use of legislative employees to prepare and send out seasonal greeting cards;

(F) a legislator from using state resources to transport computers or other office equipment owned by the legislator but primarily used for a state function;

(G) use by a legislator of photographs of that legislator;

(H) reasonable use of the Internet by a legislator or a legislative employee except if the use is for election campaign purposes;

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

(J) a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(K) full participation in a charity event approved in advance by the Alaska Legislative Council;

(3) knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowances from public funds;

(4) require a legislative employee to perform services for the private benefit of the legislator or employee at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time; it is not a violation of this paragraph if the services were performed in an unusual or infrequent situation and the person's services were reasonably necessary to permit the legislator or legislative employee to perform official duties;

(5) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning; this paragraph does not prohibit

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

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

(C) storing or maintaining, consistent with (b) of this section, election campaign records in a legislator's office;

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; or

(E) use by a legislator of photographs of that legislator.

(b) A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

(c) Unless approved by the legislature, which the legislator or legislative employee may not use or the legislator is entitled under this section, individuals eligible to vote

(1) a "campaign period"

(A) begins 60 days before the election;

cooperative organized under this section begins on the date of the election;

(B) ends the day after the election;

(2) a mass mailing is not made to a legislative employee, or another person, or a legislature or another federal, state, or local telephone cooperative.

(d) A legislator, legislative employee, or another person may not distribute or post other communications in public areas in a facility where a prohibition applies whether the prohibition may post, in the legislature, has been concluded.

(e) A legislator may not act on behalf,

(1) agree to, threaten, or attempt to influence legislative, administrative, or employment, nomination or not provide a political position to a legislator, or provide or attempt to provide

(2) state or imply that a person is a constituent service as a condition for a contribution, donate or attempt to donate

(3) unless required by law, withhold official action or the financial interest of a person from employment.

(f) A legislative employee may not be employed by the legislature. A legislator or legislative employee, including a government employee, A person required to maintain the committee by the legislature on whose record of the disclosure in the journal. This subchapter is appointed to a board or committee if the person is appointed to the committee during the calendar year.

(g) Unless required by law, a legislator may not vote on a question of business, investment, or other matter that has a material and the effect on

(c) Unless approved by the committee, during a campaign period for an election in which the legislator or legislative employee is a candidate, a legislator or legislative employee may not use or permit another to use state funds, other than funds to which the legislator is entitled under AS 24.10.110, to print or distribute a political mass mailing to individuals eligible to vote for the candidate. In this subsection,

(1) a "campaign period" is the period that

(A) begins 60 days before the date of an election to the board of an electric or telephone cooperative organized under AS 10.25, a municipal election, or a primary election, or that begins on the date of the governor's proclamation calling a special election; and

(B) ends the day after the cooperative election, municipal election, or general or special election;

(2) a mass mailing is considered to be political if it is from or about a legislator, legislative employee, or another person who is a candidate for election or reelection to the legislature or another federal, state, or municipal office or to the board of an electric or telephone cooperative.

(d) A legislator, legislative employee, or another person on behalf of the legislator or legislative employee, or a campaign committee of the legislator or legislative employee, may not distribute or post campaign literature, placards, posters, fund-raising notices, or other communications intended to influence the election of a candidate in an election in public areas in a facility ordinarily used to conduct state government business. This prohibition applies whether or not the election has been concluded. However, a legislator may post, in the legislator's private office, communications related to an election that has been concluded.

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

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

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

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

(f) A legislative employee may not serve in a position that requires confirmation by the legislature. A legislator or legislative employee who serves on a board of an organization, including a governmental entity, shall disclose the board membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves. The committee shall maintain a public record of the disclosure and forward the disclosure to the appropriate house for inclusion in the journal. This subsection does not require a legislator or legislative employee who is appointed to a board by the presiding officer to make a disclosure of the appointment to the committee if the appointment has been published in the appropriate legislative journal during the calendar year.

(g) Unless required by the Uniform Rules of the Alaska State Legislature, a legislator may not vote on a question if the legislator has an equity or ownership interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect

on a substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region.

(h) An employee who engages in political campaign activities other than incidental campaign activities during the employee's work day shall take leave for the period of campaigning. Political campaign activities while on government time are permissible if the activities are part of the normal legislative duties of the employee, including answering telephone calls and handling incoming correspondence.

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record. (§ 1 ch 36 SLA 1984; am § 27 ch 85 SLA 1988; am § 8 ch 167 SLA 1988; am § 3 ch 127 SLA 1992; am §§ 13 — 18 ch 74 SLA 1998; am § 8 ch 3 SLA 2002; am § 49 ch 163 SLA 2004; am § 2 ch 10 SLA 2006; am §§ 19 — 21 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a), in paragraph (2) rewrote the introductory language, rewrote subparagraphs (A)-(C), added subparagraphs (D) and (E), and in paragraph (5) rewrote subparagraphs (A)-(C) and added subparagraphs (D) and (E); rewrote subsections (c), (d), and (g), added the last three sentences in subsection (f), and added subsection (h).

The 2002 amendment, effective April 16, 2002, in subsection (a) substituted "10 days" for "five days" in two places in subparagraphs (2)(E) and (5)(E); added subparagraphs (F)-(K) in paragraph (2); added subparagraph (F) in paragraph (5); and made stylistic changes.

The 2004 amendment, effective July 1, 2005, added subsection (i).

The 2006 amendment, effective March 31, 2006, in subsection (a), inserted "solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080(c)(10)" in paragraph (1) and "or legislative employee" in paragraph (2)(J), and added paragraph (2)(L), making corresponding stylistic changes.

The 2007 amendment, effective July 10, 2007, substituted "AS 24.60.080(a)(2)(B)" for "AS 24.60.080(c)(10)" in paragraph (a)(1), deleted former paragraphs (a)(1)(C) and (a)(5)(C), relating to telephone or facsimile use and redesignated the following subparagraphs accordingly, substituted "60 days" for "90 days" in paragraph (c)(1)(A), rewrote the second sentence of subsection (f), and substituted "person" for "legislator or legislative employee who is" in the third sentence of subsection (f).

NOTES TO DECISIONS

No duty to disclose. — Two former members of the Alaska legislature who were charged with honest services fraud under 18 USCS §§ 1341, 1343, and 1346 could exclude evidence of their failure to disclose a conflict of interest arising from their dealings with a corporation; neither this section nor AS 24.60.010 impose a duty to disclose, and state law controls. *United States v. Kott*, — F. Supp. 2d — (D. Alaska Sept. 4, 2007).

Legislature did not intend to imply a duty to disclose. — Alaska legislature clearly knows how to establish a duty to disclose and has done so in several instances. Its failure to include an explicit duty to disclose in subsection (e)(3) is significant; reading AS 24.60 as a whole, it would be inappropriate to imply a duty to disclose matters within the ambit of (e)(3). *United States v. Kott*, — F. Supp. 2d — (D. Alaska Sept. 4, 2007).

Sec. 24.60.031. Restrictions on fund raising. (a) A legislative employee may not

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

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(c) The committee may impose a fine on a person who files a disclosure after a deadline set by this chapter. The amount of the fine imposed under this subsection may not exceed \$2 for each day to a maximum of \$100 for each late filing unless the committee determines that the late filing was inadvertent or wilful. If the committee finds that a late filing was inadvertent, the maximum fine the committee may impose under this subsection is \$25. If the committee determines that the late filing was wilful, the amount of the fine imposed under this subsection may be \$100 for each day but may not exceed a maximum of \$2,500. (§ 31 ch 127 SLA 1992; am §§ 62, 63 ch 74 SLA 1998; am § 6 ch 94 SLA 2008)

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

The 2008 amendment, effective September 14, 2008, substituted “late filing unless the committee determines that the late filing was inadvertent or willful” for “disclosure for a late disclosure” in the second sentence of subsection (c), deleted “However” at the beginning of the third sentence of that subsection, and added the last sentence of that subsection.

Article 5. Miscellaneous and General Provisions.

Section

970. Actions by the attorney general
980. Cooperation by state agencies

Section

990. Definitions
995. Short title

Sec. 24.60.970. Actions by the attorney general. The attorney general may independently bring civil actions relating to violations under this chapter regardless of the outcome or settlement of a charge before the committee. This section does not prohibit the attorney general from bringing an action under another civil or criminal law. (§ 30 ch 127 SLA 1992)

Revisor's notes. — Enacted as AS 24.60.178. Renumbered in 1992.

Sec. 24.60.980. Cooperation by state agencies. Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter. (§ 1 ch 36 SLA 1984)

Revisor's notes. — Formerly AS 24.60.180. Renumbered in 1992.

Sec. 24.60.990. Definitions. (a) In this chapter,

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

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

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

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

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients;

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

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

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

(6) "immediate family" means

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

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

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

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

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

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

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

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

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

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

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

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

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or

political act to which the (3) has or s legislature (subsection, t of or owned legislative, a SLA 1998; a SLA 2003; a

Revisor's no paragraph (17) time former pa: graphs (5) - (14). Effect of am effective Janua: paragraph (6) (f and former para The 2001 am sserted "the victi (formerly (9)). The first 2003 2003, in subsecti

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- Section
- 10. Office of vic
 - 20. Appointmer
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 - 90. Procedure
 - 100. Jurisdiction:
 - 110. Advocacy on
 - 120. Investigation

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political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action. (§ 31 ch 127 SLA 1992; am §§ 64, 65 ch 74 SLA 1998; am § 17 ch 92 SLA 2001; am §§ 32, 33, 41 ch 108 SLA 2003; am § 7 ch 115 SLA 2003; am §§ 47, 48 ch 47 SLA 2007)

Revisor's notes. — Paragraph (5) was enacted as paragraph (17) and renumbered in 2003, at which time former paragraph (15) was repealed and paragraphs (5) - (14) were renumbered as (6) - (15).

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) rewrote paragraph (6) [formerly (5)] and added paragraph (16) and former paragraph (15).

The 2001 amendment, effective July 1, 2002, inserted "the victim's advocate," in paragraph (a)(10) [formerly (9)].

The first 2003 amendment, effective September 14, 2003, in subsection (a) substituted "domestic partner"

for "spousal equivalent" in subparagraph (6)(A), repealed former paragraph (15), and added paragraph (5).

The second 2003 amendment, effective September 15, 2003, updated a section reference in paragraph (a)(12).

The 2007 amendment, effective July 10, 2007, substituted "AS 24.60.080(a)(2)(B) or (c)" for "AS 24.60.080(c)" in subparagraph (a)(2)(A); and substituted "an asset that a person has received or expects to receive, regardless of whether it is" for "assets that are received, regardless of whether they are" in paragraph (a)(7).

Sec. 24.60.995. Short title. This chapter may be cited as the Legislative Ethics Act. (§ 18 ch 12 SLA 2006)

Effective dates. — Section 43, ch. 12, SLA 2006 makes this section effective April 4, 2006.

Chapter 65. Office of Victims' Rights.

Section

- 10. Office of victims' rights
- 20. Appointment of the victims' advocate
- 30. Qualifications
- 40. Term of office
- 50. Removal
- 60. Compensation
- 70. Staff and delegation
- 80. Office facilities and administration
- 90. Procedure
- 100. Jurisdiction; duties
- 110. Advocacy on behalf of crime victims; records
- 120. Investigations

Section

- 130. Powers
- 140. Consultation
- 150. Procedure after investigation
- 160. Publication of recommendations
- 170. Annual report
- 180. Judicial review
- 190. Immunity of the victims' advocate
- 200. Victims' advocate's privilege not to testify or produce documents or other evidence
- 210. Penalty
- 250. Definitions

Effective dates. — Section 49, ch. 92, SLA 2001 makes this chapter effective July 1, 2002.

Sec. 24.65.010. Office of victims' rights. There is created in the legislative branch of the state the office of victims' rights. The victims' advocate is the director of the office of victims' rights. (§ 19 ch 92 SLA 2001)

Sec. 24.65.020. Appointment of the victims' advocate. (a) A candidate for appointment as the victims' advocate shall be nominated by the victims' advocate selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of a minority party caucus in each house shall be appointed to the selection committee.

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

Jurisdiction over divorce action. — This section does not affect the common-law rule that Alaska courts have jurisdiction over a divorce action when one of the parties is domiciled in Alaska, where "domicile" is defined as physical presence plus an intent to remain permanently. *Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

Quoted in *E.H. v. State*, 23 P.3d 1186 (Alaska 2001).

Stated in *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

Sec. 01.10.060. Definitions. (a) In the laws of the state, unless the context otherwise requires,

- (1) "action" includes any matter or proceeding in a court, civil or criminal;
- (2) "daytime" means the period between sunrise and sunset;
- (3) "month" means a calendar month unless otherwise expressed;
- (4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;
- (5) "nighttime" means the period between sunset and sunrise;
- (6) "oath" includes affirmation or declaration;
- (7) "peace officer" means
 - (A) an officer of the state troopers;
 - (B) a member of the police force of a municipality;
 - (C) a village public safety officer;
 - (D) a regional public safety officer;
 - (E) a United States marshal or deputy marshal; and
 - (F) an officer whose duty it is to enforce and preserve the public peace;
- (8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;
- (9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;
- (10) "property" includes real and personal property;
- (11) "real property" is coextensive with land, tenements, and hereditaments;
- (12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;
- (13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;
- (14) "writing" includes printing.

(b) In the laws of the state, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this subsection may be construed to authorize an act that is

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CS FOR HOUSE BILL NO. 193()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to representation by a legislator or legislative employee of another**
2 **person in an administrative hearing; relating to charity events under the Legislative**
3 **Ethics Act; requiring compensation of public members of the Select Committee on**
4 **Legislative Ethics; exempting certain information from disclosure requirements of the**
5 **Legislative Ethics Act; relating to the selection of alternate members and the**
6 **participation of members and alternate members in formal proceedings of the Select**
7 **Committee on Legislative Ethics and its subcommittees; and defining 'constituent,'**
8 **'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit'**
9 **for the purposes of the Legislative Ethics Act."**

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 *** Section 1. AS 24.60.030(i) is amended to read:**

12 **(i) Except for supplying information requested by the hearing officer or the**

1 individual, board, or commission with authority to make the final decision in the case,
 2 or when responding to contacts initiated by the hearing officer or the individual, board,
 3 or commission with authority to make the final decision in the case, a legislator or
 4 legislative employee may not attempt to influence the outcome of an administrative
 5 hearing by directly or indirectly contacting or attempting to contact the hearing officer
 6 assigned to the hearing or the individual, board, or commission with authority to make
 7 the final decision in the case unless the legislator or legislative employee is
 8 representing another person in the case for compensation and subject to
 9 AS 24.60.100

10 [(1) CONTACT IS MADE IN THE PRESENCE OF ALL PARTIES
 11 TO THE HEARING OR THE PARTIES' REPRESENTATIVES AND THE
 12 CONTACT IS MADE A PART OF THE RECORD; OR

13 (2) FACT AND SUBSTANCE OF THE CONTACT IS PROMPTLY
 14 DISCLOSED BY THE LEGISLATOR OR LEGISLATIVE EMPLOYEE TO ALL
 15 PARTIES TO THE HEARING AND THE CONTACT IS MADE A PART OF THE
 16 RECORD].

