LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

SB 415 cont. 1989-1990 678 269

5/4/90
Failed

AMENDMENTS TO SENATE BILL 415 (ETHICS) BY FISCHER

#17 Page 85, Line ~~1,~~ 25 Delete "40,000", add "49,680"

5/4/90
Failed

Amendments to SB 415 By Fischer

#22 Page 85, Line ~~1~~ 25, Delete "40,000".

5/4/90
withdrawn

AMENDMENTS TO SENATE BILL 415 (ETHICS) BY FISCHER

#1 Add all elected municipal and school district officials under the same requirements as legislators and legislative assistants.

975

SB 415
5/3/90

MAY 2 1990

B

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   May 2, 1990

SUBJECT: Sectional analysis of CSSB 415 (Legislative Ethics)

TO: Senator Johne Binkley
Senator Rick Uehling
Co-Chairs, Senate Finance Committee

FROM: John B. Gaguine JBG
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. This is especially true in the case of a piece of legislation as lengthy and complex as HB 596.

Section 1 gives the act a title, the Legislative Ethics Act of 1990.

Section 2 establishes a new legislative ethics code, AS 24.61, as follows:

Article 1 contains legislative findings and purpose and eight general principles to be followed in interpreting the law. The article notes, in AS 24.61.020, that these principles are "broader and more philosophical than the standards of conduct and, therefore, not amenable to strict enforcement." Nevertheless, the principles "shall be regarded as an integral part" of the law. The principles are:

1. Good faith commitment to advance the purpose of the ethics laws

2. Nonpartisanship - consideration of ethics matters only on their merits

3. Public trust - duty to avoid perception that legislators are acting for selfish motives

4. Public interest - duty to avoid putting narrow interests over general public good

5. Accountability to public

6. Representative democracy - duty to avoid abuse of procedural powers and arbitrary use of authority

7. Respectability - duty not to discredit legislature and not to treat others unfairly

8. Independent judgment, free from conflicts of interest and both real and perceived improper influences

Article 2 contains the specific standards of conduct that must be followed. All apply to legislators; most apply to legislative aides in positions of influence; some apply to most legislative employees and to candidates for the legislature. Nearly all are subject to penalties that may be imposed by the legislature, including heavy fines, censure and expulsion (or, in the case of a legislative employee, termination). Many violations can also be prosecuted as Class A misdemeanors, or deal with conduct that is criminal under a Title 11 statute. The standards of conduct are as follows:

- AS 24.61.110 prohibits the acceptance of anything of value in connection with the performance of legislative duties

- AS 24.61.120 imposes a duty on persons to report improper offers to influence

- AS 24.61.130 prohibits the use of state property, staff and resources for private gain or personal advantage

- AS 24.61.140 prohibits the use of state property, staff, and resources for political purposes, and includes a ban on mass mailings near an election and on solicitation and acceptance of campaign contributions in a state office.

- AS 24.61.150 imposes an obligation on legislative employees to refuse to perform improper tasks

- AS 24.61.170 prohibits the use of nonpublic (so-called "inside") and confidential information for private gain

- AS 24.61.180 prohibits a legislator for using his or her title or prestige for private gain or personal advantage, and includes a ban on use of the title in commercials

- AS 24.61.190 bans former legislators and aides, for a period of one year after leaving legislative service, from lobbying the legislature, and bans certain key legislators from administratively lobbying in connection with matters or agencies over which they had influence

- AS 24.61.205 prohibits the use of campaign funds for personal purposes (including legal fees not connected to the campaign or public office), loans and contributions to another group (e.g., to another candidate), inflated campaign expenses, and the payment of fines, and bars post-election campaign contributions

- AS 24.61.210 restricts the use of surplus campaign funds to retiring loans, returning contributions to contributors on a pro rata basis, donating them to the state, a municipality, or a charity, and, within monetary limits, transferring them to an ongoing political account or office expense account

- AS 24.61.220 authorizes a legal defense fund to defend against specific charges, including ethics charges, and prohibits the acceptance of funds for legal defense except as provided in the section

- AS 24.61.230 prohibits withholding or threatening to withhold legislative action in order to obtain campaign funds or gifts

- AS 24.61.240 prohibits fund-raising by a legislator during legislative sessions and restricts it to certain time periods for both legislators and challengers

- AS 24.61.290 prohibits nepotism in a manner similar to current AS 24.60.090

- AS 24.61.300 restricts the participation of lobbyists in political campaigns, requires disclosure of close economic associations with lobbyists, and restricts employment of legislators or aides by lobbyists and lobbying groups

- AS 24.61.310 prohibits legislators from serving on governing or advisory boards of nongovernmental entities with substantial interests in legislation, requires aides serving on such boards to disclose their membership, and prohibits aides from serving on most elected local government boards and in state positions requiring legislative confirmation

- AS 24.61.320 prevents a legislator or aide from participating in governmental action when he or she has a substantial financial interest involved

- AS 24.61.330 restricts representation for compensation by legislators and aides before state courts and agencies; it allows such representation in certain quasi-judicial hearings

- AS 24.61.340 restricts the ability of legislators, legislative aides, and their family members from entering into state contracts or leases other than those competitively bid, of a small amount, or standardized; the section is similar to current AS 24.60.040

- AS 24.61.345 authorizes legislators and legislative employees to participate in general statewide programs; the section is similar to current AS 24.60.050

- AS 24.61.350 prohibits, with certain exceptions, the solicitation or receipt of single gifts worth $100 or more or gifts from a single source whose aggregate value is $100 or more; the section is similar to current AS 24.60.080 as the ethics committee proposed to modify it, with one major exception: a legislator or legislative employee would no longer be allowed to have travel on matters on legislative concern paid by a nongovernmental entity with a substantial interest in the legislator's or employee's activities

- AS 24.61.360 prohibits legislators and legislative employees from accepting outside employment that would create conflicts of interest or that involves inappropriately high payment for the work done, and from accepting most offers of honoraria (other than reimbursement of travel expenses)

- AS 24.61.380 prohibits improper influence on decisions by other government officials and bodies, but does not prohibit constituent "casework" or the exercise of legislative oversight

- AS 24.61.390 - 24.61.420 establish income disclosure requirements, in some ways considerably broader than the APOC-administered requirements under AS 39.50; the requirements distinguish between income derived from sources with interest in legislation (amounts must be disclosed and sources without such interest (amounts need not be disclosed)

- AS 24.61.430 requires compliance by legislators with the Open Meetings Act; if this section is violated, a legislator may not be fined or expelled

- AS 24.61.440 requires legislators and employees to police the legislative system and prohibits retaliation against or harassment of "whistleblowers"

- AS 24.61.450, which like AS 24.61.430 carries limited sanctions, prohibits acts of employment discrimination in violation of the state Human Rights Act

Article 2 also contains several sections relating to financial and personal relationships between legislators and legislative employees and persons with interests before the legislature. AS 24.61.250 states a general rule that legislators and legislative employees should avoid financial relationships and transactions that might compromise or appear to compromise them. AS 24.61.255 - 24.61.265 define three terms ("financial conflict of interest," "substantial interest in legislative, administrative, or political action," and "close economic association") that govern what financial relationships must be disclosed under AS 24.61.300(b). AS 24.61.270 states that financial conflicts shall be generally dealt with as a matter of disclosure and voluntary restraint. AS 24.61.280 states that personal relationship conflicts of interest can be damaging to the public trust, but generally are dealt with as a matter of voluntary restraint.

Article 3 establishes the Legislative Ethics Commission, consisting of nine public members appointed by all three branches of government, and subject to decertification by the legislature. It authorizes the hiring of an executive director and other staff. The article, like current law, provides for advisory opinions and a complaint process (more open than current law, and similar to what the ethics committee proposed in HB 451); it also authorizes the commission to grant exceptions to the prohibitions of AS 24.61.

AS 24.61.560 sets out a lengthy list of the sanctions that the commission can recommend to the legislature, if a legislator is found guilty of an ethics violation, or that the commission can impose itself, if a legislative employee is found guilty. Article 3 also authorizes the attorney general to bring civil or criminal actions to enforce AS 24.61.

Article 4 establishes an ethics education program for legislators, aides and lobbyists, including the publication of an ethics manual, the establishment of an education advisory committee, and the giving of ethics seminars at which attendance is mandatory.

Article 5 contains general provisions for AS 24.61. Among other things the article sets forth a principle of strict compliance (AS 24.61.920), and retains current laws concerning the cooperation of others with the ethics commission and the prohibition against "leaking" confidential ethics information. The article also defines terms used in AS 24.61.

Sections 3 - 7 of the bill make technical changes.

Section 8 raises the annual salary of legislators to $40,000 from the current $22,140 (Range 10, Step A of the state salary schedule).

Section 9 repeals the provision of current law allowing legislators to receive long-term per diem of $50 per day for work that they do in their districts during the interim. It retains the provisions relating to per diem during the session and to per diem for travel on legislative business at any time to a location other than the legislator's residence.

Section 10 eliminates the current office allowance, and instead allows legislators to charge actual office expenses to the state, up to a maximum that varies according to the number of constituents a legislator represents. It also allows each legislator to send two constituent newsletters a year, not subject to the office expense limit, provided that the newsletters comply with the ethics act.

Section 11 allows each legislator two state-paid round trip airplane tickets to a city in the legislator's district for "a personal, family, business, or constituent purpose."

Sections 12 - 13 eliminate current provisions of law that allow an attorney-legislator who represents a client to get an automatic stay of a court case during the session.

Sections 14 - 16 are additions to the regulation of lobbying chapter to ensure compliance with the ethics education for lobbyists provisions.

Section 17 prohibits lobbyists from using state property as part of their lobbying activities, and from participating in a candidate's campaign management or hosting a fund-raiser.

Section 18 places the executive director and staff of the legislative ethics commission in the exempt service.

Section 19 - 20 transfer the authority for handling financial disclosure statements of legislators and legislative candidates from APOC to the ethics commission.

Section 21 makes a technical change.

Section 22 repeals the current legislative ethics law, AS 24.-60, and three provisions that make AS 39.50 applicable to legislators.

Section 23 provides for terms of varying length of the initial commission appointees, in order to stagger terms.

Section 24 provides that the initial ethics courses and seminars provided for by the act will be held in January and February, 1991.

Section 25 provides that the Legislative Council make its proposals to the Legislative Ethics Commission for adoption as regulations required by the act by January 1, 1991.

Section 26 provides that, notwithstanding the repeal of AS 24.60, the Legislative Ethics Commission may consider complaints under AS 24.60 that arise before January 21, 1991 (the effective date of most of AS 24.61), but that are not filed until after that date.

Section 27 provides for a transitional period for those covered by AS 24.61 who are currently representing others in violation of the new law. It requires that any such representation be terminated by January 1, 1992, but that the Legislative Ethics Commission may grant an exemption from this date in exceptional cases.

Section 28 makes effective on July 1, 1990, the portions of the bill establishing the commission and requiring it to adopt regulations and begin the ethics education process. It also makes sections 23 - 25 effective on July 1.

Section 29 makes AS 24.61.200 - 24.61.240 (primarily campaign financing sections) effective on November 6, 1990, the day after the election.

Section 30 makes the remainder of the bill, including the new standards of conduct and the repeal of AS 24.60, effective on January 21, 1991 (the date that the Seventeenth Legislature convenes).

JG:mi:pl
WKP4/104

5/3/90
Pourchot
A

SUMMARY ETHICS BILL
CS SB 415 (JEC)

Senator Pat Pourchot
Thursday, May 3, 1990

Findings and Ethical Principals
- Normative ethics; important in goals and education but not specifically enforceable

Standards of Conduct
- prohibits misuse of public office for personal gain p.9-10
- duty to report improper offers or requests p.10 & p.14
- misuse of state property and resources for personal gain p.10-12
- misuse of non-public and confidential information p.15
- misuse of title, prestige, official letterhead p.15
- post-service employment restrictions:
  - no lobbying legislature by legislators for a year or state agency where legislator had special authority
  - legislative assistant as a lobbyist for a year p.16-17
- improper coercion p.23-24 and p.42-44
- nepotism (same as current law) p.29

Campaign Activities
- no soliciting or accepting funds in state building p.13
- no use of campaign funds for personal use p.18-19
- no fundraising after election day p.19
- disbursement of campaign surpluses by: p.20-21
  - return to contributors
  - charity, government
  - future campaign account - $2,500 House, $5,000 Senate
  - $1,000 to office account
- no fundraising by legislators and other public officials who are legislative candidates during session p.24-25
- all legislative candidates' fundraising limited from June 1 of year before election to election

Legal Defense Funds - p.21-23

Conflicts of Interest/Close Association
- disclose economic relationship with lobbyists p.30
- board membership restrictions p.31
- legislative assistant can't serve as elected officials but can seek exemption p.31-32
- restrictions on legislative actions where substantial financial interest p.32
- Restriction on advocating before state agencies
- Restriction on interests in state contract p.32-33
- Participation in state loans and programs/leases p.33-35 and p.35-37

Gifts - p.37-40

- Prohibition of gifts - $100, including travel
- Exclusions for family gifts, awards, meals, foreign gifts, travel by government/non-profits, hospitality in a friend's home
- Reporting of some exclusions

Outside Employment/Income - p.40-50

- full day's work for full day's pay
- restrictions on work impeding legislators' official duties
- disclosure of income from those with substantial interest in legislative actions
- no honoraria except from government, non-profits
- income disclosures by amount for substantial legislative interest income and sources for other income

Compliance with Other Laws

- open meetings p.50
- whistle blower p.50-51
- discrimination p.51+

Legislative Ethics Commission - p.52-72

- 9 citizen members appointed by legislature, governor, Lt. governor, supreme court, APOC and Commission
- powers to issue advisory opinions, exemptions, investigate complaints, conduct hearings, make findings and recommendations
- civil sanctions LEC could recommend: fines, divestiture, disclosure, restitution, reprimand, censure, expulsion
- sanctions recommendations go to legislature for action - legislature does not retry case only votes to appropriate anction.

Ethics Education - p.73-76

- LEC develops education program for legislature, employees, lobbyists
- initial course required of all legislators, employees, lobbyists
- update every 2 years for legislators and employees
- retake course every 3 years for lobbyists

Pay/Compensation/Allowances - p.85-87

- legislators $40,000/yr. salary
- per diem during session
- short-term per diem for legislative travel
- no per diem for travel to legislative home
- no long-term per diem during interim
- vouchered legislative office allowance for office expenses only:
  - $6,000 single member house district
  - $7,000 single member senate district and 2 member house district

  - $9,000 two-member senate district

- 2 newsletters per year paid for by senate subject to content restrictions by legislative council p.12-13
- 2 trips home during session for personal reasons

Alaska State Legislature

Senate

Official Business

Finance Committee

Pouch V
State Capitol
Juneau, Alaska 99811

APPLICATION AND PENALTIES OF PROVISIONS CONTAINED IN JOSEPHSON PROPOSAL CSSB (415) (Leg. Ethics)

AS 24.61.100	ALL STAFF - & LEGISLATORS	Misuse of Office for Private Gain: General Principle
AS 24.61.110	ALL STAFF - & LEGISLATORS	Improper Benefit from Performance of Public Duties Penalty:
	sub. (a)	Is an existing crime 11.56.120 & civil sanctions Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session
	sub. (b)	May be an existing crime (felony). Civil sanctions apply to everyone.
AS 24.61.120	ALL STAFF & LEGISLATORS	Duty to Report Improper Offers Penalty: Civil sanctions apply to everyone.
AS 24.61.130	ALL STAFF & LEGISLATORS	Misuse of State Property and Resources for Private Gain or Personal Advantage
	sub. (a)	May be prosecuted as "theft" 11.46. Legislators may be protected by legislative immunity during session. Civil sanctions apply to everyone.
	sub. (b)	Civil sanctions apply to everyone. Criminal penalty under another law.
	sub. (c)	Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session. Civil sanctions apply to everyone.

AS 24.61.140	ALL STAFF - & LEGISLATORS	Misuse of State Property and Resources for Political Purposes
		Penalty:
	sub. (a)	Is an existing crime "theft". May be a misdemeanor or felony under existing law.
	sub. (c)	<u>Staff</u>: Class A misdemeanor <u>Legislators</u>: May be protected by legislative immunity during session
	sub. (d)	same as subsection (c)
	sub. (e)(1)	theft under 11.46, Class A mis.
	sub. (f)	May be "theft" under existing law. Civil sanctions apply to everyone.
	subsections	b,c,e (1-3) are civil sanctions.
AS 24.61.150	ALL STAFF ONLY NO LEGISLATORS	Obligation of Subordinates to Refuse to Perform Improper Tasks
		Penalty: Civil sanctions
AS 24.61.170	ALL STAFF & LEGISLATORS	Use of Nonpublic & Confidential Information for Private Gain
		Penalty: Civil sanctions
AS 24.61.180	ALL STAFF & LEGISLATORS	Misuse of Title or Prestige of Office for Private Gain or Personal Advantage
		Penalty: Civil sanctions apply to everyone in addition to criminal penalties undera another law.
AS 24.61.190	LEG. ASSISTANTS & LEGISLATORS	Post-service Restrictions to Prevent Misuse of Public Office by Former Legislators and Leg. Employees. (Note contradiction)

		Penalty for former assistants & legislators: Class A misdemeanor & civil sanctions for everyone
AS 24.61.205	LEGISLATORS & CANDIDATES	Prohibited Use of Campaign Funds Penalty: Class A misdemeanor & civil sanctions (Under APOC law but not referenced)
AS 24.61.210	LEGISLATORS & CANDIDATES	Disbursement of Surplus Campaign Funds Penalty: None
AS 24.61.220	ALL STAFF LEGISLATORS & CANDIDATES	Payment of Legal Expenses; Special Expense Funds Penalty: Class A misdemeanor & civil sanctions
AS 24.61.230	ALL STAFF & LEGISLATORS	Improper Coercion
	sub. (b)(c)	Is an existing crime <u>Staff</u>: Class A misdemeanor <u>Legislators</u>: May be protected by legislative immunity during session. Civil sanctions apply to everyone.
AS 24.61.245	LEGISLATORS ONLY	Fund Raising Limitations APOC shall enforce. 15.13.120(a) plus civil sanctions.
AS 24.61.250	ALL STAFF & LEGISLATORS	General Obligation to Avoid Conflicts of Interest & Preserve Ability to Make Independent Impartial Judgements Penalty: None