17 * Sec. 2. AS 24.60.080(a) is amended to read:

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

20 (1) solicit, accept, or receive, directly or indirectly, a gift worth \$250
 21 or more, whether in the form of money, services, a loan, travel, entertainment,
 22 hospitality, promise, or other form, or gifts from the same person worth less than \$250
 23 that in a calendar year aggregate to \$250 or more in value;

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

27 (A) food or beverage for immediate consumption;

28 (B) a contribution to a charity event, [FROM ANY PERSON
 29 AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME,
 30 EXCEPT THAT TICKETS TO OR] gifts received in connection with [AT] a
 31 charity event; however, tickets to a charity event and gifts received in

1 connection with a charity event that are not included in the price of the
2 ticket [UNDER THIS SUBPARAGRAPH] are subject to the calendar year
3 limit on the value of gifts received by a legislator or legislative employee in (1)
4 of this subsection; in this subparagraph, "charity event" means an event the
5 proceeds of which go to a charitable organization with tax-free status under 26
6 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in
7 advance; the tickets may entitle the bearer to admission to the event, to
8 entertainment, to food or beverages, or to other gifts or services in connection
9 with [INVOLVED IN] the charity event;

10 (C) a gift that is unconnected with the recipient's legislative
11 status and is from a member of the legislator's or legislative employee's
12 immediate family;

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

15 (E) a compassionate gift under AS 24.60.075.

16 * Sec. 3. AS 24.60.080(c) is amended to read:

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

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

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

24 (B) at a social event or meal;

25 (2) discounts that are available

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

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

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

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

3 (5) gifts from the immediate family of the person; in this paragraph,
4 "immediate family" means

5 (A) the spouse of the person;

6 (B) the person's domestic partner;

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

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

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

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

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

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

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

29 (9) a gift of transportation from a legislator or a legislative employee to
30 a legislator or a legislative employee if the transportation takes place in the state on or
31 in an aircraft, boat, motor vehicle, or other means of transport owned or under the

1 control of the donor; this paragraph does not apply to travel described in (4) of this
2 subsection or travel for political campaign purposes; or

3 (10) a contribution to a charity event from any person at any time, or a
4 ticket to a charity event from a person who is not a lobbyist, an immediate family
5 member of a lobbyist, or acting on behalf of a lobbyist; in this paragraph, "charity
6 event" has the meaning given in (a)(2)(B) of this section.

7 * Sec. 4. AS 24.60.080(d) is amended to read:

8 (d) A legislator or legislative employee who accepts a gift under (c)(4) of this
9 section that has a value of \$250 or more or a ticket to a charity event under
10 (c)(10) of this section that has a value of \$250 or more shall disclose to the committee,
11 within 30 days after receipt of the gift, the name and occupation of the donor and the
12 approximate value of the gift. A legislator or legislative employee who accepts a gift
13 under (c)(8) of this section that the recipient expects will have a value of \$250 or more
14 in the calendar year shall disclose to the committee, within 30 days after receipt of the
15 gift, the name and occupation of the donor, a general description of the matter of
16 legislative concern with respect to which the gift is made, and the approximate value
17 of the gift. The committee shall maintain a public record of the disclosures it receives
18 relating to gifts under (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward
19 the disclosures to the appropriate house for inclusion in the journal. The committee
20 shall forward to the Alaska Public Offices Commission copies of the disclosures
21 concerning gifts under (c)(4), (c)(8), (c)(10), and (i) of this section that it receives
22 from legislators and legislative directors. A legislator or legislative employee who
23 accepts a gift under (c)(6) of this section that has a value of \$250 or more shall, within
24 30 days after receiving the gift, disclose to the committee the name and occupation of
25 the donor and a description of the gift. The committee shall maintain disclosures
26 relating to gifts under (c)(6) of this section as confidential records and may only use,
27 or permit a committee employee or contractor to use, a disclosure under (c)(6) of this
28 section in the investigation of a possible violation of this section or in a proceeding
29 under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the
30 record of a proceeding under AS 24.60.170, the confidentiality provisions of that
31 section apply to the disclosure.

1 * **Sec. 5.** AS 24.60.105 is amended by adding a new subsection to read:

2 (d) A person may refrain from making a disclosure that is required by this
3 chapter if making the disclosure would violate the United States Constitution, the
4 Constitution of the State of Alaska, or other state or federal law. However, at the
5 request of the committee or a person authorized to act on behalf of the committee, a
6 person who refrains from making a disclosure under this subsection shall provide the
7 committee with justification in writing, and the committee may review the written
8 justification to determine whether it is sufficient.

9 * **Sec. 6.** AS 24.60.130(f) is amended to read:

10 (f) The committee may contract for professional services and may employ
11 staff as it considers necessary. A committee employee, including a person who
12 provides personal services under a contract with the committee, may not be a
13 legislator, an elected or appointed official of a state or local governmental entity, an
14 officer of a political party, a candidate for public office, or a registered lobbyist. The
15 legislative council shall provide office space, equipment, and additional staff support
16 for the committee. The committee shall submit a budget for each fiscal year to the
17 finance committees of the legislature and shall annually submit an estimated budget to
18 the governor for information purposes in preparation of the state operating budget.
19 Public members of the committee shall receive [SERVE WITHOUT] compensation
20 of \$150 a day while attending committee meetings and [FOR THEIR SERVICES,
21 BUT] are entitled to per diem and travel expenses authorized for boards and
22 commissions under AS 39.20.180.

23 * **Sec. 7.** AS 24.60.130(n) is amended to read:

24 (n) A member who participates at the commencement of a proceeding
25 under AS 24.60.170 shall participate for the duration of the proceeding unless
26 disqualified or unable to continue participating for any reason; however,
27 provision shall be made for service by alternate members on the committee or on
28 a subcommittee, as follows:

29 (1) when [WHEN] appointing members of the legislature to serve on
30 the committee, the speaker of the house or the president of the senate, as appropriate,
31 shall appoint an alternate member for each regular member; an [. AN] alternate must

1 have the same qualifications as the regular member for whom the alternate stands as
2 alternate and is subject to confirmation as required for the regular member;

3 (2) when selecting public members to serve on the committee, the
4 Chief Justice of the Alaska Supreme Court shall also select one alternate public
5 member; the alternate public member's selection is subject to ratification as
6 required for selection of the regular public members;

7 (3) if, except as to a proceeding under AS 24.60.170, [. IF] a regular
8 [LEGISLATIVE] member of the committee or a subcommittee is unable to
9 participate in [ATTEND] a meeting, the chair of the committee or a subcommittee
10 shall designate the regular member's alternate to participate [SERVE] in place of the
11 regular member at the meeting, and the designated alternate, unless for any reason
12 unable to participate, shall participate for the duration of that meeting; if
13 [SERVE UNLESS UNABLE TO SERVE FOR ANY REASON. IF] a regular
14 [LEGISLATIVE] member of the committee or a subcommittee is disqualified under
15 (h) of this section from participating in [SERVING ON THE COMMITTEE OR
16 THE SUBCOMMITTEE CONCERNING] a proceeding under AS 24.60.170 or if the
17 regular member is unable to participate [ATTEND], the chair of the committee or a
18 subcommittee shall designate the regular member's alternate to participate [SERVE]
19 in place of the regular member for the duration of [IN] the proceeding unless the
20 alternate is [ALSO] disqualified or is for any reason unable to participate; the
21 [FROM SERVING. THE] designation shall be treated as confidential to the same
22 extent that the identity of the subject of a complaint is required to be kept confidential.

23 * Sec. 8. AS 24.60.990(a) is amended by adding new paragraphs to read:

24 (17) "constituent" means a natural person to whom a legislator owes a
25 duty of representation under the Constitution of the State of Alaska;

26 (18) "constituent service" means assistance, including representation
27 other than legal representation and advice other than legal advice, that is provided by a
28 legislator or a legislator's staff to a constituent;

29 (19) "legislative purpose" means a goal of a legislative action or a
30 constituent service;

31 (20) "nonlegislative purpose" means a purpose other than a legislative

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purpose;

(21) "private benefit" means a financial benefit to a person as a result of a legislative, administrative, or political action of which financial benefit to that person in particular is a substantial goal and that is greater than the financial benefit of the legislative, administrative, or political action to a substantial class of persons to which the person belongs by law, choice, legal entitlement, legal privilege, profession, occupation, industry, or region.

new definition

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

House Bill 193 Legislative Ethics Amendments **Sponsor Statement**

The Select Committee on Legislative Ethics requested some changes to the Legislative Ethics Statutes to address several issues discussed by the committee.

Two amendments requested by the committee address tickets to charity events and disclosure of gifts of tickets for charitable events that have a value of more than \$250.00. They allow persons who are not lobbyists to give a gift of a ticket to a charitable event sanctioned by the Legislative Council to a legislator or legislative employee that has a value of more than \$250.00. However, the recipient of the ticket must disclose to the Select Committee on Legislative Ethics the value of the ticket that exceeds the \$250.00 limit. The bill clarifies that lobbyists, immediate family members of lobbyists, or persons acting on behalf of a lobbyist may not exceed the \$250 limit.

The committee also recommended two changes to the statutes that deal with the public members of the Select Committee on Legislative Ethics. First, public members would be paid a \$150 a day stipend for attending meetings. Secondly, an alternate member of the committee selected to replace a regular member of the committee for some purpose would serve for the entire duration of the proceeding.

The bill clarifies that disclosures prohibited by state and federal law are not required by the Select Committee on Legislative Ethics.

The bill draws a bright line for legislators and legislative staff to follow for assisting constituents with problems they encounter with state agencies. Once an issue has been appealed to an administrative hearing officer, the legislator or legislative staffer may no longer make contacts with the agency, unless he or she is acting in a private capacity and reports any compensation for the representation to the Select Committee on Legislative Ethics.

Finally this bill reopens the discussion of AS 24.60.030(a)(2), the use of public funds, facilities, etc for the private benefit of either the legislative, a legislative employee, or another person. The committee has recognized that many things a legislator or staff does for constituents, such as problems with child support or the permanent fund dividend, results in a monetary benefit for the constituent. Section 8 of this bill adds definitions for "constituent", "constituent service", "legislative purpose", "nonlegislative purpose", and "private benefit" to better clarify the law. While Representative Coghill disagrees with some of the definitions, he feels it is important to open the dialogue on the subject and fix the problem.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

House Bill 193 Legislative Ethics Amendments Sectional

Section 1. Draws a bright line for legislators and legislative staff to follow for assisting constituents with problems they encounter problems with state agencies. Once an issue has been appealed to an administrative hearing officer, the legislator or legislative staffer may no longer make contacts with the agency, unless he or she is acting in a private capacity and reports any compensation for the representation to the Select Committee on Legislative Ethics.

Sec. 2 & Sec. 4. Two amendments requested by the committee address tickets to charity events and disclosure of gifts of tickets for charitable events that have a value of more than \$250.00. They allow persons who are not lobbyists to give a gift of a ticket to a charitable event sanctioned by the Legislative Council to a legislator or legislative employee that has a value of more than \$250.00. However, the recipient of the ticket must disclose to the Select Committee on Legislative Ethics the value of the ticket that exceeds the \$250.00 limit.

Sec. 3. Clarifies that lobbyists, immediate family members of lobbyists, or persons acting on behalf of a lobbyist may not exceed the \$250 limit.

Sec. 5. Clarifies that disclosures prohibited by state and federal law are not required by the Select Committee on Legislative Ethics.

Sec. 6. The committee also recommended two changes to the statutes that deal with the public members of the Select Committee on Legislative Ethics. First, public members would be paid a \$150 a day compensation for attending meetings.

Sec. 7. Alternate members of the committee selected to replace a regular member of the committee for some purpose would serve for the entire duration of the proceeding.

Sec. 8. Reopens the discussion of AS 24.60.030(a)(2), the use of public funds, facilities, etc for the private benefit of the legislative, a legislative employee, or another person. The committee has recognized that many things a legislator or staff does for constituents, such as problems with child support or the permanent fund dividend, results in a monetary benefit for the constituent. Section 8 of this bill adds definitions for "constituent", "constituent service", "legislative purpose", "nonlegislative purpose", and "private benefit" to better clarify the law. While Representative Coghill disagrees with some of the definitions, he feels it is important to open the dialogue on the subject and fix the problem.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 193
() Publish Date: _____

Identifier (file name): HB193-COU-ETH-03-23-09 Dept. Affected: Legislature
Title "An Act relating to representation by a legislator or legislative RDU Legislative Council
employee of another person in an administrative hearing;" Component Select Comm on Legislative Ethics
Sponsor Representative Coghill
Requester House State Affairs Component Number 2321

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	4.5	4.5	4.5	4.5	4.5	4.5	4.5

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF	4.5	4.5	4.5	4.5	4.5	4.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	4.5	4.5	4.5	4.5	4.5	4.5

Estimate of any current year (FY2009) cost: _____

POSITIONS

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 93 makes changes to the Legislative Ethics Act. Sec. 6. of this legislation authorizes compensation for public members of the committee in the amount of \$150 a day while attending committee meetings. Currently, public members do not receive compensation but are entitled to per diem and travel expenses.

There are five public members of the Select Committee on Legislative Ethics. For purposes of this fiscal note, it is estimated that the Committee will meet six times each year and that each meeting will last one day. This will result in a \$4,500 increase in the annual budget for the Select Committees on Legislative Ethics.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division Legislative Affairs Agency Date/Time 3/23/09 8:23 AM
Approved by: Pamela Varni, Executive Director Date 3/23/2009
Legislative Affairs Agency

Coghlin
will be read across 7/18
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HB 193

26-LS0656E

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE COGHILL

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to representation by a legislator or legislative employee of another
2 person in an administrative hearing; relating to charity events under the Legislative
3 Ethics Act; requiring compensation of public members of the Select Committee on
4 Legislative Ethics; exempting certain information from disclosure requirements of the
5 Legislative Ethics Act; relating to the selection of alternate members and the
6 participation of members and alternate members in formal proceedings of the Select
7 Committee on Legislative Ethics and its subcommittees; and defining 'constituent,'
8 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit'
9 for the purposes of the Legislative Ethics Act."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 24.60.030(i) is amended to read:

12 (i) Except for supplying information requested by the hearing officer or the

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individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the legislator or legislative employee is representing another person in the case for compensation and subject to AS 24.60.100

[(1) CONTACT IS MADE IN THE PRESENCE OF ALL PARTIES TO THE HEARING OR THE PARTIES' REPRESENTATIVES AND THE CONTACT IS MADE A PART OF THE RECORD; OR

(2) FACT AND SUBSTANCE OF THE CONTACT IS PROMPTLY DISCLOSED BY THE LEGISLATOR OR LEGISLATIVE EMPLOYEE TO ALL PARTIES TO THE HEARING AND THE CONTACT IS MADE A PART OF THE RECORD].

* Sec. 2. AS 24.60.080(a) is amended to read: **GIFTS**

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

(1) solicit, accept, or receive, directly or indirectly, a gift worth \$250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$250 that in a calendar year aggregate to \$250 or more in value;

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

(A) food or beverage for immediate consumption;

(B) a contribution to a charity event, [FROM ANY PERSON AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME, EXCEPT THAT TICKETS TO OR] gifts received in connection with [AT] a charity event; however, tickets to a charity event and gifts received in

Black line for constituent issues that go to admin hearing

\$25000 limit on lobbyist's gifts to charity events

1 connection with a charity event that are not included in the price of the
 2 ticket [UNDER THIS SUBPARAGRAPH] are subject to the calendar year
 3 limit on the value of gifts received by a legislator or legislative employee in (1)
 4 of this subsection; in this subparagraph, "charity event" means an event the
 5 proceeds of which go to a charitable organization with tax-free status under 26
 6 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in
 7 advance; the tickets may entitle the bearer to admission to the event, to
 8 entertainment, to food or beverages, or to other gifts or services in connection
 9 with [INVOLVED IN] the charity event;

10 (C) a gift that is unconnected with the recipient's legislative
 11 status and is from a member of the legislator's or legislative employee's
 12 immediate family;

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

15 (E) a compassionate gift under AS 24.60.075.