AS 24.61.260	ALL STAFF & LEGISLATORS	Substantial Interest in Legislative Administrative, or Political Action Defined Penalty: None
AS 24.61.265	ALL STAFF & LEGISLATORS	Close Economic Association Defined Penalty: None
AS 24.61.280	ALL STAFF & LEGISLATORS	Dealing With Personal Relationship Conflicts of Interest Penalty: None
AS 24.61.290	SOME STAFF & LEGISLATORS	Restricted Relationships: Nepotism Penalty: Civil sanctions
AS 24.61.300	ALL STAFF & LEGISLATORS	Restricted Relationships: Lobbyists, Legislators, & Legislative Employees Penalty: Civil sanctions and other penalties under 24.45
AS 24.61.310	ALL STAFF & LEGISLATORS	Restricted Relationships: Board Membership Penalty: Civil sanctions
AS 24.61.320	ALL STAFF & LEGISLATORS	Restricted Financial Interests Penalty: Civil sanctions
AS 24.61.330	LEG. ASSISTANTS & LEGISLATORS	Restricted Activities as an Attorney or Representative Penalty: Civil sanctions & appropriate criminal penalties under another law.
AS 24.61.340	LEG. ASSISTANTS & LEGISLATORS	Restricted Transactions: Interest in State Contracts or Leases

		Possibly also an existing crime Penalty: Civil sanctions
AS 24.61.345	ALL STAFF & LEGISLATORS	Participation in General Statewide Programs Permissible Penalty: Civil sanctions & criminal penalties under another law.
AS 24.61.350	ALL STAFF & LEGISLATORS	Restricted Transactions: Gratuities Penalty: Civil sanctions
AS 24.61.360	ALL STAFF & LEGISLATORS	Restrictions on Earned Income: Outside Employment & Honoraria Penalty: Civil sanctions
AS 24.61.370	ALL STAFF & LEGISLATORS	Obligation to Make all Decisions on the Merits: Favoritism & Patronage Possibly a crime. Penalty: Civil sanctions
AS 24.61.380	ALL STAFF & LEGISLATORS	Improper Influence with the Independent Judgement of Others on Behalf of Constituents
	sub. (c)	Penalty: <u>Staff</u>: Class A misdemeanor <u>Legislators:</u> May be protected under legislative immunity during session. Civil sanctions apply to everyone
AS 24.61.390	LEG. ASSISTANTS & LEGISLATORS	Conflict of Interest Disclosure: Statement of Purpose
AS 24.61.400	LEG. ASSISTANTS & LEGISLATORS	Conflict of Interest Disclosure by Legislators & Legislative Assistants: Category A and Category B Income

AS 24.61.405	LEG. ASSISTANTS & LEGISLATORS	Reporting Category A Income
AS 24.61.410	LEG. ASSISTANTS & LEGISLATORS	Reporting Category B Income
AS 24. 61.415	LEG. ASSISTANTS & LEGISLATORS	Reporting Obligations of Employers and Others Paying Compensation to Legislators or Legislative Assistants
AS 24.61.420	LEG. ASSISTANTS & LEGISLATORS	Prohibited Conduct Relating to Disclosures Penalty: <u>Staff</u>: Class A misdemeanor <u>Legislators</u>: May be protected by legislative immunity during session. Civil sanctions apply to everyone
AS 24.61.430	ALL STAFF & LEGISLATORS	Accountability: Openness & Oversight Penalty: Administrative sanctions
AS 24.61.440	ALL STAFF & LEGISLATORS	Accountability: Self-Policing, Whistleblowing, & Protection of Whistleblowers Penalty: Civil sanctions
AS 24.61.450	ALL STAFF & LEGISLATORS	Duty Toward Colleagues & Subordinates Penalty: Liability under another criminal law or administrative sanctions & civil rights statutes
AS 24.61.460	ALL STAFF	Duty to Advance Principles of

	& LEGISLATORS	Representative Democracy Penalty: Administrative sanctions
AS 24.61.570	SUPERVISOR OR APPOINTING AUTHORITY	Recommendations & Order Where Violator is a Legislative Employee Failure to implement the commission's order is subject to civil sanctions
AS 24.61.960	ALL STAFF, LEGISLATORS, COMMISSION MEMBERS AND THEIR EMPLOYEES	Confidentiality Penalty: Subject to prosecution under 11.56.860 or another law, plus civil sanctions.

Senator Pourchot
May 2, 1990

INDEX TO CSSB 415 (JEC)

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Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

May 3, 1990

MEMORANDUM

TO: Senator Rick Uehling

ATTN: Carol Horos

FROM: Leola Weimer LWW
Legislative Analyst

RE: Ethics Codes: A Comparison
Research Request 90.317 (Supplemental Information)

On pages 27 and 28 of 90.317 the following definitions found in CSSB 415 (Leg. Ethics) were omitted:

> 24.61.990 (16) "legislative assistant" means a legislative employee whose assigned duties involve the exercise of substantial discretion and judgment; it does not include employees who perform purely clerical or ministerial functions; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;

> 24.61.990 (17) "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 members and staff of the commission; it does not include individuals who perform functions that are incidental to legislative functions, such as security messengers, maintenance, and print shop employees; for purposes of this paragraph, "regular or substantial" means work that is expected to involve, or does involve, at least 400 hours in a calendar year or 300 hours during a regular legislative session; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;

> 24.61.990 (20) "nonpublic information" means information that (A) is obtained in the course of a person's legislative duties and that is subject to public inspection under AS 09.25.110 - 09.25.120, but that, because of its nature, is not readily accessible to the public or the profession, occupation, or group to which the person belongs; and (B) if used or disclosed, a personal benefit or advantage is likely to result.

Alaska State Legislature

Legislative Research Agency

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May 2, 1990

MEMORANDUM

TO: Senator Rick Uehling

ATTN: Carol Horos

FROM: Leola Weimer LMW
Legislative Analyst

RE: **Ethics Codes: A Comparison**
Research Request 90.317

You asked for a comparison of governmental ethics codes in the United States. Specifically, you wanted to know the provisions in federal, state and various model ethics codes regarding 1) the composition and jurisdiction of ethics boards or commissions; 2) mandatory ethics education; 3) required disclosures of conflicts of interest; and 4) post-employment restrictions.

SUMMARY

The composition and jurisdiction of ethics boards and commissions vary from state to state. A five-member board that regulates either campaign finance or ethics codes is the most common. Alaska has three agencies that regulate ethics codes: the Alaska Public Offices Commission (APOC) for campaigns, financial disclosures and lobbyist registration; the Personnel Board for deciding matters regarding the Executive Branch Ethics Act; and the Select Committee on Legislative Ethics for matters concerning legislators and legislative staff. These agencies have five, three and nine members, respectively. CSSB 415 would create a Legislative Ethics Commission of nine members.

Education is a key element to an effective ethics code. Most states require ethics commissions to publish annual reports or handbooks on the state's ethics code. The requirement for mandatory ethics education is a relatively new development. Ethics codes for the City of Los Angeles and the State of California are the only two which require mandatory ethics education. Alaska Statutes require APOC to publish a manual on the state ethics codes. CSSB 415 would require mandatory ethics education for all legislators, employees and lobbyists. A five-member education advisor committee would administer the on-going education program.

The purpose of conflict-of-interest provisions is to prevent public officials and employees from abusing the power and status of their public office for personal gain. Financial disclosure is considered the "linchpin" of government

ethics laws. Financial disclosure requirements must be drafted carefully to provide a constitutional balance between the official's or employee's right to privacy and the public's right to know. Alaska Statutes require financial disclosures of legislative members, executive official employees, candidates and lobbyists. Some conflict-of-interest provisions in CSSB 415 are already covered in Alaska Statutes, many of the general proposals have precedence in other states or model codes, and some specific provisions have no precedence.

Twenty-nine states have statutes restricting the employment of government officials or employees after they leave their government posts. These "revolving-door" restrictions typically prohibit high-ranking public officials from lobbying their former agencies on matters in which they were personally and substantially involved. Other common provisions place permanent bans on disclosing confidential information and temporary bans on lobbying for a specific matter in which a high-ranking public official was personally or substantially involved. Such restrictions must be defined narrowly so as not to discourage highly qualified professionals from entering government service, infringe on the constitutional rights of present state officials, or prevent the flow of communication and understanding between the public and private sector. Alaska Statutes place a two-year, post-employment prohibition on executive branch public officers from lobbying, for compensation, their former agencies on matters which they participated in personally and substantially, and permanently bans all government employees from disclosing confidential information. CSSB 415 would prohibit legislators from lobbying, for compensation, the legislature or state agencies on specific matters over which the former legislator had special oversight or budget authority. "Legislative assistants" are subject to a one-year ban from lobbying before the legislature on any matter.

BACKGROUND

The first major ethics reform in the United States was spawned by the Watergate scandal of the early 1970s. At that time, relatively few states had comprehensive or effective ethics laws. Today, almost every state has enacted ethics laws that seek to prevent public officials from using their positions for private gain. Although public support for ethics reform has remained strong, only about a dozen states have something comprehensive enough to be called a state code of ethics.[1]

According to a recent *National Journal* article, "almost every state and major city in the U.S. has confronted a scandal among its public officials in the past

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[1]Jill M. Schultz, legislative analyst, "State Ethics Codes And Minnesota's Ethics Laws--A Comparison," Minnesota Senate Counsel and Research, February 1988, p. 1.

five years."[2] Publicity of these local scandals and national revelations about the Iran-Contra affair, the scandal at the U.S. Department of Housing & Urban Development, the collapse of the savings and loan industry, and lobbying activities of former White House officials, has spawned a renewed demand to revise and strengthen existing codes of ethics. Over 22 states are currently considering bills to reform their state ethics laws.[3]

Model ethics codes have been drafted by the Council on Governmental Ethics Laws (COGEL),[4] by the National Municipal League and by Common Cause. A review of federal ethics was completed by the President's Commission on Federal Ethics Law Reform in March 1989. Many of the commission's recommendations were enacted into law on November 30, 1989 through the passage of the *Ethics Reform Act of 1989* (PL 101-194). Wisconsin has long been considered the model to which other state ethics laws are compared. New York, California and the City of Los Angeles have recently passed ethics codes considered to the be most comprehensive.

COMPOSITION AND JURISDICTION OF ETHICS BOARDS AND COMMISSIONS

The composition and jurisdiction for ethics boards and commissions varies from state to state. Tables 1 - 3, attached, are summaries of the findings from a survey conducted by COGEL in 1989 of the fifty states, District of Columbia and federal government.[5] A more detailed description by state is found in Attachment A.

Fifty-seven percent of those surveyed have more than one agency which is responsible for regulating the conduct of public officials and employees. The ethics boards and commissions are most commonly (34 percent) composed of 5 members. Thirty-eight percent have separate campaign and ethics commissions, 29 percent have commissions which regulate campaigns only, 23 percent have boards which regulate both campaign finance and ethics codes, and the remaining 10 percent have a complex structure of boards some which regulate both campaigns and ethics and some which regulate only a specific aspect of campaigns or ethics.

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[2]"Grass-Roots Graft," *National Journal*, August 1, 1987, pp. 1962-1967.

[3]Schultz, *Op. cit.*

[4]COGEL is an affiliate of the Council of State Governments (CSG).

[5]Council on Governmental Ethics Laws, *Campaign Finance, Ethics & Lobby Law*, Special Edition, Blue Book 1988-89.

Model Ethics Codes

The Council On Governmental Ethics Laws (COGEL) *Model Laws* recommends the establishment of an independent authority consisting of five members appointed by the governor from a panel of ten individuals nominated by the chief justice (§ 206.01).[6] Meetings are held at the call of the chair or a majority of its members (§ 206.03). Members serve without compensation, but are afforded actual and necessary expenses incurred in the performance of duties (§ 206.06).

Common Cause (CC) *Model Ethics Law for State Government* recommends the establishment of an independent commission consisting of seven members; five of whom are appointed by the governor, one by the state secretary and one by the attorney general [Section II (1.1)].[7] A special caution was added in the commentary of the CC report to ensure that there "always be an odd number of commissioners, as well as some mechanism for ensuring timely action by the commission."[8] The commission is to meet at least once each month. The chair or any four members may call a meeting at any time provided that advance written notice is mailed to each member and public notice is made 72 hours prior to such meeting [Section II (1.7)]. Members are to be compensated for work preformed at a set rate and reimbursed for reasonable and necessary expenses [Section II (1.8)].

The National Municipal League (NML) *Model State Conflict of Interest and Financial Disclosure Law* recommends the establishment of a seven-member commission appointed by the governor with the concurrence of the Senate [Section 4 (a)].[9] There is no recommendation as to the frequency of commission meetings. Each member shall be compensated at a set rate for each day and reimbursed for reasonable and necessary expenses incurred in the performance of official duties [Section 4 (d)].

All three model codes extend the ethics commission's jurisdiction to elected or appointed officials and employees of state legislative, executive and judicial branches.

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[6]Council on Governmental Ethics Laws, *Model Laws*, second draft, Section 206.01 (hereafter cited as COGEL Model Laws).

[7]Common Cause, *A Model Ethics Law For State Government*, January 1989, Appendix, Text of Model State Ethics Law, p. 13 (hereafter cited as Common Cause, *Ethics Law*).

[8]*Ibid.*, p. 16.

[9]National Municipal League, *Model State Conflict of Interest & Financial Disclosure Law*, 1979, p. 5 (hereafter cited as NML, *Model Law*).

Alaska's Current Law

In Alaska, government ethics are regulated by the Alaska Public Offices Commission (APOC), the Alaska Executive Branch Ethics Act (AS 39.52) and the Select Committee on Legislative Ethics (AS 24.60.130).
APOC

The duties of the Alaska Public Offices Commission (APOC) are specified in AS 15.13. APOC is the agency in charge of regulating campaign finance, personal financial disclosure and lobbyist registration (AS 15.13.010 - .130). The commission has a total of five members, four of whom are appointed by the governor. The commission meets four times a year and received an annual budget of 572,500 for FY 88.

Executive Branch

Alaska Statute 39.52 establishes the Alaska Executive Branch Ethics Act. Article 4 describes the complaints and hearing procedures. Violations of the Executive Branch Ethics Act are reported to the attorney general. If a complaint is deemed warranted, the attorney general then conducts an investigation and presents the findings to a hearing officer. Within thirty days after the conclusion of the formal hearing, written conclusions are submitted to the Personnel Board who then determines if a violation has occurred and what action should be taken. The Personnel Board is composed of three members appointed by the governor and confirmed by the legislature (AS 39.25.060).

Legislative Branch

Alaska Statute 24.60.130 establishes a Select Committee on Legislative Ethics. The committee adopts procedures and publishes summaries of decisions and advisory opinions. They may also conduct investigations and make recommendations to the legislature. The committee consists of nine members: three senate members, three house members and three public members. The committee is divided into two subcommittees, one for the house and one for the senate; public members serving on both subcommittees.

Josephson's Proposal

Article 3 of CSSB 415 describes the composition and jurisdiction of the Legislative Ethics Commission.

Section 24.61.500 establishes an independent commission of nine members, of whom one member is appointed by the senate, one by the house, two by the supreme court, one by the governor, one by the lieutenant governor, one by APOC, and two by a majority vote of the seven appointed members. Section 24.61.504 requires that the commission meet at least once every three months and/or at the call of the chair or a majority of the commissioners. The fiscal note for CSSB 415 (JUD) is $1,244,000 for FY 91.

Section 24.61.504 (d) requires the commission to "develop and implement policies consistent with those employed by other state commissions for the reimbursement of travel costs and the payment of per diem under AS 39.20.180." Attachment B is a summary by state of salary and per diem expenses for existing ethics commissions and their annual budgets.

Section 24.61.510 lists the general powers and duties of the commission. The provisions outlined under this section are similar to those of model and existing state ethics codes.

A comparison of the composition of ethics commissions discussed above is as follows:

Source	Number of Members
COGEL survey of states (mode or 34 percent)	5
COGEL model laws	5
Common Cause model	7
National Municipal League	7
APOC	5
Alaska Personnel Board (Executive Branch)	3
Alaska Select Committee on Legislative Ethics	9
Josephson's Proposal CSSB 415 (5/1/90 draft)	9

ETHICS EDUCATION

Education is a key element to an effective ethics code. Most states require the ethics commission to publish annual reports or handbooks on the state ethics code. For example, Title 8, Section 803(i) of the Federal Ethics Reform Act of 1989 (PL 101-194--November 30, 1989) establishes an Office on Advice and Education which is responsible for a) providing information and guidance; b) submitting written interpretations of applicable laws, rules, regulations, or other standards upon request; c) recommending formal advisory opinions of general applicability; and d) carrying out periodic educational briefings for members, officers and employees on those laws, rules, regulations, or other standards of conduct applicable to them. In addition, executive branch agencies are responsible for training their employees concerning ethics requirements. To maintain uniformity among executive branch agencies, each must obtain approval of its annual plan for training and awareness activities from the Office of Government Ethics.[10]

Mandatory Ethics Education

The requirement for mandatory ethics education is a relatively new development. In 1989, Los Angeles was the first city to initiate a mandatory ethics education program. According to the final report and recommendations of the commission organized to draft an ethics code for the Los Angeles city government, "the central function of an ethics code is to prevent--rather than punish--unethical conduct. To achieve that goal, the Commission believes an educational and training program must accompany the new code."[11] Simply reading the rules or getting instruction on the filing of disclosure forms was deemed ineffective. Instead, mandatory ethics training courses and ongoing educational seminars are required for all current and newly elected and appointed officials, city employees, lobbyists, declared candidates and campaign treasurers.[12]

After over one and one half years of special committee hearings and deliberations, the California State Legislature passed a comprehensive political reform act on ethics in government (SB 1738) on April 26, 1990.[13] Upon enactment of this bill, a new section will be added to the Government Code. One section of this proposal will require mandatory ethics education. In addition to requiring legislators and designated employees to participate in ethics course at least once per biennial session, this bill also amends the Political Reform

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[10]President's Commission on Federal Ethics Law Reform, *To Serve With Honor*, Report and Recommendations to the President, March 9, 1989, p. 97.

[11]*Ethics and Excellence in Government*, Final Report and Recommendations of the Commission to Draft an Ethics Code for Los Angeles City Government, November 1989, p. 12 (hereafter cited as *Ethics and Excellence in Government*).

[12]*Ibid.*, p. 11 (Recommendation 7).

[13]Ethics reform in California is a three tier process. One of which includes the passage of SB 1738. There is also an initiative, proposition 112, to be voted on in the next election and a comprehensive reform of internal rules of both houses.

Act to require that lobbyists take the course at least once every two years.[14] Section 1.8956 states

(a) The appropriate legislative ethics committees shall conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct. The curriculum and presentation of the course shall be established by house rules.