16 * Sec. 3. AS 24.60.080(c) is amended to read:

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

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

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

24 (B) at a social event or meal;

25 (2) discounts that are available

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

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

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

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

3 (5) gifts from the immediate family of the person; in this paragraph,
4 "immediate family" means

5 (A) the spouse of the person;

6 (B) the person's domestic partner;

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

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

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

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

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

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

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

29 (9) a gift of transportation from a legislator or a legislative employee to
30 a legislator or a legislative employee if the transportation takes place in the state on or
31 in an aircraft, boat, motor vehicle, or other means of transport owned or under the

1 control of the donor; this paragraph does not apply to travel described in (4) of this
2 subsection or travel for political campaign purposes; or

3 (10) a contribution to a charity event from any person at any time, or a
4 ticket to a charity event from a person who is not a lobbyist, an immediate family
5 member of a lobbyist, or acting on behalf of a lobbyist; in this paragraph, "charity
6 event" has the meaning given in (a)(2)(B) of this section.

7 * Sec. 4. AS 24.60.080(d) is amended to read:

8 (d) A legislator or legislative employee who accepts a gift under (c)(4) of this
9 section that has a value of \$250 or more or a ticket to a charity event under
10 (c)(10) of this section that has a value of \$250 or more shall disclose to the committee,
11 within 30 days after receipt of the gift, the name and occupation of the donor and the
12 approximate value of the gift. A legislator or legislative employee who accepts a gift
13 under (c)(8) of this section that the recipient expects will have a value of \$250 or more
14 in the calendar year shall disclose to the committee, within 30 days after receipt of the
15 gift, the name and occupation of the donor, a general description of the matter of
16 legislative concern with respect to which the gift is made, and the approximate value
17 of the gift. The committee shall maintain a public record of the disclosures it receives
18 relating to gifts under (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward
19 the disclosures to the appropriate house for inclusion in the journal. The committee
20 shall forward to the Alaska Public Offices Commission copies of the disclosures
21 concerning gifts under (c)(4), (c)(8), (c)(10), and (i) of this section that it receives
22 from legislators and legislative directors. A legislator or legislative employee who
23 accepts a gift under (c)(6) of this section that has a value of \$250 or more shall, within
24 30 days after receiving the gift, disclose to the committee the name and occupation of
25 the donor and a description of the gift. The committee shall maintain disclosures
26 relating to gifts under (c)(6) of this section as confidential records and may only use,
27 or permit a committee employee or contractor to use, a disclosure under (c)(6) of this
28 section in the investigation of a possible violation of this section or in a proceeding
29 under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the
30 record of a proceeding under AS 24.60.170, the confidentiality provisions of that
31 section apply to the disclosure.

*clarifies
charity ticket
can not be
accepted from
lobbyist if
over \$250*

*requires disclosure
of ticket cost
over \$250.00*

1 * Sec. 5. AS 24.60.105 is amended by adding a new subsection to read:

2 (d) A person may refrain from making a disclosure that is required by this
3 chapter if making the disclosure would violate the United States Constitution, the
4 Constitution of the State of Alaska, or other state or federal law. However, at the
5 request of the committee or a person authorized to act on behalf of the committee, a
6 person who refrains from making a disclosure under this subsection shall provide the
7 committee with justification in writing, and the committee may review the written
8 justification to determine whether it is sufficient.

*no disclosure
state or federal
law*

9 * Sec. 6. AS 24.60.130(f) is amended to read:

10 (f) The committee may contract for professional services and may employ
11 staff as it considers necessary. A committee employee, including a person who
12 provides personal services under a contract with the committee, may not be a
13 legislator, an elected or appointed official of a state or local governmental entity, an
14 officer of a political party, a candidate for public office, or a registered lobbyist. The
15 legislative council shall provide office space, equipment, and additional staff support
16 for the committee. The committee shall submit a budget for each fiscal year to the
17 finance committees of the legislature and shall annually submit an estimated budget to
18 the governor for information purposes in preparation of the state operating budget.
19 Public members of the committee shall receive [SERVE WITHOUT] compensation
20 of \$150 a day while attending committee meetings and [FOR THEIR SERVICES,
21 BUT] are entitled to per diem and travel expenses authorized for boards and
22 commissions under AS 39.20.180.

*Compensation for
committee members*

23 * Sec. 7. AS 24.60.130(n) is amended to read:

24 (n) A member who participates at the commencement of a proceeding
25 under AS 24.60.170 shall participate for the duration of the proceeding unless
26 disqualified or unable to continue participating for any reason; however,
27 provision shall be made for service by alternate members on the committee or on
28 a subcommittee, as follows:

29 (1) when [WHEN] appointing members of the legislature to serve on
30 the committee, the speaker of the house or the president of the senate, as appropriate,
31 shall appoint an alternate member for each regular member; an [. AN] alternate must

*Participation of
alternate in meetings*

1 have the same qualifications as the regular member for whom the alternate stands as
2 alternate and is subject to confirmation as required for the regular member;

3 (2) when selecting public members to serve on the committee, the
4 Chief Justice of the Alaska Supreme Court shall also select one alternate public
5 member; the alternate public member's selection is subject to ratification as
6 required for selection of the regular public members;

7 (3) if, except as to a proceeding under AS 24.60.170, [IF] a regular
8 [LEGISLATIVE] member of the committee or a subcommittee is unable to
9 participate in [ATTEND] a meeting, the chair of the committee or a subcommittee
10 shall designate the regular member's alternate to participate [SERVE] in place of the
11 regular member at the meeting, and the designated alternate, unless for any reason
12 unable to participate, shall participate for the duration of that meeting; if
13 [SERVE UNLESS UNABLE TO SERVE FOR ANY REASON. IF] a regular
14 [LEGISLATIVE] member of the committee or a subcommittee is disqualified under
15 (h) of this section from participating in [SERVING ON THE COMMITTEE OR
16 THE SUBCOMMITTEE CONCERNING] a proceeding under AS 24.60.170 or if the
17 regular member is unable to participate [ATTEND], the chair of the committee or a
18 subcommittee shall designate the regular member's alternate to participate [SERVE]
19 in place of the regular member for the duration of [IN] the proceeding unless the
20 alternate is [ALSO] disqualified or is for any reason unable to participate; the
21 [FROM SERVING. THE] designation shall be treated as confidential to the same
22 extent that the identity of the subject of a complaint is required to be kept confidential.

23 * Sec. 8. AS 24.60.990(a) is amended by adding new paragraphs to read:

24 *too limited* (17) "constituent" means a natural person to whom a legislator owes a
25 duty of representation in the legislature because the person resides in the legislator's
26 election district, is registered to vote in that district, or is a member of the immediate
27 family of a person who is registered to vote in that district;

28 (18) "constituent service" means assistance, including representation
29 other than legal representation and advice other than legal advice, that is provided by a
30 legislator or a legislator's staff to a constituent of the legislator;

31 (19) "legislative purpose" means a goal of a legislative action or a

definitions

1 constituent service that is a primary goal or, when measured against other goals of the
2 legislative action or constituent service, is a substantial goal;

3 (20) "nonlegislative purpose" means a purpose other than a legislative
4 purpose;

5 (21) "private benefit" means a benefit, other than a benefit to a
6 political party, that is personal to the recipient and does not have a legislative purpose
7 or that satisfies, in whole or in part, a person's substantial interest in legislative,
8 administrative, or political action under (b) of this section.

ALASKA STATE HOUSE OF REPRESENTATIVES



Contact:


Interim Address:

**3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271**

Session

**(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204**

REPRESENTATIVE JOHN COGHILL

Date: March 19, 2009
To: Representative Bob Lynn, Chairman
House State Affairs Committee
From: Representative John Coghill 
Re: HB 193 Legislative Ethics Bill

I am requesting a hearing for HB 193, *"An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit for the purposes of the Legislative Ethics Act'"* at your earliest convenience.

I have attached backup for the bill.

Thank you for your consideration.

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE



Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

November 4, 2008

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
STATEWIDE SUICIDE PREVENTION COUNCIL
SUNSET REVIEW
November 4, 2008

Audit Control Number
06-20055-08

The review was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Currently, under AS 44.66.010(a)(8), the Statewide Suicide Prevention Council (council) is scheduled to terminate on June 30, 2009. We recommend the legislature extend the termination date of the council until June 30, 2013.

Four of the fifteen voting members of the council are legislators. Since the Legislative Audit Division is part of the legislative branch, our agency does not meet the independence standard required by generally accepted government auditing standards. Therefore, we are disclosing our lack of adherence to the independence auditing standard.

Except for the independence standard discussed above, the audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

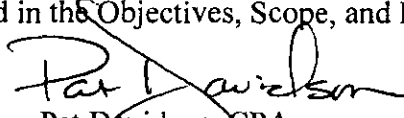

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Statewide Suicide Prevention Council (SSPC or council) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if the termination date of the council should be extended. State law currently specifies SSPC will terminate on June 30, 2009. If no action is taken by the legislature, the council will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the council should be extended.
2. To determine if the council is operating in the public interest.
3. To provide a current status on the recommendations made in the prior report.

Our assessment of the operations and performance of the council was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the council.

Scope and Methodology

Auditors and audit organizations are required to be independent in both fact and appearance to the entities being audited. Audit organizations are presumed to be organizationally independent per generally accepted government auditing standards under various situations. One of those situations, which is applicable to the Division of Legislative Audit, is when the,

...audit organization is in a different branch of government within the same level of government as the audited entity; for example, legislative auditors auditing an executive branch program.

The Division of Legislative Audit does not meet the organizational independence requirements because four of the fifteen voting members of SSPC are members of the Alaska State Legislature. Readers of this report may not view the conclusions, findings, and

recommendations as impartial because of the lack of organizational independence. Nevertheless, we conducted the audit of SSPC as required by AS 24.20.271 and AS 44.66.050.

Our audit reviewed the operations and activities of the council from FY 05 through FY 08.

During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Budget documents, session laws, and other legislative information related to the council's operations.
- Council meeting minutes, bi-laws, and website.
- Annual reports to the legislature and governor.
- Financial reports from the State Accounting System.
- *The Statewide Suicide Prevention Plan.*
- Alaska Injury Prevention Center's follow-back studies to the council.
- Other documents related to the council's operations and mission, as necessary.

In addition, we interviewed:

- Various SSPC members, SSPC coordinators, and staff under the Department of Health and Social Services.
- Board members, executive directors and other staff of the Alaska Mental Health Trust Authority (AMHTA), Alaska Mental Health Board (AMHB) and Advisory Board on Alcoholism and Drug Abuse (ABADA).

We also attended the following meetings:

- May 5-6, 2008 meeting of SSPC.
- June 13, 2008 meeting of representatives from SSPC, Division of Behavioral Health, Division of Senior and Disability Services, the Alaska Commission on Aging, AMHTA, ABADA, AMHB, and the Governor's Council on Disability and Special Education.
- June 17, 2008 SSPC teleconference for a working session on the revision of the Suicide Prevention Plan.

ORGANIZATION AND FUNCTION

Under AS 44.29.350, the Statewide Suicide Prevention Council (SSPC or council) is charged with advising the legislature and the governor on,

...actions that can and should be taken to improve health and wellness throughout the state by reducing suicide and its effect on individuals, families, and communities.

In addition to this advisory role, the council's activities include planning, coordinating, educating, training, and providing technical support on the prevention of suicide.

Exhibit 1

The council consists of 15 members. There are two senators, two representatives, two executive branch employees, and nine public members. The senate seats and the representative seats are appointed by the president of the senate and the speaker of the house, respectively. The executive branch and public seats are appointed by the governor.

Alaska Statute 44.29.300 specifies the public seats be filled by,

...one member of the Advisory Board on Alcoholism and Drug Abuse; one member of the Alaska Mental Health Board; one person recommended by the Alaska Federation of Natives, Inc.; one person who is a counselor in a secondary school; one adult who is active in a statewide youth organization; one person who has experienced the death by suicide of a member of the person's family; one person who resides in a rural community in the state that is not connected by road or the Alaska marine highway to the main road system of the state; one person who is a member of the clergy; and one person who is under the age of 18.

Council Members

As of September 30, 2008

Officers:

Brenda Moore, Public, Chair
Pat Donelson, Public, Chair-Elect
Renee Gayhart, DHSS, Treasurer

Other Members:

Charles Jones, Public
Celena Powder, Public
William Martin, Public
Bernard Gatewood, Public
Vacant, Public
Vacant, Public
Vacant, Public
Bill Hogan, DHSS
Johnny Ellis, Senate
Kim Elton, Senate
Woodie Salmon, House
Reggie Joule, House

Except for the members of the House of Representatives who serve two years, council members serve staggered four-year terms.

The council is staffed by a coordinator, who, by statute, is employed by the council and directly responsible to the council. As of July 1, 2008, the coordinator is the project manager for the Prevention and Early Intervention section. The coordinator is employed for the council on a part-time basis and is assisted by a project coordinator from the same division.

The council receives administrative assistance from the Department of Health and Social Services.

REPORT CONCLUSIONS

Under AS 44.66.010(a)(8), the Statewide Suicide Prevention Council (SSPC or council) will terminate on June 30, 2009. If the legislature does not take action to extend the termination date, the council will have one year to administratively conclude its affairs.

Alaska Statute 44.29.350 defines the purpose of the council.

The council shall serve in an advisory capacity to the legislature and the governor with respect to what actions can and should be taken to...

The statute continues, listing the six areas where the council should advise the legislature and the governor. In addition to advising the legislature through testimony to the House and Senate Committees, the council has taken on a direct role in various areas. These areas include broadening the public awareness of suicide and the related risk factors, the development of a statewide suicide prevention plan, and other examples which are discussed in more detail in the Analysis of Public Need section of this report.

Suicide remains a major public health problem in Alaska. Over the last seven years, the crude rate¹ for suicide has ranged from over 16 to 23, while the national average crude rate for suicide was 11 in 2005².

Exhibit 2

	Suicides of Alaska Residents By Year*						
	-----Year of Death-----						
	2001	2002	2003	2004	2005	2006	2007
Deaths	103	131	123	154	127	132	146
Crude Rate	16.3	20.5	19	23.4	19.1	19.7	21.6

*2006 and 2007 data is still provisional and subject to change.
Source: Alaska Bureau of Vital Statistics

In addition to the rate of suicide being significantly higher than the national average, the profile of those committing suicide is also substantially different. In national statistics, elderly individuals are more likely to commit suicide; in Alaska, suicide is most commonly committed by individuals in their 20s. Suicide rates in Alaska are also disproportionately high in the native population.

¹ Crude rate is the number of suicides per 100,000 population.

² USA Suicide: 2005 Official Final Data, from American Association of Suicidology on its website, <http://www.suicidology.org>.

In developing our conclusion on whether SSPC's termination date should be extended, we evaluated SSPC's operations using the 11 factors set out in AS 44.66.050(c) to determine if the council has demonstrated a public need for its continued operation.

We found no direct correlation between the activities of the council and the change in the suicide rate for any particular year. However, given that the council's role is primarily advisory and suicide is a public health concern that is often linked with mental illness and substance abuse, both which are long term health issues, it is unlikely that a direct identifiable correlation will ever be clearly visible.

However, through the efforts of the council we have seen a broader and more public acknowledgement of the problem of suicide in Alaska. We saw the council responding to communities by working to revise the statewide suicide prevention plan, making it less clinical and more user-friendly. The council and the Department of Health and Social Services, Division of Behavioral Health (DHSS, DBH) have proposed an initiative to develop a cross-disciplinary, community-driven, and research-based approach to reducing the number of deaths by suicide in Alaska. A Suicide Prevention Strategy and Implementation Plan will be available to the legislature by December 15, 2008.