(b) The committees shall conduct at least annually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the Fair Political Practices Commission. This course may be combined with the course described in subdivision (a).

(c) At least once in each biennial session, each Member of the Legislature and each designated employee of the Legislature shall attend one of these courses.

(d) The committees shall impose fees on lobbyists for attending the course described in subdivision (b). The fees shall be set at an amount that will enable the lobbyists' participation in the course to be funded from those fees to the fullest extent possible.

Model Ethics Codes

Section 208.12 of the COGEL model ethics law recommends that the ethics commission "(1) conduct research concerning state governmental ethics; and (2) implement the educational programs it considers necessary to effectuate this Act."

Chapter 2, Section 2.3 of the Common Cause model ethics law suggests including "a provision requiring the commission to notify all new employees and officials of provisions of conflict of interest law as it applies to them. The commission should publish working interpretations of the law, with examples, for specific branches of government, other agencies, or candidates, thereby 'spreading the word' among employees and officials and facilitating compliance."[15]

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[14]California State Legislature, Conference Committee on SB 1738, hearing April 4, 1990, p. 5.

[15]Common Cause, *Ethics Law*, p. 26.

Section 5 (c) of the National Municipal League model ethics code states

> The Commission shall, in addition to its other duties:
>
> (i) Prescribe forms for reports, statements, notices, and other documents required by law;
>
> (ii) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this law; and
>
> (iii) Provide assistance to agencies, officials and employees in administering the provisions of this law.[16]

Alaska Statutes

Alaska Statutes 15.13.030(2) requires the Alaska Public Offices Commission to:

> prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter.

Josephson's Proposal

Article 4 of CSSB 415 (Leg. Ethics) establishes a Legislative Ethics Education Program. A five-member Education Advisor Committee is responsible for implementing mandatory ethics orientation training courses for new legislators and employees each January; current issues and applications seminars required for all existing legislators and legislative employees in January of each odd-numbered year; and lobbyist training courses. There is no specification as to when lobbyist training courses must be offered, but lobbyists are required to repeat the training course at least once every three years.

CONFLICT-OF-INTEREST DISCLOSURE REQUIREMENTS

The purpose of conflict-of-interest provisions is to prevent public officials and employees from abusing the power and status of their public office for personal gain. A variety of conflict-of-interest prohibitions have been adopted

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[16]NML, *Model Law.*, p. 9.

in the United States. Financial disclosure, however, is considered the "linchpin" of any government ethics law.[17] In drafting precise and complete financial disclosure requirements, the official or employee's right to privacy must be weighed against the public's right to know. In general, conflict of interest provisions seek to

1. prohibit the acceptance of gifts and additional compensation,

2. prohibit the solicitation of things of value,

3. prohibit the use of confidential information for personal gain,

4. restrict an employee's or an official's appearances before his or her own agency or other agencies on personal or private business,

5. restrict an employee's or an official's outside business interests and employment, and official acts which would affect his or her financial interests, and

6. restrict an employee's or official's business contracts with the state.[18]

Attachment C is a description of personal disclosure statements by state. Conflict-of-interest disclosures are primarily a listing of financial interests. The disclosure of personal relationships beyond one's immediate family members and dependents is not currently required by any state.

Sample States

California and New York are two states commonly referred to as having model ethics codes. California has recently adopted a revised comprehensive ethics code covering executive, judicial and legislative branches. It provides a comprehensive list of conflict-of-interest restrictions. New York's Ethics In Government Act of 1987 (EIGA) is one of the most comprehensive standards of conduct and financial disclosure laws for elected officials. Extensive personal financial disclosures are required for legislators and key legislative employees.

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[17] *Ethics and Excellence in Government*, p. 15.

[18] Schultz, *op cit.*, p. 2.

California

California Political Reform Act on Ethics in Government bans honoraria, limits gifts to no more than $250 per single source per calendar year and makes various changes on gift limitations and the use of campaign funds. It also strengthens existing conflict of interest laws by imposing a fine of up to $2,000 per violation for legislators who attempt to use their official positions to influence a governmental decision in which they have a financial interest, including

1. any state governmental decision, other than an action or decision before the legislature, made in the course of his or her duties as a member;

2. approval, modification or cancellation of any contract to which either house or any committee of the legislature is a party;

3. introduction as a lead author of any legislation that the member knows or has reason to know is not general legislation;

4. any vote in a legislative committee or subcommittee on what the member knows or has reason to know is not general legislation;

5. any roll-call vote on the Senate or Assembly floor on an item which the member knows is not general legislation;

6. any action or decision before the legislature in which the member knows or has reason to know the action or decision will have a direct and substantial financial impact, different from the impact on the public generally, on a lobbyist or employer from whom the member has received earned income within the preceding 12 months; and

7. any action or decision before the legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any

> other action on behalf of that person, before any local board or agency.[19]

These provisions do not apply to a vote on the budget bill as a whole, on a consent calendar, motion for reconsideration, waiver of any legislative rule, or purely procedural matters.

New York

One of the major aspects of the New York Ethics in Government Act of 1987 was to provide for stricter personal financial disclosure requirements. Previously, legislative officials were only required to disclose a limited amount of personal financial information. Currently, an extensive financial disclosure form is required for all legislators and legislative staff who earned in excess of $53,171 from the legislature during 1990 or who hold "policy-making" positions. Employees who earn less than $53,171 or have "non-policy-making" positions are only required to fill out a limited disclosure form. Copies of both the long and short form are Attachment D. General code of ethics standards as they apply to legislative employees, members of the legislature and officers and employees of state agencies are also in Attachment D.

Federal Conflict of Interest Restrictions

The Ethics Reform Act of 1989 (PL 100-194) provides specific descriptions of the way in which individuals must report assets, income, financial transactions, liabilities, gifts and reimbursements. A review of existing ethics laws by the President's Commission on Federal Ethics Law Reform, however, warned that

> the use of unduly narrow categories for specifying asset value and income seems to the Commission to result in a needless burden on filers without providing particularly useful information to the public and also increases the risk that filers will make inadvertent mistakes. In the case of assets other than publicly traded securities, the precision of the required reporting may also necessitate the employee's incurring the cost of a professional appraisal.[20]

The commission recommended that disclosures be limited to a minimum number of asset value and income categories as may be needed to provide useful information. The commission also recommended that financial disclosure

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[19]California State Legislature, Conference Committee on SB 1738, hearing April 4, 1990, p. 6.

[20]President's Commission, *op cit.*, p. 81.

requirements for political appointees and high-level policy makers be extended to include home mortgages and loans from relatives. The commission warned, however, that these requirements should not be extended to "career employees." The commission explained that they were "reluctant to increase reporting burdens on those who have become accustomed to the existing requirements, and there has been no indication that indebtedness among career employees is a significant source of conflict problems."[21]

Model Ethics Codes

COGEL

The COGEL model ethics laws suggest that statutes include both general conflict-of-interest clauses and specific requirements for personal financial disclosure.

Recommended conflict-of-interest sections center around preventing the use of a public position to obtain private benefits for oneself or an immediate family member. This includes appearing as an advocate or representing former clients before state or local entities (except in purely ministerial matters), in a personal capacity for immediate family, or for a government entity that is the public official's or employee's principal employer (Section 230). Acceptance of gifts, honoraria, contracts and outside employment are also regulated (Sections 232, 234, 236 and 238). In the case of accepting anything of value for the promise to perform certain duties and responsibilities, conflict-of-interest restrictions are extended to include business associates (Section 218). Likewise in the case of "using one's public position to obtain benefits for business or social acquaintances," restrictions are extended to persons "with whom the public official or employee has a personal, financial, or other non-business relationship has an economic interest in the particular matter, or may receive an unwarranted privilege as a result of the official or employee's participation" (Section 220). Copies of the relevant sections are found in Attachment E.

The accompanying commentary stresses the need to make clear distinctions "between the proper and improper use of title and prestige of office" and stresses that prohibitions be extended "regardless of whether the public official or employee receives any pecuniary benefit."[22]

Special attention should also be paid to serious constitutional questions as to how these restrictions may effect the right to free speech. COGEL recognizes that many of these sections will "be difficult to police and will have to be

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[21]Ibid., p. 82.

[22]COGEL, *Model Laws*, p. 23.

enforced on a subjective, rather than objective, basis."[23] Endorsement of political parties and candidates for public office is recognized as a constitutionally protected right. Restrictions on endorsements should "serve to temper these endorsements by playing down the public servant's government affiliation and emphasizing instead the individual."[24] For example, a campaign advertisement should not say "endorsed by the Governor of Alaska," or "endorsed by Governor Cowper," but rather that the candidate was "endorsed by Steve Cowper."
With regards to financial disclosures, COGEL suggests that public officials, public employees earning $35,000 or more and consultants disclose their own financial and economic interests and those of their immediate family members. Ten category amounts are specified ranging from less than $1,000 to over $100,000 (Section 246, Attachment E). Exceptions are specified and disclosure of the following financial information is not required:

(1) spouses living separate and apart from the public official or public employee;

(2) a former spouse;

(3) a seasonal or special occasion gift exchanged between family members or family friends;

(4) a campaign contribution (eliminates duplication of campaign finance law disclosure requirements);

(5) a gift of a nonpecuniary occasional nature that is not substantial in value;

(6) an award presented at a public ceremony in recognition of the civic, governmental, cultural, charitable, or religious activities of a public official, public employee, or immediate family member; and

(7) income received by a dependent child from a trust established for that child by a family member.