Overall, we found that the council is operating in the public interest and spearheading efforts that are necessary to address the public health concern of suicide. Therefore, we recommend the legislature extend the termination date of the council to June 30, 2013.

The four year extension is recommended because of the following issues:

- At the end of FY 08, the council was organizationally aligned with the Prevention and Early Intervention section, Division of Behavioral Health. A key to enhancing the effectiveness of the council is a good working relationship between the council and DBH, each focused on its own mission – coordinating but not duplicating. A limited extension will allow for a reevaluation of whether the closer alignment with DBH has impeded the independent voice of the council.
- Secondly, the membership requirements for appointment to the council make it difficult to fill all the seats and to ensure sufficient participation to meet quorum requirements. Again, a limited extension will allow a timely reexamination of this problem.

These issues are more fully discussed in the Findings and Recommendations section of this report.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Statewide Suicide Prevention Council (SSPC or council) should, in accordance with statutes, appoint its own coordinator and perform annual performance reviews.

Effective July 1, 2008, the Department of Health and Social Services (DHSS) assigned SSPC coordinator responsibilities to the Prevention and Early Intervention section³ manager in the Division of Behavioral Health (DBH). This SSPC coordinator appointment was not made in accordance with the statutes and appears to diminish SSPC's autonomy and independent voice with the governor and legislature. Also, the coordinator may be placed in a position with potentially conflicting responsibilities between the council and DBH.

DHSS' decision was based on department personnel resource needs and a desire to align the activities of the council and the section.

The hiring, supervision, and evaluation of the SSPC coordinator are part of the council's rights and responsibilities per the statutes.⁴ DHSS has traditionally assisted the council with the coordinator's selection. However, SSPC was not involved in the latest selection. Also, the council has not annually evaluated the coordinator's performance for at least the past four years. Neglecting these statutory requirements may have diminished the council's ability to maintain an independence voice.

We recommend the council either accept the current coordinator through a formal vote or initiate actions to hire a new coordinator. In addition, it is critical that the council conduct annual performance evaluations as required by statute, particularly if the coordinator is a DBH employee. Only through the council's interest in remaining autonomous can its independent voice be assured.

Recommendation No. 2

The legislature should consider modifying the composition of council membership.

During FY 05 – FY 08, there were excessive vacancies on the council and significant absences by council members at its meetings. Additionally, those being appointed to the

³ Prevention and Early Intervention is the section responsible for DHSS programs that address suicide prevention.

⁴ Alaska Statute 44.29.330(b) states,

The council may employ a coordinator to assist the council. The coordinator is in the partially exempt service. The coordinator shall be directly responsible to the council in the performance of the coordinator's duties. The council shall annually review the performance of the coordinator.

council did not always meet the statutory qualifications for the position. Exhibit 3 illustrates the extent of vacancies and absences over the last four years.

Exhibit 3

Statutory Qualifications	Do incumbents meet the qualifications	Rate of attendance at SSPC meeting FY 05 – FY 08
Four legislator seats: Senate majority member Senate minority member House majority member House minority member	Yes No No Yes	Overall 15%
Two persons employed by the executive branch of state government	Yes	Overall 73%
A member of the Advisory Board on Alcoholism and Drug Abuse	Yes	60%
A member of the Alaska Mental Health Board	Yes	100%
A person recommended by the Alaska Federation of Natives, Inc.	Yes	100%
A person who is a secondary school counselor	No ⁵	80%
A person who is an adult and active in statewide youth organizations	Yes	73%
A person whose family has experienced death by suicide	Vacant ⁶	33%
A person who lives in a rural community – not connected by either the road system or the marine highway	Vacant ⁷	0%
A member of the clergy	Yes	93%
A person under the age of 18	Yes	33%
Overall Average⁸		54%

The composition of the council's membership is established in AS 44.29.300 and includes very specific qualifications which have created difficulties in filling the positions. Vacancies combined with low attendance rates make it difficult for the council to establish a quorum at its meetings.

The legislature should consider changes to AS 44.29.300 to broaden the qualifications of council members to ensure that appointees are interested in the work of the council and can

⁵ The current incumbent is a secondary school principal.

⁶ This position has been vacant since November 2005.

⁷ This position has been vacant for more than 3 of the 4 years between FY 05 and FY 08.

⁸ This average includes one member appointed to the council that does not meet any of the statutory criteria. This member's attendance over the last 4 years has been at 87%.

make the time commitment necessary to serve. Additionally, consideration should be given to making legislative members non-voting to prevent potential quorum issues.

Current Status of Prior Audit Recommendations

Prior Recommendation No. 1

The Division of Behavioral Health Community-based Suicide Prevention Program coordinator should ensure prevention programs conform to the statewide suicide prevention plan.

Current Status

This recommendation is no longer an issue. Starting in FY 06, the State has followed a national trend to provide grants on a more comprehensive programmatic basis. Grant funds are awarded in a way that allows communities to focus the funds according to local priorities, rather than awarding separate grants for mental health, substance abuse, or suicide programs.

Additionally, the council has undertaken a rewrite of the statewide suicide prevention plan to make it more user-friendly, so Alaskan communities can better use the plan in developing their grant activities and community plans.

Prior Recommendation No. 2

The administrative manager for Department of Health and Social Services Boards and Commission and the Statewide Suicide Prevention Council coordinator should develop a more formalized information system of reporting financial information to the council.

Current Status

This recommendation has been resolved. Council members are receiving budget and financial reports as part of their meeting packets.

Prior Recommendation No. 3

The council should ensure it provides public notice of all council meetings as required by Alaska Statute 44.62.310.

Current Status

This recommendation has been resolved.

Prior Recommendation No. 4

The Office of the Governor should make appointments to the council in a timely manner.

Current Status

Appointments to the council continue to be a problem. See current Recommendation No. 2.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

The following analysis of commission activities relates to the public need factors defined in the sunset law, AS 44.66.050. This analysis was not intended to be comprehensive, but to address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

To assess whether the Statewide Suicide Prevention Council (SSPC or council) has operated in the public interest, we measured the council's activities against objectives set out by the legislature for SSPC in state law, at AS 44.29.350.⁹ From our review of council activities, we conclude SSPC has reasonably addressed its statutory objectives.

The council, as an advisory body, has made presentations to the House and Senate Committees on Health, Education and Social Services. Additionally, they provide the legislature and the governor with the council's annual report.

The council also actively participates in the six areas in which they are intended to advise the legislature and the governor. The following discussion describes the council's areas of active participation:

1. Actions to be taken to improve health and wellness by reducing suicide.

During FY 08, the council, in partnership with Department of Health and Social Services, Division of Behavioral Health (DHSS, DBH), proposed the Alaska Suicide Prevention Initiative to the governor and the legislature. The initiative proposed developing a cross-disciplinary, community-driven and research-based approach to reduce the number of deaths by suicide in Alaska. The initiative addressed potential activities from FY 09 through FY 13. The FY 09 budget included an increment dedicated to the development of the Suicide Prevention Strategy and Implementation Plan, which is to be completed by December 15, 2008.

⁹ Alaska Statute 44.29.350 states,

The council shall serve in an advisory capacity to the legislature and the governor with respect to what actions can and should be taken to (1) improve health and wellness throughout the state by reducing suicide and its effects on individuals, families, and communities; (2) broaden the public's awareness of suicide and the risk factors related to suicide; (3) enhance suicide prevention services and programs throughout the state; (4) develop healthy communities through comprehensive, collaborative, community-based and faith-based approaches; (5) develop and implement a statewide suicide prevention plan; and (6) strengthen existing and build new partnerships between public and private entities that will advance suicide prevention efforts in the state.

2. Increasing public awareness of suicide and the related risk factors.

The council has become increasingly diligent in this area. The council continues to maintain a website¹⁰ that provides suicide statistics, risk factors, and prevention. Additionally, the website provides links to resources such as the council's annual reports and statewide suicide prevention plan.

The council participated in many conferences and workshops during FY 05 through FY 08, making presentations or providing information displays. The council also purchased and distributed items such as pens, pencils, magnets, and posters to those needing support for suicide prevention related functions.

In 2006 the council initiated the "Live Your Dream" bracelet campaign which targets the State's youth population. This has been viewed as particularly popular and successful in spreading suicide awareness.

The council has contributed to the "YOU KNOW ME" media campaign which focuses on suicide prevention awareness. The Alaska Mental Health Trust Authority (AMHTA) has sponsored the council in this endeavor since 2005.

3. Enhance suicide prevention services and programs throughout the State.

Overall, the council enhances suicide prevention services and programs by directly providing information or providing direction to other knowledgeable sources. Throughout the year, the council receives two to three requests per week for information or technical assistance. Their web site generates questions from the public and other organizations who then request informational materials from the council. As appropriate, they also provide studies, DVDs, books, and other materials on suicide and suicide prevention.

Other examples of SSPC's enhancement of suicide prevention services include:

- Involvement in the certification of Careline¹¹ and DBH's targeted gatekeeper training.¹²
- Having the Careline phone number placed in phone books across the State.

¹⁰ <http://health.hss.state.ak.us/suicideprevention/default.htm>

¹¹ Careline is Alaska's statewide toll-free crisis intervention and assistance hotline.

¹² DBH has contracted for the development of a training curriculum specific to Alaska. Gatekeepers are individuals who have face-to-face contact with large numbers of people in their community. The council's role in the initiative is to review the developed curriculum and provide feedback.

- Sponsoring travel for communities that needed assistance to attend gatekeeper training.
 - Providing funds which allowed the Careline project manager, the Boys & Girls Club representative, and the Survivor Group representative to attend the American Association of Suicidology Conference in 2006.
4. Develop healthy communities through comprehensive, collaborative, community-based and faith-based approaches.

The council has maintained faith-based partnerships through some SSPC members' participation in faith-based organizations. Other community approaches have included:

- Sponsoring an Alaska State Council on the Arts workshop in Bethel to orient artists and arts organizations to programs, resources, and grant opportunities.
 - Providing a liaison to assist grassroots community members as they researched and established a nonprofit organization whose mission is suicide prevention, awareness, and support of the survivors.
 - Providing technical support to community programs providing suicide prevention services via research, best practices updates, referral resources, training, and conference opportunities.
 - Recommending the Boys & Girls Clubs' staff development director receive training and certification as a gatekeeper¹³ trainer.
5. Develop and implement a statewide suicide prevention plan.

SSPC completed its first statewide plan in 2004, and it followed the format of the National Strategy for Suicide Prevention and existing plans from other states. However, communities did not find the plan user-friendly in providing guidance in aligning their grant activities and community plans with the statewide plan. The council is now revising the statewide plan to make it more relevant to the granting process for the Comprehensive Behavioral Health Prevention and Early Intervention Services grants.

6. Collaborating on planning activities with other related agencies.

In 2005 SSPC established a memorandum of agreement (MOA) with the Advisory Board on Alcoholism and Drug Abuse (ABADA), the Alaska Mental Health Board (AMHB), and DHSS. In 2006 an MOA was established with AMHTA. The purpose of the MOAs is coordination and collaboration to achieve the best outcomes for their targeted

¹³ See footnote 12 for more information about gatekeepers.

beneficiaries. Their websites are interlinked and these entities participate in reciprocal reporting.

Other boards that SSPC collaborates with include Alaska Commission on Aging, Alaska Brain Injury Network, Governor's Council on Disabilities and Special Education, Faith-Based and Community Initiatives, and Division of Behavioral Health. While there is reciprocal reporting between these boards, MOAs have not yet been established.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

SSPC has not operated in strict compliance with the statutes in regards to the composition of the council and some personnel matters. Specifically:

1. SSPC was not involved in hiring its latest coordinator, a position directly responsible to the council; nor has the council reviewed the coordinator's performance for any of the past four years. These are requirements stated in AS 44.29.330. At least in appearance, these moves could impede the council's independence and autonomy when advising the legislature and the governor. (See Recommendation No. 1)
2. Some council members either do not meet the positions' requirements as presented in the statutes or have excessive absences from the board meetings and other SSPC activities. (See Recommendation No. 2)

Exhibit 4

Schedule of Operating Expenditure and Funding Sources				
(Unaudited)				
	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>	<u>FY 08</u>
Expenditures				
Personal Services	\$ 18,300	\$ 26,028	\$ 22,307	\$ 35,915
Travel	23,847	32,636	41,155	51,072
Services	33,335	37,515	19,821	18,205
Commodities	<u>14,383</u>	<u>6,336</u>	<u>8,461</u>	<u>2,142</u>
Total Operating Expenditures	\$ 89,865	\$ 102,515	\$ 91,744	\$ 107,334
Funding Sources				
General Fund Appropriations	<u>\$ 89,865</u>	<u>\$ 102,515</u>	<u>\$ 91,744</u>	<u>\$ 107,334</u>
Total Funding	\$ 89,865	\$ 102,515	\$ 91,744	\$ 107,334

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The council has not pursued any statutory changes.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The council provided public notices to all but one of their meetings. However, public comment periods occurred during all of the meetings. The council has conscientiously made efforts to conduct at least one of their four meetings in a remote location such as Bethel, Kotzebue, and Sitka. They have held three town hall meetings, usually following one of their regularly scheduled meetings. Additionally, the public has the opportunity to contact the council, through its website, to offer feedback and request information.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Under AS 44.29.350, the council has developed and implemented a statewide suicide prevention plan. The existing plan is currently under major revision to increase its usability. The council has requested input from participants outside the council such as the grantees, gatekeepers,¹⁴ and members of other boards. Once the plan has been approved by the council, it will be sent out for public testimony. Further revisions, as a result of public testimony, may be made before its release.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

Neither the Office of the Ombudsman nor the Office of Victim's Rights reported any complaints filed with them regarding SSPC.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

This criterion is not applicable since SSPC does not regulate any occupations or professions.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

Nothing in our review of the council indicated that there were any complaints involving SSPC personnel practices.

¹⁴ See footnote 12 for more information about gatekeepers.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

As discussed in Report Conclusions, we recommend the council be continued. However, in Recommendation No. 1, we also suggest that the appointment of the council's coordinator be approved by the council and annual performance reviews of the coordinator's performance should be conducted as set out in statute. This is important for SSPC to maintain its autonomy in the future for advising the legislature and governor. Due to personnel resource concerns and the desire for closer alignment between the council and DBH, DHSS has organizationally moved the administration of the council to DBH, specifically the Prevention and Early Intervention section. It is essential that DHSS and the council develop means to assure the council maintains an independent voice.

As discussed in Recommendation No. 2, the council should ensure that appointed members meet the qualifications of AS 44.29.300. We suggest the legislature consider broadening the qualifications for membership to ensure sufficient qualified and interested individuals are available and willing to serve on the council.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

The council established performance measures which are detailed in the annual reports to the legislature. For the FY 08 annual report, the measures were:

- Reduction of the three-year average rate of Alaska suicides.

SSPC has been unable to achieve this objective at this time. During FY 08, the council has partnered with DHSS, DBH in an initiative, attempting to accomplish this by FY 13.

- Review and update the statewide suicide prevention plan.

SSPC members are currently reviewing the plan with the objective of making it more relevant to the granting process for the Comprehensive Behavioral Health Prevention and Early Intervention Services grants.

- Consistently review data to identify trends, make analyses, and provide recommendations regarding suicide prevention, education and services needed in the State.

The Follow-Back Study, which presented Alaska suicide data and analysis for the period from September 1, 2003 through August 31, 2006, was received by SSPC in February 2007. The council has and continues to use this study to make recommendations to the legislature, executive branch agencies, and the public.

- Support and assist Alaskans in starting a state Suicide Prevention Awareness Network (Network).

The council supported the Alaska Suicide Prevention Action Coalition (ASPAC) in its research into becoming a Network affiliate. Although the Coalition decided to incorporate and maintain its autonomy, its goals are similar to the Network and further the goals of the council.