Common Cause

In September 1989, Common Cause published a special report entitled *Conflict of Interest Legislation in the States*. In the review of the ethics codes in each of the fifty states, they found that "a sound conflict-of-interest statute is

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[23] *Ibid.*, p. 24.

[24] *Ibid.*

vital to comprehensive reform."[25] Four key elements were identified as essential components of an effective statute:

(1) personal financial disclosure requirements;

(2) prohibitions on abuse of public office for personal financial gain;

(3) prohibitions on conflicts of interest and standards of conduct to prevent and avoid them; and

(4) the establishment of an independent, nonpartisan commission to administer the law with investigatory and civil enforcement powers.[26]

In considering the specific scope of personal disclosure statements, special attention must be paid to the constitutional question of balancing "the public's right to know versus the public official's right to privacy."[27] Virtually all state courts have upheld the constitutionality of financial disclosure. Most state courts have reached conclusions similar to those of the Supreme Court of Washington decision in the case of *Fritz v. Gorton*, 517 P.2d 911, 925 (1974). In this case, the court held

> The right of the electorate to know most certainly is no less fundamental than the right of privacy. When the right of the people to be informed does not intrude upon intimate personal matters which are unrelated to fitness for public office, the candidate or officeholder may not complain that his own privacy is paramount to the interests of the people.[28]

Section 5 of the Common Cause model ethics law outlines a proposal for financial disclosure guidelines that take into account this delicate balance between the public's right to know and a public official's right to privacy. The complete text of this model ethics code is found in Attachment F. The Common Cause proposal suggests that "all candidates for public office, high-level officials, and their spouses and dependent children must disclose their financial interests

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[25]Common Cause, *Conflict of Interest Legislation in the States*, September 1989, p. 6.

[26]*Ibid.*, pp. 6-7.

[27]*Ibid.*, p.10.

[28]*Ibid.*

according to a system of category amounts."[29] It explains that this type of disclosure has become "an accepted foundation of sound ethics laws across the country" and cites statutes in which "the legislators of forty states and the state-wide elected officials of thirty-six states currently must disclose their personal financial interests."[30] In evaluating the personal disclosure requirements of these various states, Common Cause warns that "simply requiring candidates, officials and employees to file financial disclosure reports is not enough. To be effective, financial disclosure must be public."[31]

National Municipal League

Sections 11 through 20 of the NML model code regulate conflicts of interest and Sections 9 and 10 deal with financial disclosures. A complete text of this proposal is found in Attachment G. The stated purpose for specified conflict-of-interest provisions is to "prevent public officials and employees from gaining financial profit from their official actions (other than government salaries), or from helping family or friends to profit unfairly because of inside information or preferential treatment."[32] The purpose of financial disclosure laws is "to make available sufficient relevant information to allow citizens to judge whether officials are acting in the public interest or tending too much to favor personal interests."[33]

Commentary of the NML report explains that "having a conflict of interest is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic, cultural, emotional, nostalgic, regional, financial or philosophical." Likewise, "it is not the purpose of financial disclosure laws to give the public a chance to pry into every private detail of an official's life, right down to valuations on jewelry, silver, antiques and art."[34]

The definition section of the model code extends conflict-of-interest and financial disclosure requirements beyond one's immediate family [Section 3 (e)]. The term "member of household" is used and defined as

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[29]Common Cause, *Ethics Law*, p. 40.

[30]*Ibid.*, pp. 8 and 40.

[31]*Ibid.*, p. 9.

[32]NML, *op cit.*, p. x.

[33]*Ibid.*

[34]*Ibid.*

(i) a person who is another person's spouse, child, ward, parent or other relative, or the child, ward, parent or other relative of such person's spouse, and who shares such other person's legal residence; or

(ii) a person who is another person's spouse, child, ward, parent or other relative of such person's spouse, and over whose financial affairs and holdings such other person has legal or actual control, whether or not they share a legal residence.

This definition includes "individuals whose financial affairs are likely to be best know to the official and who, because of ties of blood or affection the official is most likely to want to benefit financially."[35]

Whereas conflict of interest provisions apply to all state officials and employees, financial disclosure requirements apply only to state officials. A state official is defined as

> an elected office holder in the legislative and executive branches of state government, or a member of any state board, commission, agency, bureau, department or any other part of state government who is appointed by any elected state official or by the legislature, except a member of the judiciary . . . [or] a member of any commission which is solely advisory in nature and which has no authority to make binding decisions, to enter into contracts or to make expenditures. . .[36]

State employee is defined to include

> all persons who, by reason of their work for the government, gain contacts and inside knowledge which, because of their position, may be abused or used in a manner to benefit themselves or others. The definition includes not only persons who stand in formal employment relationship, but also persons who may be regarded as independent contractors.[37]

The rationale for limiting financial disclosures to only state officials is based on the premise that "over-inclusiveness may become burdensome to the Commission in that the mass of filing may obscure violations rather than reveal

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[35] *Ibid.*, p. 3.

[36] *Ibid.*, Section 3 (g), p. 4.

[37] *Ibid.*, Section 3 (f), commentary.

them."[38] States, however, are "urged to consider including some state employees in disclosure requirements. . . [but] to limit inclusion to employees who are actually in a position to benefit from their own interests."[39]

Alaska Statutes

Legislative standards of conduct are detailed in AS 24.60. Conflicts of interest are specified in AS 24.60.030 (attachment H). A conflict of interest generally exists when a public office is used for private advancement or gain. If a conflict of interest arises, AS 24.60.110 requires a legislator to either

(1) resign the conflicting position;

(2) divest the interest that has resulted in the conflict or potential conflict; or

(3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session but disclosure does not remove the conflict of interest (§ 1 ch 36 SLA 1984; am § 8 ch 113 SLA 1986).

The Alaska Executive Branch Ethics Act (AS 39.52) regulates public officers and employees in the executive branch. As it relates to this section, a public official is defined in AS 39.50.200(8) as

> a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer.

Financial disclosure requirements are covered under AS 39.50. Within 30 days of taking office as a public official or declaration of candidacy, public officials and candidates for public office are required to file statements with

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[38] *Ibid.*, p. 15.

[39] *Ibid.*

the Alaska Public Offices Commission giving income sources and business interests. All financial disclosure statements filed under this chapter are public records.[40]

Josephson's Proposal

Conflict-of-interest and personal disclosure requirements are covered in Article 2 of the proposed CSSB 415 (Leg. Ethics). According to a review of this proposal by John Gaguine, counsel for the Legislative Affairs agency, conduct described in the following sections is already covered under Title 11 (criminal penalties) of the Alaska Statutes:

24.61.110. Improper benefit from performance of public duties.

24.61.130. Misuse of state property and resources for private gain or personal advantage.

24.61.140. Misuse of state property and resources for political purposes.

24.61.180. Misuse of title of prestige of office for private gain or personal advantage.

24.61.230. Improper coercion.

24.61.340. Restricted transactions: interest in state contracts or leases.

24.61.345. Participation in general statewide programs permissible.

24.61.350. Restricted transactions: gratuities.

24.61.380. Improper influence with the independent judgement of others on behalf of constituents.

24.61.450. Duty toward colleagues and subordinates.[41]

Many of Josephson's general proposals that are not already covered by Alaska Statutes, have a precedence in other states or model ethics codes. Some of the

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[40]AS 39,50.020, Alaska Statutes Supplement, pp. 41-42.

[41]John B. Gaguine, legislative counsel, Legislative Affairs Agency, State of Alaska, Memorandum to Senator Pat Pourchot, chair, Joint Committee on the Legislative Ethics Act, April 30, 1990, pp. 2-3.

specific provisions regarding definitions of scope and responsibility, however, are apparently unprecedented.

POST-EMPLOYMENT RESTRICTIONS

Twenty-nine states have statutes restricting post-employment of government officials or employees. Attachment I is a listing of these and other substantive restraints by state. Three provisions are commonly found in post-employment or "revolving door" statutes:

(1) a former employee or official is banned from making an appearance before his or her former agency, usually for one year;

(2) a former employee or official is prohibited from becoming involved in matters in which he or she participated personally and substantially as a state employee, sometimes permanently and sometimes for one year; and

(3) a former employee or official is permanently prohibited from disclosing or using confidential information for personal gain, which he or she obtained as an employee.[42]

Legislative Branch Restrictions

The same employees and public officials that are covered under conflict-of-interest provisions are not necessarily the same as those covered by post-employment restrictions. For example, the code of ethics for Connecticut and Wisconsin apply conflict-of-interest restrictions on legislative branch public officials and employees but exempts them from post-employment restrictions. Similarly, the State of California considered including legislative employees in the revised ethics codes dealing with post-employment but decided to exempt them because "they are 'at will' employees and therefore not afforded the same protection as executive branch employees."[43]

Ethics codes that do include legislative branch officials and employees typically apply post-employment restrictions only to "top full-time decision makers" or "senior employees." Ethics codes for the city of Los Angeles and the federal government are two such examples.

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[42]Schultz, *op cit.*, p. 4.

[43]Charlene Simmons, chief staffer, Senate Select Committee on Ethics, telephone conversation April 23, 1990, TEL: (916) 324-8234.