- Increase the number of communities that can recognize the warning signs of suicide through increasing the number of community-based suicide prevention grantees who align their community funding with the statewide suicide prevention plan.

The Prevention and Early Intervention section gave comprehensive prevention grants to communities for the FY 06 - FY 08 three-year grant cycle. A comprehensive prevention grant can be used to address any alcohol, drug, mental health, or suicide related issue. Since none of the grants during this grant cycle were specifically for suicide prevention, no tracking was done to determine whether grantees aligned their funding with the statewide plan. As comprehensive prevention grants continue to be made by DBH, the council should revise this performance measure.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The Statewide Suicide Prevention Council mission overlaps with other state entities such as the Alaska Mental Health Board, the Advisory Board on Alcoholism and Drug Abuse, and the Alaska Mental Health Trust Authority. However, the council was established to bring attention and focus, specifically, to the suicide issue in Alaska, so overlapping missions are to be expected.

While the council actively collaborates with various other boards and commissions with related missions, there does not appear to be any duplication of activities between the council and these other governmental agencies or in the private sector.

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STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

December 1, 2008

RECEIVED
DEC 01 2008
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
Alaska State Legislature, Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:

Thank you for this opportunity to provide a written response to the *Preliminary Audit Report on the Statewide Suicide Prevention Council, Sunset Review, November 4, 2008*. I have reviewed the report and offer the following comments.

First, we appreciate your staff's careful attention to detail and the thorough nature of the audit process, including the many interviews and opportunities for individuals to be heard and to voice their opinions. Suicide is a critical social issue for the State of Alaska and the Statewide Suicide prevention Council (SSPC) has a significant responsibility to find strategies and solutions to begin reducing the rate of suicide throughout our state.

As stated in the audit report, the SSPC has recently undergone a significant change in location within the department and in their staff coordination. Beginning July 1, 2008, the SSPC is now under the direction of the Division of Behavioral Health, section of Prevention & Early Intervention Services. The reason for this change of location was to allow for better coordination of statewide suicide prevention efforts between the SSPC and Behavioral Health and to promote a more seamless and coordinated approach to suicide prevention in Alaska. While this transition is complete, the SSPC members and Behavioral Health staff are continuing to define and develop their relationship and structure. We are confident this change will accomplish its intended purpose and provide for better statewide alignment in issues related to suicide prevention.

The Department of Health and Social Services (DHSS) supports and agrees with the audit findings and recommendations. We are pleased with the recommendation to extend the SSPC for four more years, with a new sunset date of June 30, 2013. We believe the DHSS and the SSPC are at a critical juncture to make significant progress in reducing and preventing suicide in Alaska. DHSS, in partnership with the council and others, recently received a 3-year federal Garrett Lee Smith Youth Suicide Prevention grant to focus on developing regional strategies to 'turn the corner' on suicide data. In addition, with one-time funding from the FY08 Legislature, we are offering regional suicide prevention planning grants focusing on those regions of Alaska with the highest rates of suicide. It is our intent that these planning grants will become the foundation of the Statewide Suicide Prevention Initiative, a joint effort of the DHSS and the Council. The four (4) year extension will allow these projects to become embedded in our statewide strategy and to develop sustainability of community/regional efforts.

In response to the other two recommendations, again we are in agreement with the findings and recommendation, with the following comments and suggestions.

Recommendation No. 1:

The Statewide Suicide Prevention Council should, in accordance with statutes, appoint its own coordinator and perform annual performance reviews.

With the change in location of the SSPC to the Division of Behavioral Health, and the departure of Kathryn Craft as Coordinator, interim decisions were made with minimal input from the council. One decision was to have two current Behavioral Health staff share the role of providing support to the council. L. Diane Casto, Section Manager and James Gallanos, Project Coordinator, are currently sharing the task of providing staff support to the council. It was never the intent that these two staff would be the Council Coordinator, but would be available to provide support and guidance as requested from Council Chairperson Brenda Moore.

Due to limited funding, there are not enough funds for a full-time coordinator, and in fact, Ms. Craft provided approximately .25 FTE services to the council. At the most recent SSPC meeting in September, and again during a November telephonic executive work session of the council, it was decided that the personnel money available in the SSPC budget will be used to hire a .50 FTE Project Assistant, hired by the council, to provide day-to-day support. We are beginning the process to reclass the current Position Control Number (PCN) previously assigned to Ms. Craft. Once completed, we will begin the solicitation and hiring process, with input and direction from the council. The position will be located in the Juneau offices of the Division of Behavioral Health.

We also support the audit recommendation for the council to conduct annual evaluations of the council staff person and will provide assistance as requested.

Recommendation No. 2:

The legislature should consider modifying the composition of council membership.

As stated in the audit, there have been "excessive vacancies on the council and significant absences by council members at its meetings." In addition, it is noted that "those being appointed to the council did not always meet the statutory qualifications for the position." We agree with both of these conclusions and support the recommendation to consider modifying the composition of the council membership.

In July, when the SSPC came into the Division of Behavioral Health, section of Prevention & Early Intervention Services, Ms. Casto began a dialogue with the Director of Boards and Commissions about the current vacancies and how best to recruit and/or encourage applications to fill these positions. Through this process, it became evident that the current membership did not directly meet the statutory qualifications for council membership. Discussions with the office of Boards and Commissions continue with DBH staff to make sure vacant positions are

Pat Davidson
Alaska State Legislature, Division of Legislative Audit
December 1, 2008
Page 3

filled in a timely manner and that applicants meet the statutory requirements. The office of Boards and Commissions is currently reviewing a number of applications for SSPC membership.

In addition, at the September meeting of the SSPC, there was a discussion about these current qualifications or categories of representation, and the council agrees that some modifying of the council composition would be beneficial. Providing more flexibility and broader definitions (i.e. expanding a secondary school counselor to a school counselor or K-12 school personnel) would allow for a larger pool of potential candidates.

Another area that has concerned the council is the large number of legislators required as council members. While the council is not concerned with having legislative representation and in fact supports their membership, it is difficult for legislators to be available for meetings, creating difficulty having a quorum for conducting council business. As reported in the audit, legislative members have attended meeting 15% of the time over the last 4 years.

With the challenges the current statutory qualifications have created, the DHSS supports the recommendation to modify the membership and, upon request, will work with the council to develop broader and more flexible categories of representation for possible legislative action.

I want to thank you for the opportunity to review and respond to the preliminary audit report. We support the work of the Legislative Audit team, and believe your recommendations will strengthen the Statewide Suicide Prevention Council, the collaboration with Behavioral Health, and the council outcomes.

Please do not hesitate to contact me if you have questions or would like additional information.

Sincerely,



William H. Hogan
Commissioner

cc: Melissa Stone, Director, Division of Behavioral Health

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To: Legislative Budget and Audit Committee
Division of Legislative Audit

From: Statewide Suicide Prevention Council
Brenda Moore, Chair

Re: Department of Health and Social Services
Statewide Suicide Prevention Council, Sunset Review, November 4, 2008

RECEIVED
NOV 30 2008
LEGISLATIVE AUDIT

November 28, 2008

Recommendation No. 1

The Statewide Suicide Prevention Council (SSPC or council) should, in accordance with statutes appoint its own coordinator and perform annual performance reviews.

During an executive session, Nov. 24, 2008, the council discussed hiring a part-time coordinator to work in conjunction with the Division of Behavioral Health, Office of Prevention and Early Intervention manager and prevention specialist that currently provides administrative support to the council. There was consensus among council members that it could develop its own goals and implementation plans with input and assistance from its current administrative support staff. A coordinator is needed to organize and carry out operational activities necessary to support the council in achieving its goals. The council determined to form a committee to review the budget and job classification in order to hire a coordinator. A performance review schedule and procedure will also be established.

Recommendation No. 2

The legislature should consider modifying the composition of council membership.

The council is in agreement with the recommendation to broaden the qualifications of council members to ensure that appointees are interested in the work of the council and can make the time commitment necessary to serve. In addition the council agrees to the recommendation that consideration should be made to making legislative members non-voting to prevent potential quorum issues.

26-LS0656\C

Wayne

3/25/09

CS FOR HOUSE BILL NO. 193()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SIXTH LEGISLATURE - FIRST SESSION****BY****Offered:****Referred:****Sponsor(s): REPRESENTATIVE COGHILL****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to representation by a legislator or legislative employee of another
2 person in an administrative hearing; relating to prohibitions on the use of state
3 resources under the Legislative Ethics Act; relating to charity events under the
4 Legislative Ethics Act; requiring compensation of public members of the Select
5 Committee on Legislative Ethics; exempting certain information from disclosure
6 requirements of the Legislative Ethics Act; relating to the selection of alternate members
7 and the participation of members and alternate members in formal proceedings of the
8 Select Committee on Legislative Ethics and its subcommittees; and defining
9 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and
10 'private benefit' for the purposes of the Legislative Ethics Act."

11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 * Section 1. AS 24.60.030(a) is amended to read:

1 (a) A legislator or legislative employee may not

2 (1) solicit, agree to accept, or accept a benefit other than official
3 compensation for the performance of public duties; this paragraph may not be
4 construed to prohibit lawful solicitation for and acceptance of campaign contributions,
5 solicitation or acceptance of contributions for a charity event, as defined in
6 AS 24.60.080(a)(2)(B), or the acceptance of a gift [LAWFUL GRATUITY] under
7 AS 24.60.075 or 24.60.080 [AS 24.60.080];

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

13 (A) limited use of state property and resources for personal
14 purposes if the use does not interfere with the performance of public duties and
15 either the cost or value related to the use is nominal or the legislator or
16 legislative employee reimburses the state for the cost of the use;

17 (B) the use of a legislator's legislative mailing list for
18 campaign purposes, or the use of mailing lists, computer data, or other
19 information lawfully obtained from a government agency and available to the
20 general public for nonlegislative purposes;

21 (C) the legislative council, notwithstanding AS 24.05.190, from
22 designating a public facility for use by legislators and legislative employees for
23 health or fitness purposes; when the council designates a facility to be used by
24 legislators and legislative employees for health or fitness purposes, it shall
25 adopt guidelines governing access to and use of the facility; the guidelines may
26 establish times in which use of the facility is limited to specific groups;

27 (D) a legislator from using the legislator's private office in the
28 capital city during a legislative session, and for the 10 days immediately before
29 and the 10 days immediately after a legislative session, for nonlegislative
30 purposes if the use does not interfere with the performance of public duties and
31 if there is no cost to the state for the use of the space and equipment, other than

1 utility costs and minimal wear and tear, or the legislator promptly reimburses
2 the state for the cost; an office is considered a legislator's private office under
3 this subparagraph if it is the primary space in the capital city reserved for use
4 by the legislator, whether or not it is shared with others;

5 (E) a legislator from use of legislative employees to prepare
6 and send out seasonal greeting cards;

7 (F) a legislator from using state resources to transport
8 computers or other office equipment owned by the legislator but primarily used
9 for a state function;

10 (G) use by a legislator of photographs of that legislator;

11 (H) reasonable use of the Internet by a legislator or a legislative
12 employee except if the use is for election campaign purposes;

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

16 (J) a legislator from sending any communication in the form of
17 a newsletter to the legislator's constituents, except a communication expressly
18 advocating the election or defeat of a candidate or a newsletter or material in a
19 newsletter that is clearly only for the private benefit of a legislator or a
20 legislative employee; or

21 (K) full participation in a charity event approved in advance by
22 the Alaska Legislative Council;

23 (3) knowingly seek, accept, use, allocate, grant, or award public funds
24 for a purpose other than that approved by law, or make a false statement in connection
25 with a claim, request, or application for compensation, reimbursement, or travel
26 allowances from public funds;

27 (4) require a legislative employee to perform services for the private
28 benefit of the legislator or employee at any time, or allow a legislative employee to
29 perform services for the private benefit of a legislator or employee on government
30 time; it is not a violation of this paragraph if the services were performed in an
31 unusual or infrequent situation and the person's services were reasonably necessary to

1 permit the legislator or legislative employee to perform official duties;

2 (5) use or authorize the use of state funds, facilities, equipment,
3 services, or another government asset or resource for the purpose of political fund
4 raising or campaigning; this paragraph does not prohibit

5 (A) limited use of state property and resources for personal
6 purposes if the use does not interfere with the performance of public duties and
7 either the cost or value related to the use is nominal or the legislator or
8 legislative employee reimburses the state for the cost of the use;

9 (B) the use of a legislator's legislative mailing list, or the use
10 of mailing lists, computer data, or other information lawfully obtained from a
11 government agency and available to the general public for nonlegislative
12 purposes;

13 (C) storing or maintaining, consistent with (b) of this section,
14 election campaign records in a legislator's office;

15 (D) a legislator from using the legislator's private office in the
16 capital city during a legislative session, and for the 10 days immediately before
17 and the 10 days immediately after a legislative session, for nonlegislative
18 purposes if the use does not interfere with the performance of public duties and
19 if there is no cost to the state for the use of the space and equipment, other than
20 utility costs and minimal wear and tear, or the legislator promptly reimburses
21 the state for the cost; an office is considered a legislator's private office under
22 this subparagraph if it is the primary space in the capital city reserved for use
23 by the legislator, whether or not it is shared with others; or

24 (E) use by a legislator of photographs of that legislator.

25 * Sec. 2. AS 24.60.030(i) is amended to read:

26 (i) A [EXCEPT FOR SUPPLYING INFORMATION REQUESTED BY THE
27 HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH
28 AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN
29 RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR
30 THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE
31 THE FINAL DECISION IN THE CASE, A] legislator or legislative employee may

1 not attempt to influence the outcome of an administrative hearing by directly or
 2 indirectly contacting or attempting to contact the hearing officer assigned to the
 3 hearing or the individual, board, or commission with authority to make the final
 4 decision in the matter [CASE] unless [THE]

5 (1) the contact is made in the presence of all parties to the hearing or
 6 the parties' representatives while the legislator or legislative employee is acting as a
 7 party or a witness in the matter and the contact is made a part of the record; or

8 (2) the contact is inadvertent and ex parte and the fact and
 9 substance of the contact are [IS] promptly disclosed by the legislator or legislative
 10 employee to all parties to the hearing and [THE CONTACT IS] made a part of the
 11 record.

12 * Sec. 3. AS 24.60.080(a) is amended to read:

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

15 (1) solicit, accept, or receive, directly or indirectly, a gift worth \$250
 16 or more, whether in the form of money, services, a loan, travel, entertainment,
 17 hospitality, promise, or other form, or gifts from the same person worth less than \$250
 18 that in a calendar year aggregate to \$250 or more in value;

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

22 (A) food or beverage for immediate consumption;

23 (B) a contribution to a charity event, [FROM ANY PERSON
 24 AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME,
 25 EXCEPT THAT TICKETS TO OR] gifts received in connection with [AT] a
 26 charity event; however, tickets to a charity event and gifts received in
 27 connection with a charity event that are not included in the price of the
 28 ticket [UNDER THIS SUBPARAGRAPH] are subject to the calendar year
 29 limit on the value of gifts received by a legislator or legislative employee in (1)
 30 of this subsection; in this subparagraph, "charity event" means an event the
 31 proceeds of which go to a charitable organization with tax-free status under 26

1 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in
2 advance; the tickets may entitle the bearer to admission to the event, to
3 entertainment, to food or beverages, or to other gifts or services in connection
4 with [INVOLVED IN] the charity event;

5 (C) a gift that is unconnected with the recipient's legislative
6 status and is from a member of the legislator's or legislative employee's
7 immediate family;

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

10 (E) a compassionate gift under AS 24.60.075.