Los Angeles, California

The intent of the Los Angeles ethics codes regarding post-employment restrictions is "to impose limits on the unfair advantages which may come with switching sides. It is not to discourage talented people from entering government, or to penalize them when they leave."[44] The Los Angeles code of ethics places both permanent and temporary restrictions on the post-employment of city officials and employees.

A permanent ban on lobbying and advocacy is placed upon all former city employees with regard to particular matters in which they were personally and substantially involved. "Personal and substantial involvement" includes "involvement through decision, approval, disapproval, recommendation, the rendering of advice, or investigation."[45] The ban only applies for as long as the matter does. The commission extended the ban to include self-representation in order "to preclude the possibility that by acquiring a small equity interest, a former employee can evade the revolving door restrictions."[46]

Temporary post-employment restrictions place a one-year ban on lobbying any city department by all elected officials and top, full-time decision-makers upon leaving city government. "Top full-time decision-makers" are defined as "those men and women whose influence and power is pervasive, such as the Deputy Mayor and the Chief Administrator."[47] The commission recognized that only elected officials and top decision-makers have citywide influence. "Lower-level decision-makers" therefore were not included in the general ban but are subject to a one-year ban on lobbying their own department. All officials and employees are also forbidden to negotiate for employment with individuals or companies that have particular matters in front of them.

Federal Government

Title One of the *Ethics Reform Act of 1989* (PL 101-194) establishes post-employment restrictions on the executive and legislative branches. Table 4 is a summary of federal post-employment restrictions as they apply to legislative members and staff (18 USC § 207). The purpose of post-employment restrictions is to prevent former members and employees from abusing their influence and

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[44] *Ethics & Excellence in Government*, p. 39.

[45] *Ibid.*, p. 40.

[46] *Ibid.*

[47] *Ibid.*, p. iii.

knowledge of confidential information to protect the public confidence in the integrity and process of government.[48]

The President's Commission on Federal Ethics Law Reform warned that the definition and scope of post-employment restrictions need to be clear, identifiable and specific if they are to be constitutionally sound and not act as a deterrent to qualified persons from entering or remaining in government service. In explaining their proposals for post-government restrictions, the commission added that,

> We cannot over-emphasize the care that must be exercised in drafting such a prohibition. A vague or overbroad restriction might impermissibly chill the exercise of First Amendment rights. The intent of the prohibition is protection, not repression.[49]

Post-employment restrictions are limited to members and "Senior Employees" (employees paid at or above the GS 17 rate, $78,200 for 1990). The commission considered extending post-employment restrictions to persons paid at the GS 16 rate or above but rejected this idea because it would be "highly detrimental to the efforts of the government to attract able personnel. Indeed, it could cause an immediate exodus of current employees."[50] Commission records show that

> Employees at that level have neither the status nor the political clout to improperly trade on their government service. Their inclusion in the law can only chill employment options and discourage qualified people from seeking government service.[51]

Particular concern over the ability to attract individuals with scientific or technological skills was also noted. In particular, overly broad restrictions against aiding or advising were viewed with extreme caution because of the potential for prohibiting the healthy attributes of the so-called "revolving door."

> With regard to the release of sensitive information, we have noted that the exchange of information between the government and private sectors can be, and often is, advantageous to both sides. In particular, a former employee's understanding of how an agency works on a day-to-day basis can be a valuable tool for the private sector employer who desires to do business with the government.

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[48]President's Commission, *op cit.*, p. 63.

[49]*Ibid.*, p. 64.

[50]*Ibid.*, p. 59.

[51]*Ibid.*

> Concomitantly, this knowledge saves government resources that would otherwise be necessary to assist the individual or firm in working through the government bureaucracy. The adoption of a general prohibition against aiding or advising would virtually eliminate all communications, including those that would be helpful to both the government and private employer. As such, we concluded that the addition of a general bar on aiding and advising would not be appropriate.[52]

The commission also noted that

> the flow of individuals between private life and occasional government service is a source of invigoration to both sectors, and provides a valuable exchange of information about the workings of government which improves the understanding of each sector about the other. Our system of government in a sense mandates a substantial amount of "revolving door" activity every four or eight years.[53]

Model Ethics Codes

COGEL

Section 240 of the COGEL Model Laws details the post-employment restrictions of former officers and employees. A copy of these provisions are found in Attachment E. In general, they prevent an officer or employee of state government from negotiating for employment, assisting or representing a non-governmental entity with whom they "participated personally and substantially as a member, officer, or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while employed or serving."[54] These post-employment restrictions apply to former members of the state legislature and "senior staff." Senior legislative staff are those persons employed as a staff director for a member, committee or the leadership. Their level of responsibility and decision-making authority is thought to be at least equivalent to deputy directors or division chiefs of departments and agencies.[55]

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[52]*Ibid.*, p. 67.

[53]*Ibid.*, p. 53.

[54]COGEL, *Model Laws*, p. 44 (Section 240).

[55]*Ibid.*, p. 45 [Section 240.01 (f)].

Common Cause

Chapter 4, Section 8 of the CC Model Ethics Law outlines a three-tiered system of post-employment restrictions (Attachment F).

The first level permanently bans former officials and employees from representing nongovernmental interests before their former agencies of employment in specific matters in which the former official was personally and substantially involved. Legislators are exempted from this section since the matters they consider rarely involve specific parties.

The second level places a two- or three- year ban on former state officials from representing, aiding or advising nongovernment interests before their former agency on particular matters involving specific parties for which they were more generally responsible.

Legislators are exempted from first- and second-level restrictions because their "broad responsibilities do not lend themselves to restrictions on particular matters involving specific parties."[56]

The third level of post-government restrictions ban, for one year, "top-level" officials, including legislators, from lobbying any state agency on any matter after leaving public service. "Second-tier" officials are also subject to a one-year lobbying ban, but they are prohibited only from lobbying the agency of their former employment. Top-level officials in the legislative branch include elected officials and "the high-level aides supporting them." Second-tier officials are defined as

> (1) the head of each division, bureau, or other major administrative unit within such state agency and persons exercising similar authority;
>
> (2) any person whose salary equals or exceeds that of the state employee classified in state statute and who reports directly to said executive or administrative head; or
>
> (3) any other persons occupying positions involving a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or the execution of other public

[56]Common Cause, *Ethics Law*, p. 15.

> trusts, including appointees to boards and commissions, so determined by a majority of the ethics commission.[57]

Employees who do not fit under either category are not restricted in their post-employment activities.

The intent of these "revolving door" restrictions is "to prevent former state employees and officials from using their past friendships and associations within government to derive unfair advantage for themselves or others."[58] Restrictions apply only when a person leaves government service for private sector employment.

National Municipal League

Section 20 of the NML model state ethics law places a two-year post-employment restriction on state officials and employees from assisting or appearing on behalf of any other person or business in connection with any transaction that they had previously had any direct connection. This restriction is also extended to "any business or person associated with such business in which the former state official or state employee is a partner or member or in a professional corporation, a shareholder."[59] The two-year restriction begins after the end of a term of office or termination of one's state service.

The accompanying commentary warns that the range of prohibitions should be defined narrowly so as not to discourage highly qualified professionals from entering government service by limiting their future employment opportunities, or infringing on the constitutional rights of present state officials and employees. The NML example seeks to "resolve these competing considerations by drawing a balance which results in reasonable limits."[60] The text of this section is found in Attachment G.

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[57]*Ibid.*, Chapter I, Sections 12.5, 12.6 and 12.7, Appendix p. 5.

[58]*Ibid.*, pp. 37-38.

[59]NML, *Model Law*, p. 33-34.

[60]*Ibid.*

Alaska Post-Employment Restrictions

Executive Branch

Two specific provisions of the Alaska Executive Branch Ethics Act (AS 39.52) restrict the actions of executive branch employees after leaving government service. One provision places a two-year, post-employment prohibition on public officers from lobbying, for compensation, their former agencies on matters that they participated in personally and substantially. AS 39.52.180 (a) states that

> A public officer who leaves state service may not, for two years after leaving state service represent, advise or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action.

Another statute prohibits former public officers from disclosing confidential information. AS 39,52.140 states that

> (a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.
>
> (b) A current or former public officer may not disclose or use, with out appropriate authorization, information acquired in the course of official duties that is confidential by law. (§ 1 ch 87 SLA 1986)

In both of these statutes, the specific term "public officer" is used instead of the term "public employee." AS 39.52.960 (21) defines public officer as "(A) a public employee; and (B) a member of a board or commission." AS 39.52.960 (20) defines public employee as "a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service."

Legislative Branch

Post-employment restrictions on legislators and legislative employees are not specifically defined in Title 24 (Legislature) of the Alaska Statutes. Title 11 (Criminal Law) provisions prohibiting the misuse of confidential information do, however, apply to former legislators and legislative employees. AS 11.56.860 states

(a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Josephson's Proposed Post-Employment Restrictions

Post-Employment Lobbying

Section 24.61.190 of CSSB 415 (Leg. Ethics) proposes a one-year, post-employment prohibition on lobbying for both legislators and legislative assistants. Restrictions for legislators extend to lobbying before legislative and executive branches but is limited to matters which the former legislator had special oversight or budget authority. Legislative assistants, on the other hand, are prohibited only from lobbying before the legislature but the scope includes all matters regardless of whether or not a legislative assistant had any special oversight or authority while employed by the legislature.