11 * Sec. 4. AS 24.60.080(c) is amended to read:

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

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

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

19 (B) at a social event or meal;

20 (2) discounts that are available

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

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

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

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

29 (5) gifts from the immediate family of the person; in this paragraph,
30 "immediate family" means

31 (A) the spouse of the person;

- 1 (B) the person's domestic partner;
- 2 (C) a child, including a stepchild and an adoptive child, of the
- 3 person or of the person's domestic partner;
- 4 (D) a parent, sibling, grandparent, aunt, or uncle of the person;
- 5 (E) a parent, sibling, grandparent, aunt, or uncle of the person's
- 6 spouse or the person's domestic partner; and
- 7 (F) a stepparent, stepsister, stepbrother, step-grandparent, step-
- 8 aunt, or step-uncle of the person, the person's spouse, or the person's domestic
- 9 partner;
- 10 (6) gifts that are not connected with the recipient's legislative status;
- 11 (7) a discount for all or part of a legislative session, including time
- 12 immediately preceding or following the session, or other gift to welcome a legislator
- 13 or legislative employee who is employed on the personal staff of a legislator or by a
- 14 standing or special committee to the capital city or in recognition of the beginning of a
- 15 legislative session if the gift or discount is available generally to all legislators and the
- 16 personal staff of legislators and staff of standing and special committees; this
- 17 paragraph does not apply to legislative employees who are employed by the
- 18 Legislative Affairs Agency, the office of the chief clerk, the office of the senate
- 19 secretary, the legislative budget and audit committee, the office of victims' rights, or
- 20 the office of the ombudsman;
- 21 (8) a gift of legal services in a matter of legislative concern and a gift
- 22 of other services related to the provision of legal services in a matter of legislative
- 23 concern;
- 24 (9) a gift of transportation from a legislator or a legislative employee to
- 25 a legislator or a legislative employee if the transportation takes place in the state on or
- 26 in an aircraft, boat, motor vehicle, or other means of transport owned or under the
- 27 control of the donor; this paragraph does not apply to travel described in (4) of this
- 28 subsection or travel for political campaign purposes; or
- 29 (10) a contribution to a charity event from any person at any time, or a
- 30 ticket to a charity event from a person who is not a lobbyist, an immediate family
- 31 member of a lobbyist, or acting on behalf of a lobbyist; in this paragraph, "charity

1 event" has the meaning given in (a)(2)(B) of this section.

2 * **Sec. 5.** AS 24.60.080(d) is amended to read:

3 (d) A legislator or legislative employee who accepts a gift under (c)(4) of this
4 section that has a value of \$250 or more or a ticket to a charity event under
5 (c)(10) of this section that has a value of \$250 or more shall disclose to the committee,
6 within 30 days after receipt of the gift, the name and occupation of the donor and the
7 approximate value of the gift. A legislator or legislative employee who accepts a gift
8 under (c)(8) of this section that the recipient expects will have a value of \$250 or more
9 in the calendar year shall disclose to the committee, within 30 days after receipt of the
10 gift, the name and occupation of the donor, a general description of the matter of
11 legislative concern with respect to which the gift is made, and the approximate value
12 of the gift. The committee shall maintain a public record of the disclosures it receives
13 relating to gifts under (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward
14 the disclosures to the appropriate house for inclusion in the journal. The committee
15 shall forward to the Alaska Public Offices Commission copies of the disclosures
16 concerning gifts under (c)(4), (c)(8), (c)(10), and (i) of this section that it receives
17 from legislators and legislative directors. A legislator or legislative employee who
18 accepts a gift under (c)(6) of this section that has a value of \$250 or more shall, within
19 30 days after receiving the gift, disclose to the committee the name and occupation of
20 the donor and a description of the gift. The committee shall maintain disclosures
21 relating to gifts under (c)(6) of this section as confidential records and may only use,
22 or permit a committee employee or contractor to use, a disclosure under (c)(6) of this
23 section in the investigation of a possible violation of this section or in a proceeding
24 under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the
25 record of a proceeding under AS 24.60.170, the confidentiality provisions of that
26 section apply to the disclosure.

27 * **Sec. 6.** AS 24.60.105 is amended by adding a new subsection to read:

28 (d) A person may refrain from making a disclosure that is required by this
29 chapter if making the disclosure would violate the United States Constitution, the
30 Constitution of the State of Alaska, or other state or federal law. However, at the
31 request of the committee or a person authorized to act on behalf of the committee, a

1 person who refrains from making a disclosure under this subsection shall provide the
2 committee with justification in writing, and the committee may review the written
3 justification to determine whether it is sufficient.

4 * Sec. 7. AS 24.60.130(f) is amended to read:

5 (f) The committee may contract for professional services and may employ
6 staff as it considers necessary. A committee employee, including a person who
7 provides personal services under a contract with the committee, may not be a
8 legislator, an elected or appointed official of a state or local governmental entity, an
9 officer of a political party, a candidate for public office, or a registered lobbyist. The
10 legislative council shall provide office space, equipment, and additional staff support
11 for the committee. The committee shall submit a budget for each fiscal year to the
12 finance committees of the legislature and shall annually submit an estimated budget to
13 the governor for information purposes in preparation of the state operating budget.
14 Public members of the committee shall receive [SERVE WITHOUT] compensation
15 of \$150 a day while attending committee meetings and [FOR THEIR SERVICES,
16 BUT] are entitled to per diem and travel expenses authorized for boards and
17 commissions under AS 39.20.180.

18 * Sec. 8. AS 24.60.130(n) is amended to read:

19 (n) A member who participates at the commencement of a proceeding
20 under AS 24.60.170 shall participate for the duration of the proceeding unless
21 disqualified or unable to continue participating for any reason; however,
22 provision shall be made for service by alternate members on the committee or on
23 a subcommittee, as follows:

24 (1) when [WHEN] appointing members of the legislature to serve on
25 the committee, the speaker of the house or the president of the senate, as appropriate,
26 shall appoint an alternate member for each regular member; an [. AN] alternate must
27 have the same qualifications as the regular member for whom the alternate stands as
28 alternate and is subject to confirmation as required for the regular member;

29 (2) when selecting public members to serve on the committee, the
30 Chief Justice of the Alaska Supreme Court shall also select one alternate public
31 member; the alternate public member's selection is subject to ratification as

1 **required for selection of the regular public members;**

2 **(3) if, except as to a proceeding under AS 24.60.170, [. IF] a regular**
3 [LEGISLATIVE] member of the committee or a subcommittee is unable to
4 **participate in [ATTEND] a meeting, the chair of the committee or a subcommittee**
5 **shall designate the regular member's alternate to participate [SERVE] in place of the**
6 **regular member at the meeting, and the designated alternate, unless for any reason**
7 **unable to participate, shall participate for the duration of that meeting; if**
8 [SERVE UNLESS UNABLE TO SERVE FOR ANY REASON. IF] a regular
9 [LEGISLATIVE] member of the committee or a subcommittee is disqualified under
10 (h) of this section from **participating in [SERVING ON THE COMMITTEE OR**
11 **THE SUBCOMMITTEE CONCERNING] a proceeding under AS 24.60.170 or if the**
12 **regular member is unable to participate [ATTEND], the chair of the committee or a**
13 **subcommittee shall designate the regular member's alternate to participate [SERVE]**
14 **in place of the regular member for the duration of [IN] the proceeding unless the**
15 **alternate is [ALSO] disqualified or is for any reason unable to participate; the**
16 [FROM SERVING. THE] designation shall be treated as confidential to the same
17 extent that the identity of the subject of a complaint is required to be kept confidential.

18 * Sec. 9. AS 24.60.990(a) is amended by adding new paragraphs to read:

19 (17) "constituent" means a person to whom a legislator owes a duty of
20 representation under the Constitution of the State of Alaska;

21 (18) "constituent service" means assistance, including representation
22 other than legal representation and advice other than legal advice, that is provided by a
23 legislator or a legislator's staff to a constituent;

24 (19) "legislative purpose" means legislative action or providing
25 constituent service;

26 (20) "nonlegislative purpose" means a purpose other than a legislative
27 purpose;

28 (21) "private benefit" means a benefit to a person as a result of a
29 legislative, administrative, or political action of which benefit to that person in
30 particular is a substantial goal and that is greater than the benefit of the legislative,
31 administrative, or political action to a substantial class of persons to which the person

1 belongs by law, choice, legal entitlement, legal privilege, profession, occupation,
2 industry, or region.



ALASKA STATE HOUSE

House State Affairs Subcommittee Report Form

Date: March 25, 2009

Time Meeting Called to Order: 3:08 p.m.

Name of Chairman: Representative Paul Seaton

Members Present: Representative Seaton, Representative Craig Johnson, and Representative Max Gruenberg.

Subject of Meeting: Legislative Ethics

Relevant Legislation: House Bill 193 Legislative Ethics

Persons participating other than committee members: Representative Mike Doogan, Representative Berta Gardner, Dan Wayne (Legislative Legal), Joyce Anderson (Director, Select Committee on Legislative Ethics), and Rynnieva Moss (Legislative Aide to Representative Coghill, sponsor of HB 193).

Subcommittee Recommendations: The subcommittee adopted a CS that made amendments to Section 1 and Section 8; they amended AS 24.60.030(a)(1) to replace the word "gratuity" with "gift" and added a reference to AS 24.60.075 (compassionate gift) to AS 24.60.030(a)(1).

AM #1: Page 8, lines 2, 3, & 4: Delete the word "financial"
Moved by Representative Gruenberg
Passed without objection

AM #2: Introduced and withdrawn by Representative Gruenberg

AM #3: Page 7, line 29: Delete "a goal of a" AND "a"
Insert after "action" the word "providing"
Moved by Representative Gruenberg
Passed without objection

AM #5: Page 7, line 24: Delete the word "natural".

AM #6: Page 1, 12 through Page 2, line 16: Delete all language and insert:

(i) [EXCEPT WHEN REPRESENTING ANOTHER PERSON AS A LICENSED PROFESSIONAL IN THE STATE OF ALASKA IN THE CASE FOR

House Subcommittee Report Form
House State Affairs Subcommittee on HB 193 Ethics
March 25, 2009

COMPENSATION AND SUBJECT TO AS 24.60.100 FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] A legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives while the legislator or legislative employee is acting as a party or witness and the contact is made a part of the record; or

(2) in the event of an inadvertent ex parte contact and if the fact and substance of the contact are [IS] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

Moved by Representative Gruenberg

Passed: Yea – Johnson and Seaton

Nay - Gruenberg

AM #7: Amends AS 24.60.030(a)(1) as follows:

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a gift [GRATUITY] event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under AS 24.60.075 and AS 24.60.080 ;

Moved by Representative Gruenberg by request of Dan Wayne

Passed without objection

In addition the committee instructed Dan Wayne to check Title 24.60 to see if the assumption that it was ethical to use a legislative newsletter email database for campaign purposes. If AS 24.60 does not allow that prepare an amendment that would correct the problem.

Representative Seaton also asked Dan Wayne to prepare a legal opinion about the definition of "constituent" and what legal interpretation of "duty of representation under the Constitution of the State of Alaska" is.

Representative Seaton allowed Representative Gara to discuss an amendment he was attempting to have drafted that would basically allow for a person who submitted in writing a request for a determination by the director of the Select Committee on Legislative Ethics for an ethics issue to be exempt from a ethics violation if the committee met at a later date and found the action unethical if the person who receive the determination acted in good faith on the advice of the

director. Representative Seaton said that was out of the scope of the purposes of the subcommittee and welcomed Representative Gara to present the issue to the full committee.

Representative Gara asked that someone from OCS be present on Friday to discuss the process used for a teen in state custody and how this legislation would affect the way they would handle a teen pregnancy when the teen is in state custody.

Time of Adjournment: 5:02 p.m.

Subcommittee of the
House State Affairs Committee
House Bill No. 193 (STA)
March 25, 2009

Chair Seaton recognized Reps Gardner, Doogan, Gruenberg,
Johnson, and Gara

Also present:

Rynniewa Moss, Legislative Aide to Rep John Coghill
Joyce Anderson, Director, Select Committee on Ethics
Dan Wayne, Legislative Legal

Rep Seaton stated that \S version is what has been adopted by
the committee and there were questions on that. There was
discussion on what version would be used as the changes were
addressed, it was finally decided that the committee would use
the \S version. Go to page 7 - on S version - Number 19
Legislative Purpose, the S version said *legislative action or
constituent service* - changed to *goal of legislative action or a
constituent service is a substantial goal*.

Rynniewa Moss recommended to only remove "a" and insert
"constituent service."

Dan Wayne stated that the P version had a lot of problems
because all the changes requested were not done; there just was
not enough time. S version is just wrong as it does not contain
changes in CS. Not sure if time is going to be very well spent.
Nothing the subcommittee was expecting

Rep Seaton - go back to S version and pull out financial in S
version.

Committee agrees.

Rep Gruenberg - stated he would like to make the change as an
amendment.

**Amendment No. 1 - \S version. Page 8 lines 2, 3 and 4, eliminate
the word [financial].**

Rep Seaton -no objection. Adopted.

Rep Seaton - Page 7 \S version - No. 19 - legislative purpose
the committee was concerned that what we have means a

constituent service and so we are changing that to a goal of legislative action or providing constituent service.

Rep Gruenberg - suggested goal of "a legislative action" - may be more than one action remove [a] and at the end of the line remove [a] and insert the word providing.

Legislative Action - A goal of legislative action or providing constituent service.

Rep Gardner - in what sense is constituent service not legislative action?

Rep Gruenberg - legislative action is passing laws or budget issues and constituent service is broader term. Is there some definition some where of legislative action?

Rynniva Moss read AS 24.60.990(a)(9) Legislative Action into the record. A constituent service could be assistance with a clerical error that does not result in legislative action - but sometimes it could result in legislative action because you find a flaw in the law and you introduce legislation to fix it.

Rep Seaton- problem was we have a series of definitions - you got into the goal or the want or desire of a constituent becomes the legislative purpose rather than the legislator providing the service.

Rep Gruenberg - Amendment No. 2 - strike [a] page 7 line 29 before legislative action and strike [a] after the word or and insert providing constituent service.

Legislative Purpose: Means a goal of legislative action or providing constituent service.

Dan Wayne - I think you might want to add before providing - a goal of [the action] - so it refers to the goal of legislative action or legislative service - to be clear.

Rynniva - do we need the word goal? Would not a legislative purpose be a legislative action or a constituent purpose?

Dan Wayne - I made these up these definitions originally. A purpose is not a thing not a service. A service is not a purpose it has a purpose.

Rep Gruenberg - purpose and goal are very similar. Amendment to amendment to delete [a goal of] on line 29 as an amendment to the amendment.

Rep Seaton - Amendment No. 2 and amendment - reads "legislative purpose means a legislative action or providing constituent service."

Rep Gruenberg stated that as amended would read "legislative purpose means legislative action or providing constituent service."

Rep Doogan - if you are saying a legislative purpose is a legislative action, it makes no sense. Your purpose is to hit a home run your action is to swing the bat therefore your purpose is to swing the bat. You have a confusion of goals and meanings.

Rep Gruenberg - What do think we should say?

Rep Doogan - if you are talking about the purpose you are talking about the goal of the action not the action itself.

Rep Gruenberg withdrew his second amendment to the amendment.

Rynniva stated that the definition of purpose out of Black's Law - objective, goal or end.

Rep Seaton - under legislative purpose we have to say something that this an attempt to work on legislative action or something like that in providing constituent service.

Rynniva - purpose is used because it is used in the statute and she highlighted where it is. We want legislative purpose to include action; not only legislative purpose but also constituent service though it is not yet defined in statute - we want to do that in this bill. One defined and one not.

Rep Seaton - Dan do you think having the word goal there is legally explanatory enough or means working towards a legislative action.

Dan Wayne - I think that I had some other language to narrow it down, but this would mean constituent service is anything you would do for a constituent no matter what it is. So I said goal of legislative action is substantial - in order that it is substantial. Maybe use the word purpose.

Rep Doogan - attempting to define legislative purpose to have two parts, legislative action - already defined and constituent service - not defined in statute. So if what you want to say is legislative purpose is 2 things you legislative purpose and constituent action. Legislative purpose or goal are we trying to define. Are we saying the legislative purpose or goal we are trying to define: legislative purpose means having a goal of legislative action or providing constituent service.

Rynniewa - it is the end product. Legislative action or constituent service we have met a legislative purpose.

3:36:04 PM

Rep Gruenberg- sounds like what Mr. Doogan has said is a good idea, add to Amendment No. 2 - just add one word - between means and a also add word "having". Just what Rep Doogan suggested.
Amendment to amendment.

No objection to Amendment to Amendment adopted

Amendment No. 2 - Legislative purpose having a goal of legislative action or constituent service.

Dan - we have to define it so we know what it is not. AS 24.60.030(a)(2) read into the record.

Rep Seaton - we are defining non-legislative purpose - Line 31 on page 7 we are defining non-legislative purpose.

Dan - if you say a person has to have a goal - "having" is not the right word.

Rep Johnson - goal in there is intent and if you talk about intention it would be difficult to define. We are defining legislative purpose and all the time is your goal and it may not be constituent related.

Rep Doogan - the definition - legislative action was read into the record again by Rynniewa.

Rep Seaton - legislative purpose means legislative action or providing constituent service. So what I would like to do is amendment 2 withdrawn.

Rep Gruenberg withdrew Amendment No. 2.

Rep Seaton - being Amendment No 3 Page 7, Line 29, delete [a goal of a] [a]removing the word and inserting the word "providing" at the end of the line.

Rep Seaton stated Legislative purpose means legislative action or providing constituent service; and asked if there were any objections.

No objection - Amendment No. 3 has passed.

Rynniewa - Page 7, line 24 - delete under constituent [natural].

Rep Gruenberg - Amendment No. 4 constituent - does not have to be natural can be any other form of person.

Rynniewa read the definition of person into the record.

3:42:47 PM

Rep Gardner - do we have a duty currently to represent a business trust.

Rep Gruenberg - as a legislator these things all relate to people and a business is one or more people and they set it up in a trust. A few years ago we had a bill setting up a children's trust. We have had things dealing with trusts.

Rep Seaton - if you have a business in your community or not is there a constitutional duty of representation to those entities.

Dan Wayne - constitutionally - no duty. Talks about how the legislature is set up in Art 2 - but does not spell out duties.

Rynniewa said there is a duty to the constituent. There are plenty of constitutional duties to a constituent.

Rep Gardner - duty to the people leave natural in there.

Rep Doogan - small business in my district, interest of various sorts the people who run those businesses may or may not be constituents in the sense that they vote for me or even live in my district, but they may still come to me and say I don't want this or I do want that - if we were to leave the term natural person in this document, could I talk to them, go to bat for them where it was appropriate - since their interest is not as my constituent but as the owner of a business in my district.

Rep Seaton - legislative purpose is providing constituent service, but if you were talking to ConocoPhillips, they are not a natural person. Business is not a natural person. It would not get constituent service. Not a natural person and therefore it would not be constituent service.

Rep Gardner - do we not also have obligations - every Alaskan is a constituent.

Rep Gruenberg original version limited constituent to your district. We discussed elimination of natural in full committee.

Rep Gardner - if that is the case, what is the reason to have to whom the legislator owes a duty of representation.

Dan - there is no duty of representation owed by the legislator.

Rynniva - we believe when a legislator takes an oath he believes that he has a duty to protect the constitutional rights and that he does have a duty to protect those rights.

Dan - we are talking about a definition, there is an oath and I am not saying they don't have that responsibility but we are trying to define something - so maybe there does not need to be a definition.

Rep Seaton - if we take out natural. Who is the person that the legislator does not owe representation to that you would be working for or providing service to. Staffer in D.C. who is a resident in D.C. and not an Alaska resident anymore, and no permanent fund - could you provide constituent service to them.

Rynniva - the answer would be if the person was being deprived of something that the person was eligible for under the constitution.

Rep Gruenberg - people in Alaska they qualify, if all the other people in the world are the second class if they are dealing with an Alaskan issue they should get our representation. I think this focuses on the people and the representation. Read this and mentioned it in committee I thought it was a creative phrase. I think this says we have a duty and right of representation as to that permissible under the constitution. Leave it at that. Keep it in. Someone that would not qualify StateWatch people in Virginia - concerned about Wrangell Islands

- does not have anything to do with Alaska, there is no duty to represent them.

3:51:24 PM

Rep Seaton - what if there is a trip to Darfur - anyway - lets request a leg legal opinion on parameters to forward on with the bill.

Rep Gruenberg - Amendment No. 4 remove [natural] Page 7, line 24.

Rep Seaton - any objection.

Rep Gardner - remove natural then could we say a constituent it could include defenders of wildlife? Then we have a duty to represent?

Dan - might fit better to take out representation and leave duty. Maybe not a duty of representation to a particular person but certainly a duty. The duty to uphold the constitution.

Rynniewa stated that would be acceptable.

Rep Seaton stated that Amendment No. 4 - deals with removing natural line 24 - Page 7 - any objections?

No objection - adopted.

Rep Gruenberg moved for Amendment No. 5 - delete [representation] Page 7, line 25.

Rep Gruenberg - to Dan - since you will be doing the legal opinion - you might want to substitute a phrase for representation or leave it in - if you are talking about duty. "of representation" - a little uncomfortable to take it out until we have a legal opinion. If we just ask for a legal opinion on that phrase.

Dan - researched it and it would say what has already been stated. Constitution would not provide any information about what duty of representation is. You are limiting the duty but there is no place to find out where that limit is.

Rep Gruenberg - only a duty of public safety or education, and this should be looked at - as a major thing that is the core of the legislature.

Rynniewa - let that word remain - and let it be discussed in Judiciary. It also could be that duty could include representation because it results in legislative action or constituent service.

Rep Gara - when you try and define the people you represent in two constrained a manner you are going to leave someone out and then you have an ethics violation. The people you are allowed to represent (constituents) that you are allowed to represent. The definition should be broad. The constituent should be who you are allowed to represent. Otherwise there will be people outside the line that you want to help but can't because of the definition and who you included in the definition.

Dan Wayne - said that is not what he said. It is the constitution that does not list any duties of representation. It does not mean you don't have a duty, it just means it is not listed. How do I tell if someone's actions are permissible when I don't know the definition of constituent? Constituent service is a service you do for someone.

Rep Seaton we need to know who a constituent is and who it is not. So we know who you can give service to.

Rep Doogan - it means the citizen of Alaska. That is about as limited as it gets. I am not here for the exercise, someone else is going to define it someone else is going to and I am not too happy with how they have done so far and some definitions have to have applicability in the real world. We want the definition to be as encompassing as possible. Don't want narrow definitions of who we can help and how we can help them. It may not be perfect but a long step to the goal I want to go. Helping people deal with the government and not have ethics come after me.

Rep Seaton - you work for all Alaska, work for people of your district, but is your duty to represent the people that elect you or everyone or the people that elect you.

Rynniewa - Rep Coghill feels it should be a very broad definition - sideboards in subparagraph 21 makes it clear. They share a class it is not helping someone to get a contract with the state. That is not constituent service, that is a crime already. But someone that has a right to be represented by their legislator.

Rep Doogan - we took a look at the oath of office and it did not say anything about House District 25 - it says the state of Alaska. Not strictly limited to the confines of my district.

Dan went over what the oath of office is. Not trying to be argumentative. But people that are not citizens have rights under our constitution. Business, corporations, have rights - and should be represented.

Rep Gara - make it as broad as possible. We don't make duty under the constitution clear. Make it any person in the state. Person in statute means business or anything. Legislative purpose if the person is here or not, and then you can represent anyone in the state. You would only help a person out of state if it is a legislative purpose, so then you would help them anyway. You can help them for a legislative purpose and then the rest you help because they are citizens of the state.

Rep Seaton - lots of state residents not living in the state. In the state is a tricky one too.

Rep Gruenberg - too narrow - if we stay within the state. Favors the broadest definition possible. Dealing with people who are Alaskan or people who are concerned about Alaskan issues. Whether it be BP or defenders of wildlife. There is a nexus between them and the state of Alaska. It should not be unethical to look at that person's interests.

Rep Seaton - who are we trying to cut out, who do we want to say a legislator can't call a constituent.

Rep Gruenberg - people who are not Alaskan's or someone trying to get us to take an issue on something that does not in any manner pertain to Alaska. Mid-East war, as most issues don't have a lot to do with Alaska.

Rynniva - defining constituents because - if you are helping someone who is not a constituent - then it is probably a crime already. The legislature feels that they are likely to be in trouble if they are helping someone when it is their duty to help Alaskans, but it might not be a constituent because there is not a definition of constituent.

Rep Seaton - helping someone that is not in Alaska, but it has a purpose within Alaska.

Rynniewa - but that would be a legislative issue so that would not be unethical.

4:12:33 PM

Rep Doogan - broadest possible interpretation inside Alaska, not outside of Alaska. Likes the language that was under the constitution. No representation for someone out of the state. Might be doing it for some other reason under duties under legislator but not under constituent service.

Rep Gruenberg - group a - wants to take trip to Alaska, please tell us how we get information and we should be able to do that. Going to withdraw my motion to delete "representation" from the bill.

Rep Seaton - we are asking for a legal opinion and if there is no duty of representation under the constitution - if there is or isn't. Because if there isn't then we have no constituents.

Dan it may be duty somewhere else. But the legislature has a state-wide constituency. It would never be my conclusion that you have no constituents.

Rep Seaton - for Joyce and the committee to have a definition when they are making decision. He asked Joyce Anderson - as far as serving for the Ethics Committee can a definition help make a decision.

Joyce - needs to see if there is a specific situation.

Rep Gruenberg - to Mr. Wayne - when you look at this - look in the broadest constitutional sense. We are looking at this really from the core of the constitutional perspective. What are we here to do.

Dan - to make legislation - the other things you do are tradition and there is no authority to do this.

Rep Gruenberg continued to discuss his concept of how the legislature serves and what it does.

Rynniewa stated she has wording that the Administrative Hearing Officer suggested for an amendment.

Rep Seaton - Amendment No. 6 - delete Page 1 line 12 through Page 2 line 16, insert new subsection i. and the rest of the page.

Rynniewa - when you are dealing with an administrative hearing unless you are a licensed officer, you are no longer involved in that constituent service. Page 1, Section 1. Line 11, runs through page 2 line 16 the rest of the amendment protects the legislator, or staff, if a constituent fails to reveal that the case is in an administrative hearing and the call is made to labor, the legislator or staff would be liable for a violation the way the statute presently reads.

Rep Gruenberg - typo on line 15, a couple of words left out - insert and if the before fact and substance of the contact [is]are. Make that a conceptual amendment and include it with the rest of Amendment No. 6.

4:28:14 PM

No objections to Amendment No. 6.

Rep Seaton objected to Amendment No. 6, he thinks that it needs to be looked at further. It could be a CPA or licensed person in some function and then a legislator could go before a body and that is what we would be allowing and that is line 1 and 2. Policy call is - are we going to look at this and say is the affect on a Department Director who is sitting across from a legislator is okay in the public interest and we are going to balance that with an officer and the public perception is that the legislator is subservient to representing himself in a license.

Rynniewa - this a policy call and I am going to let you all make that policy decision. Yu have to make the call.

Rep Seaton - Amendment No. 1 to Amendment No. 6 - deletes line 1 and 2 and would not allow them to be a for hire representation.

Rep Gruenberg objected.

Rep Seaton - lawyers and CPA's - anybody can be hired to go in and represent one side of a party in an administrative decision.

4:33:57 PM

Is public purpose of not having a legislator or legislative employee less?

Rep Doogan - there is no public purpose having them sit across the table unless you think that their job shapes the opinion of the person sitting across from them. Question is whether in a situation as part time legislators is if we can dictate how a person can make a living. Historically shied away from this, people have to eat, they go out of here and do their jobs. It is not clear to me that legislators get extra spin or (b) even if they do, you can tell someone that if they run for office a person can't make a living from what they have been doing. Pretty close call. It will be debated every step of the way.

Rep Seaton - the debate means it is questionable. It has a public perception. City council or whomever, as a legislator people react differently. Is that perception a problem.

Rep Johnson how far is the step from I am a legislator and if I represent you how far I can go because of power. It has happened and it is the step we are trying to avoid. If I decided to do it, I could make a good living representing people.

Rep Doogan - in Rep Johnson's statement, he already broke the law by getting clients because of your position. But as a living representing people, or going out and representing people because of who you are is something that could interfere with our livelihood.

Rep Gruenberg recommended that we adopt the practice that we did in the subcommittee and give it back to the full committee with the note and comments that the full committee had to make a decision.

Rep Johnson wants it in and then the committee can take it out if it wants.

Rep Gruenberg - Ms Thurbon wanted people who were representing someone would be able to respond to contacts and supply information. That would mean only people that could do it were not legislators. By taking the first two lines out you may have trouble getting information. A legislator or legislative employee may not attempt to influence the content of a hearing and that does not have anything to do with representation.

Rep Seaton if it is left in only licensed people could give the information. But language is substituting for the language we are taking out.

Rep Gruenberg reviewed again over the information and the what was happening to the bill in this section - meant that a legislator could not even speak to the issue, if not representing them.

Rep Seaton - only talks to someone with a license that is doing it for compensation. Taking out line 1 and 2 and starts on line 7.

Joyce - looked at this statute prior and it does not prevent even with what you are removing, from speaking at an administrative hearing if you are called. Just can't be initiated by the representative.

Amendment 6

Rep Johnson -yes,

Rep Gruenberg - no,

Rep Seaton - yes,

Amendment passed.

Split decision

4:49:16 PM

Rep Seaton - Non-legislative purpose Sub B - this paragraph does not prohibit information a(2)(B) -

Rynniewa - involves legislators using voter registration lists for their office and those lists used by legislators for non-legislative purposes.

Rep Seaton - mailing lists and news lists we generate since those are not available to the general public we would not be able to use those for campaign purposes. Not intended. But since it is here I would like clarification on it. Non legislative purpose.

Dan - two ways to read it. General public or non legislative purposes. It is okay to use the list if available for non legislative purposes.

Rep Seaton - The list for our mail outs are not available to the general public and if we use it- it is only legal if we make the list available to the general public.

Dan - another exception 5(B) says that a limitation does not prevent the use for non legislative purposes.

Rep Seaton - operating under the assumption we could use the list when we campaign but that is not consistent with the law.

Rynniewa - have Dan make a determination and come up with an amendment for tomorrow.

Rep Gruenberg - Page 2 sub paragraph A-5-B - you may not use.....for use in and he read it into the record.

Rep Seaton unless the mailing list was available to the general public we could not use it for a non legislative purpose. Wants a clarification.

Joyce - ethics made an advisory opinion and said if you take your constituent data base and you use it for campaign purposes it was a diminimus use of state resources and so it could be used for non legislative use. She will provide it to the committee.

Dan - look at 24.60.030 (a)(1) lawful gratuity - should say gift - under - conforming change.

Rep Seaton - prepare a conforming change.

Amendment No. 7 - to 24.60.030 - a.1 - change gratuity to gift under 24.60.075 or 24.60.080.

Without objection passed Amendment No. 7.

Rep Gruenberg - noticed that Rep Gara did have an issue and will offer it.

Rep Gara - present a problem in ethics law that deserves attention. I still do not have language. Right now we have a problem with the law. Situation with honest legislator will go to ethics staff and they get advice, but the law says you can't rely on the advice, but you can have a complaint filed against you and if the advice was wrong you get an ethics violation. And if you get a hearing and the advice was wrong you get an ethics violation. Your opponent uses it against you. So your option is to take informal advice you can't rely on or require a full hearing, unreasonable, expensive and wrong, but there is no middle ground. But if you ask in writing and give all the info they want and you get an opinion you rely on and if this is an

issue that is not that clear then hold a hearing but you are allowed to rely on the advice until the hearing is held. You have to get advice and rely on it. As for hearing it will take 60 days and you can't help constituents for 60 days. Proposal is to supply info to staff and if they decide a close issue, get a hearing, but you have some thing to have in the meantime. Right now the honest legislature can be held liable doing what they were told they could do.

Rep Seaton - a bit out of the bounds of what we were given as a subcommittee.

Rep Johnson said he would like to see this tomorrow and some examples. Deal with it tomorrow.

Rep Seaton - sounds like you are saying the ethics wants advice even though informal advice is given all the time.

5:05:19 PM

Tomorrow come when the committee gets together. Get to ethics committee tonight.

Adjourned 5:06p.m.

Nancy Manly

From: Katie Koester

Sent: Wednesday, March 25, 2009 6:01 PM

To: Nancy Manly

Nancy,

From what I understand from the HSTA subcommittee meeting today the additional requests of legal outside of changes to the CS were:

- 1) A legal opinion explaining what "of representation" adds to AS 24.60.990(a)(17). Why is it in the section and what would be the change in interpretation if "of representation" was taken out?
- 2) A legal opinion discussing the prohibition of using mailing list for non legislative purposes, AS 24.60.030 (2)(B). Could this statute be interpreted to mean that legislators may not use a mailing or email list that they have collected as a legislator for a campaign purpose?

I also have 2 advisory opinions of my desk from Ethics, I trust that you got those as well and will provide them to the committee (2004-01 and 2005-01)

Katie Koester
Legislative Aide
Rep. Seaton
907.465.2028

Alaska State Legislature

Select Committee on Legislative Ethics

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April 23, 2004

ADVISORY OPINION 2004-01

Subject: Conflict of Interest – Constituent Information

RE: Use of constituent information gathered by a legislator.

You are a legislator and therefore covered by the Legislative Ethics Code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked the following questions:

1. Can constituent information gathered by a candidate who is subsequently elected to office be used by the legislator during his or her term of office?
2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

You characterized the information referred to in the questions as:

- A. Voter information obtained from the Division of Elections for a small fee.
- B. Information obtained from public sources such as Permanent Fund recipients and corporation and business licenses databases which can be downloaded by anyone from public agency internet sites for free or for a small fee.
- C. Information gathered about individual constituents during a legislator's term, including email addresses, phone and fax numbers, and issue information.
- D. Similar constituent information as in C obtained during a candidate's campaign.

Discussion

In this document

- "constituent" means a natural person residing within a legislator's district;
- "information" means contact information including name and address as well as any other information and facts known about the contact such as issues and legislation the contact is interested in;
- "database" means an organized body of related information which is in a format read by computer database programs.

1. Can constituent information gathered by a candidate who is subsequently

elected to office be used by the legislator during his or her term of office?

This question involves a legislator using, for legislative purposes, information gathered in the course of an election campaign, described in D above. This information was obtained using private resources. There is no prohibition in the ethics code on a legislator using private resources for legislative purposes, so a legislator may use for legislative purposes information gathered during non-legislative time without the use of legislative resources.

2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

It is assumed in this answer that "information gathered by a legislator" is information collected for the legislator, described in C above, with the help of legislative staff employed to handle constituent concerns using legislative equipment. This information is being gathered for the benefit of the legislator in performing public duties. As long as the purpose is to assist the legislator in performing current legislative duties, the building and maintenance of a database containing constituent information is permitted using legislative resources. As is the case with the files maintained by a legislator's office for legislative use, a database is considered to be the confidential property of the legislator.¹

There is a general prohibition against using legislative resources for non-legislative purposes:

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

AS 24.60.030(a)(2). However there is an exemption for a de minimis use:

[AS 24.60.030(a)(2)] does not prohibit (A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

We find that it is considered to be a de minimis use of public assets under AS 24.60.030(a)(2)(A) for a legislator to make a copy of a database created or maintained in the legislator's own office for personal or campaign use.²

¹ When the legislator leaves office, the files and information belong to the legislator. A legislator's files, including information such as databases on a legislator's office computers are considered confidential.

² This opinion does not condone the unauthorized copying of copyright protected information.

In regard to voter information and other publicly available databases, the information described in A and B above, a legislator may obtain this information for legislative purposes. This information would probably be combined into the legislator's constituent database. As discussed above, a legislator can make a copy of the legislator's own database for personal or campaign purposes.

In the case of purchased databases, there may be copyright issues if a person copies a database rather than purchasing another license for separate use. If the legislator wants another copy of a commercial database, a separate license, if required, should be purchased with personal funds.

Conclusion

For the reasons stated above, the committee finds that constituent information gathered by a candidate using private resources can be used by that person if subsequently elected to serve as a legislator, and that constituent information gathered by a legislator using legislative resources such as staff time and equipment for legislative purposes may be copied and used for personal or campaign use by a legislator as a de minimis use of public assets under AS 24.60.030(a)(2)(A).

Adopted by the Select Committee on Legislative Ethics on April 23, 2004

Members present and concurring in this opinion were:

H. Connor Thomas, Chair
Representative Mary Kapsner
Representative Norman Rokeberg
Senator Kim Elton
Senator Ben Stevens
Dennis "Skip" Cook, public member
Ann Rabinowitz, public member
Marianne Stillner, public member

Member present & abstained from voting because not present for entire discussion:

Herman G. Walker, public member

BRC:mdr:lmb
04-164.mdr

Alaska State Legislature

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November 9, 2005

ADVISORY OPINION 2005-01

Subject: Conflict of Interest – Legislative Contacts with Administrative Decision Maker

RE: AS 24.60.030(i) and legislative contacts with administrative decision makers

You are a legislator and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked several specific questions in regard to AS 24.60.030(i).¹ This subsection makes it a violation of the legislative ethics code for a legislator or legislative employee to "attempt to influence the outcome of an administrative hearing by directly or indirectly

¹ This new subsection of AS 24.60.030, "Prohibitions related to conflicts of interest and unethical conduct," became effective July 1, 2005. The office of administrative hearings, created effective July 1, 2004, began hearing administrative proceedings that began on or after July 1, 2005. Sec. 92(a), ch. 163, SLA 2004. No previous advisory opinions have discussed AS 24.60.030(i).

This new subsection provides:

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

contacting or attempting to contact" a decision maker in an administrative adjudication. Such communication is only permitted if the communication with the decision maker is made in the presence of all parties to the adjudication, and made a part of the record; or, if the fact and substance of the communication is promptly disclosed to all parties and made part of the record.

You ask how AS 24.60.030(i) will be applied in the following situations.

1. Can a legislator² contact a decision maker without trying to influence the outcome of the case by asking the decision maker:
 - a. if certain documents had been filed;
 - b. whether a file was complete; or
 - c. if there was other information that could be provided.
2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?
3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

Discussion

The provisions of AS 24.60.030(i) will only apply to an administrative matter that has progressed to a hearing. A legislator or legislative staff member may contact any administrative department with questions regarding a matter that is not the subject of a pending administrative adjudication.³

The ethical standards which prohibit ex parte contacts by legislators and legislative employees recognize that impartial fact finders and decision makers are an essential part of the due process of law.⁴ Administrative decision makers are required to be impartial

² All references in this opinion to a legislator also apply to legislative employees subject to AS 24.60.

³ It may be difficult to determine from a constituent whether the matter of concern has reached the stage that this ethical prohibition applies so care should be taken to avoid contacting any person or entity that has the authority to make a final decision. It may be prudent for a legislator to make a call to the department administering a matter, to determine the appropriate person to contact for the information, in order to avoid inadvertently contacting a decision maker.

⁴ Under the Alaska Constitution, a person may not "be deprived of life, liberty, or property, without due process of law." The Alaska Supreme Court has interpreted this provision as requiring an impartial fact finder. *In re Robson*, 575 P.2d 771 (Alaska 1978); *K & L Distributors, Inc. v. Murkowski*, 486 P.2d 351 (Alaska 1971). Questioning of a decision-maker while the case is pending impairs the impartiality of the judicial process. It may even invalidate the decision reached in the matter, causing the whole matter to be reheard. "To subject an administrator to a searching examination as to how

and may not engage in ex parte communications.⁵ An ex parte communication is a contact or communication (personal communications or some form of evidence) with the decision maker that takes place outside the presence of all parties to the proceeding.

I. Obtaining information on behalf of a constituent in regard to an administrative adjudication.

While a legislator or legislative staff member may contact an administrative department with questions regarding a matter, once that matter is assigned to a hearing officer or other decision maker there should be no direct contact with the decision maker.

Once a matter is in a hearing process, questions to the administrative unit should be limited to procedural matters and case information. The answers to those questions can most likely be answered by a person other than the decision maker. For example, if the office of administrative hearings has jurisdiction of the matter, that office will be able to provide information about the case file without impairing the impartial role of the hearing officer.⁶ If the adjudication is not within the jurisdiction of the office of administrative

and why he reached his decision in a case still pending before him, . . . sacrifices the appearance of impartiality - the *sine qua non* [essential condition] of American *judicial* justice" Pillsbury v. F.T.C., 354 F.2d 952, 963 (5th Cir Ct. of Appeals, 1966). "Legislative intervention which occurs during a pending decisional process of an agency endangers and may undermine the integrity of the ensuing decision, and it has been held that administrative decisions which are based in whole or in part on pressures emanating from the legislature may be invalid." 73 C.J.S. Sec. 31, Public Administrative Law and Procedure.

⁵ For example see AS 44.62.630 in the Administrative Procedure Act, also see AS 44.64.050(b) regarding the standard of conduct for hearing officers in the office of administrative hearings.

⁶ See AS 44.64.030 for the jurisdiction of the office of administrative hearings. Child support services and permanent fund dividend adjudications are under the jurisdiction of the office of administrative hearings.

AS 44.64.050 provides fundamental standards of conduct required of hearing officers. The chief administrative law judge is required to adopt regulations for a code of conduct.

. . . The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall

- (1) uphold the integrity and independence of the office;
- (2) avoid impropriety and the appearance of impropriety;
- (3) perform the duties of the office impartially and diligently;
- (4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and

hearings, the agency holding the hearings will have procedures to insulate the decision makers from improper contacts. Legislators subject to AS 24.60 will be expected to make every effort to obtain basic procedural or case file information about a matter under administrative adjudication by means other than contacting the hearing officer. Also, in response to your questions, it would not be the proper function of any administrator in the adjudicatory process to give advice in response to your questions, but only to provide information about the case file, parties, scheduling or other routine procedural matters.⁷

(5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

The proposed draft regulations at 2 AAC 64.030 provide:

(b) The following guidelines apply to any determination on whether a hearing officer of administrative law judge has adhered to the canons [of hearing officer conduct]:

(1) The requirement to uphold the integrity and independence of the office, and of the hearing function, dictates that a hearing officer or administrative law judge establish and personally observe high standards of conduct and avoid improper ex parte communications with private and agency parties on the subject of a hearing request; so that the integrity and independence of the office and hearing function will be preserved;

(3) The requirement to perform the duties of the office or of the hearing function impartially and diligently dictates that a hearing officer or administrative law judge . . .

(B) not initiate, permit, or consider improper ex parte communications, . . .

"improper ex parte communications" are defined at 2 AAC 64.990(13) as

a direct or indirect, oral or written communication between a decision maker and a party to a proceeding, or another person trying to influence the decision maker, which occurs outside the presence of the other parties, and without a notice and an opportunity to participate being given to the other parties.

⁷ You have asked "can a legislator contact a decision maker to ask if there was other information that could be provided." This would require the decision maker or the administrator in charge of the case file to advise the legislator on how to conduct the case or influence the outcome. This would not be appropriate, as it impairs the impartiality of the hearing process.

In the rare instance that a communication with a hearing officer occurs the legislator must comply with AS 24.60.030(i)(2): the "fact and substance of the contact [must be] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact [must be] made a part of the record." A failure by a legislator to properly make this disclosure may be held to be a violation of the legislative ethics code.

The committee is also concerned that ex parte contacts, by a legislator or legislative employee, with a decision maker creates an appearance of a violation of the ethics code. This is based on AS 24.60.010 which provides in pertinent part:

The legislature finds that

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?

If contact with a decision maker does occur, a legislator or legislative employee must notify all parties and make the contact a part of the record. Complying with this requirement of disclosure to all parties is the responsibility of the legislator who initiated the ex parte contact, not the adjudicator hearing the matter. Information about the other parties to the matter can be obtained as discussed in the answer to the first question.

There is no obligation to contact all parties in regarding communications with administrative departments or personnel initiated by a legislator when a matter has not yet been assigned to a hearing officer.

3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

As discussed above, a legislator may advocate and communicate on an administrative matter on behalf of a constituent. AS 24.60.030(i) only applies once an administrative matter is assigned to an administrative decision maker. In the event that a legislator makes an ex parte contact with a decision maker, the requirements of AS 24.60.030(i)(2) apply. The ethics statute clearly places the responsibility for compliance with (i)(2) on the legislator making the ex parte contact, not the adjudication agency or the administrative agency who is a party to the matter.

Conclusion

For the reasons stated above, the committee finds that a legislator or legislative employee seeking information on an administrative matter that is assigned to a hearing officer, individual, board or commission should not attempt to contact the decision maker assigned to that matter.⁸ Information about the procedural aspects of the matter may be sought from the office administering the hearing, but not the decision maker directly. If a legislator or legislative employee makes an ex parte communication and fails to comply with the requirements of AS 24.60.030(i)(2), it could be considered a violation of the legislative ethics code.

AS 24.60.030 does not apply to contacts in regard to administrative matters that have not been assigned to an administrative decision maker.

Adopted by the Select Committee on Legislative Ethics on November 9, 2005.

Members present and concurring in this opinion were:

Herman G. Walker, Jr. Chair
Representative Max Gruenberg
Senator Hollis French
Senator Ben Stevens
Ann Rabinowitz, public member
Marianne Stillner, public member
H. Connor Thomas, public member

Members dissenting from this opinion were:

Members absent were:
Representative Bruce Weyhrauch
Dennis "Skip" Cook, public member

BRC:med
05-475.med

⁸ The only exceptions are described in AS 24.60.030(i):

[e]xcept for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case . . .

Nancy Manly

From: Katie Koester

Sent: Wednesday, March 25, 2009 6:01 PM

To: Nancy Manly

Nancy,

From what I understand from the HSTA subcommittee meeting today the additional requests of legal outside of changes to the CS were:

- 1) A legal opinion explaining what "of representation" adds to AS 24.60.990(a)(17). Why is it in the section and what would be the change in interpretation if "of representation" was taken out?
- 2) A legal opinion discussing the prohibition of using mailing list for non legislative purposes, AS 24.60.030 (2)(B). Could this statute be interpreted to mean that legislators may not use a mailing or email list that they have collected as a legislator for a campaign purpose?

I also have 2 advisory opinions of my desk from Ethics, I trust that you got those as well and will provide them to the committee (2004-01 and 2005-01)

Katie Koester
Legislative Aide
Rep. Seaton
907.465.2028