The term "legislative assistant" is not defined in Alaska Statutes or the proposed CSSB 415 (Leg. Ethics). The Judiciary Letter of Intent for CSSB 415 (Jud), as published in Senate Journal Supplement No. 22 on April 17, 1990, p. 2 provides guidelines for constructing a definition for legislative assistant. Based on the premise that "many legislative employees expend state funds and have access to confidential information," the Letter of Intent seeks to distinguish a special category of legislative employees referred to as "legislative assistants" who "exercise, or are perceived to exercise, discretion and judgement with respect to legislative, administrative or political actions."[61]

Post-Employment Disclosure of Nonpublic Information

Section 24.61.170 regulates the use of nonpublic information for private gain for both present and former legislators and legislative employees. A one-year prohibition is applied to former legislators and legislative employees. The end of the proscribed one-year prohibition, however, does not allow the disclosure of information made confidential by law.

The term "non-public information" is not defined by Alaska Statutes or the proposed CSSB 415 (Leg. Ethics). Current Alaska Statutes make a distinction between public and confidential information but do not provide a reference for defining nonpublic information. The Letter of Intent for CSSB 415 (Jud) suggests a definition of nonpublic information that includes

> valuable information not available to the general public which was acquired by the legislator or legislative employee by virtue of public position. For example, "inside information" about state plans or negotiating strategies, information revealed to legislative committees with the expectation that it be only used for official purposes, financial data, computer data and lists obtained during legislative service . . .[62]

I hope this information is useful to you. If you have any questions or would like additional information, please contact this agency.

Attachments

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[61]Judiciary Letter of Intent Alaska Legislative Ethics Act of 1990 Guidelines and Commentary to CSSB 415 (Judiciary), Senate Journal Supplement No. 22, April 17, 1990, p. 2.

[62]*Ibid.*, p. 15.

TABLE 1
NUMBER OF AGENCIES THAT ADMINISTER ETHICS LAWS
in the 50 States, Federal Government & District of Columbia
(Summary)*

Number of Agencies Within Each State	% of Total
1	40
2	30
3	25
5	2

Source: Council on Governmental Ethic Laws/
Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317a)

TABLE 2
MEMBERSHIP OF AGENCIES THAT ADMINISTER ETHICS LAWS in the 50 States, Federal Government & District of Columbia (Summary)*

Number of Members	% of Total
3	10
4	5
5	34
6	15
7	15
8	8
9	5
11	1.6
12	1.6
15	1.6
18	1.6
28	1.6

Source: Council on Governmental Ethic Laws/
Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317b)

TABLE 3
JURISDICTION OF AGENCIES THAT ADMINISTER ETHICS LAWS
in the 50 States, Federal Government & District of Columbia
(Summary)*

Jurisdiction	% of Total
Campaign only	29
Campaign & Ethics--Separate	38
Campaign & Ethics-Combined	23
Multiple Agencies with Partial Jurisdiction*	10

*Some states have agencies which regulate both campaigns and ethics as well as some which regulate only a specific aspect of either campaigns or ethics.

Source: Council on Governmental Ethics Laws/ Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317c).

TABLE 4

Post Employment Restrictions in 18 USC 207(e)

Members	1 year ban on "lobbying" the legislative branch
Employees paid at or above the GS 17 rate for 60 days who serve on:	
Personal Staff	1 year ban on "lobbying" personal staff or the Member
Committee	1 year ban on lobbying Members and employees who are currently on the Committee and Members who were on Committee within one year prior to the employee's termination
Leadership Staff	1 year ban on lobbying any Member or employee of the majority or minority leadership
Other Legislative Offices	1 year ban on lobbying the legislative office which they left
ALL Members, Officers, and Employees paid at or above the GS 17 rate	1 year ban on representing a foreign entity before the U.S. government and aiding or advising a foreign entity with the intent to influence the U.S. Government
All Members, Officers and Employees, who personally and substantially participate in trade or treaty negotiations	1 year ban on using confidential information to aid or assist anyone regarding that continuing negotiation

5/3/90 pm
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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM May 3, 1990

SUBJECT: Susan Burke's constitutional questions re CSSB 415 (Leg. Ethics)

TO: Senator Pat Pourchot

FROM: John B. Gaguine JBG/mo
Legislative Counsel

You have asked me for my opinions on the constitutional questions raised by Susan Burke in her testimony this morning on the ethics bill. Here is a brief response.

1. Separation of powers regarding appointment of members. Tam Cook of this office sent you a memorandum on this exact subject recently, in which she concluded that the provisions of the ethics bill on appointment of members to the ethics commission did not raise separation-of-powers problems. I am enclosing a copy of that memorandum, with which I am in agreement. I believe that the court decisions to which Ms. Burke referred are those relating to giving executive functions to legislative employees, such as the U.S. Supreme Court decision that invalidated the Gramm-Rudman provision giving the Comptroller General (a Congressional employee) the power to trigger the automatic budget cuts.

2. Sanctions against former legislators and employees. I agree with Ms. Burke that the Legislative Ethics Commission probably is without power to impose sanction on former legislative employees, and that the legislature also probably lacks the power to impose sanctions against former legislators. However, I believe that the legislature, as part of its broad investigatory powers, could at least look into a complaint, and could issue a report on the complaint, even if it could not impose sanctions. I must express two caveats, however. First, under numerous decisions of the U.S. Supreme Court, the investigation has to in some way give rise to the possibility of a legislative enactment or be properly related to the legislature's oversight functions;

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ALASKA LEGISLATIVE ETHICS ACT OF 1990
Guidelines and Commentary
(CSSB 415 (Leg. Ethics), 5/2/90)

Article 1. Legislative Findings and Ethical Principles

GENERAL

1. Structure. This Alaska Legislative Ethics Act (ALEA) has three major components:

(a) Ethical Principles and Standards of Conduct -- a comprehensive declaration of the ethical principles inherent in legislative activities along with specific standards of conduct and rules of disclosure expressed in the form of legislative rules, civil laws and criminal offenses which make these obligations binding and enforceable; provisions and interpretative directives in these guidelines and commentary are an intrinsic part of this law.

(b) Legislative Ethics Commission -- an independent public commission is established to implement the Legislative Ethics Act.

(c) Continuous Mandatory Educational Program -- creates a mandatory ongoing educational program for legislators, legislative staff and lobbyists to assure that the legal requirements and ethical expectations embodied in it, as well as the principles and values that underlie them, are known and understood.

2. Types of Provisions. The Statement of Ethical Principles, Standards of Conduct & Guidelines contain three types of provisions:

(a) Legislative Rules and Directives -- the overarching principles and some specific provisions establish internal rules and directives for behavior, the violation of which may subject the violator to administrative sanctions imposed by the legislature through the processes established. They do not provide the basis for a separate civil or criminal charge.

(b) Civil Laws -- some provisions establish legal obligations that give rise to civil liability and court-ordered sanctions. Such actions may be brought by the attorney general's office or by a private citizen.

(c) Criminal Offenses -- some provisions establish criminal offenses enforceable as other criminal laws in the Alaska courts.

3. Strict Compliance is Expected. As codified in AS 24.61.920, legislators and legislative employees in civil and administrative actions will be held strictly to the provisions and spirit of the principles and standards of this act as explained and amplified in the guidelines and commentary. Except in extraordinary circumstances, persons will not be permitted to assert a lack of knowledge or understanding as a defense to a charge of misconduct.

(a) Obligation to Know Duties. While some of the provisions of this code are detailed and complex, it is essential that each legislator, legislative employee and lobbyist accept and fulfill a personal obligation to know and understand its requirements. Extensive educational and training opportunities are provided through the legislative ethics commission to assist them. It is not only unseemly, it is publicly unacceptable when those who are intimately involved in the lawmaking process claim ignorance of the law or assert that violations were mere "technicalities" or mistakes.

(b) Extraordinary Circumstances. The presumption that those covered by this code know and understand its provisions is a strong one but it may be rebutted in exceptional circumstances where the person charged demonstrates that it would be unreasonable to hold him or her to strict knowledge. For example, changes in the law, errors in officially published educational materials or other special circumstances may justify a defense based on a mistake or asserted ignorance of law.

4. Application Depends on Duties Rather Than Salary Status. Most of the provisions of this chapter apply to all employees involved in some substantive way with the legislative process,

regardless of salary or duties (see definitions at AS 24.61.990 (13), (14)). The time of public employees is a state resource which should only be used for proper public purposes. Moreover, many legislative employees expend state funds and have access to confidential information. The most serious restrictions and disclosure requirements, however, only apply to legislative employees who exercise, or are perceived to exercise, discretion and judgment with respect to legislative, administrative or political actions. These individuals are referred to as legislative assistants. The purposes of the chapter should not be circumvented by legalistic arrangements which change the category of a person who otherwise would, and should, be subject to its provisions. Thus, the controlling factors are related to the function employees or agents perform and the amount of discretionary authority they possess, rather than their salary or technical status as full-time or part-time employee, independent contractor or consultant.

STATEMENT OF PRINCIPLES

AS 24.61.020. PREAMBLE. The eight principles stated in AS 24.61.025 -- AS 24.61.060 articulate the theoretical and moral foundation for the standards of conduct. They represent the spirit of the Legislative Ethics Act. They set forth a positive dimension of the ethical obligations of public service in order to make clear that the objective of these rules and regulations is to raise the issue of government ethics to a higher plane. The overarching principles are an integral part of each provision of the standards of conduct and they infuse individual rules with ethical purpose in a way that precludes narrow legalistic approaches leading to the conclusion that if an act is technically legal it is ethical, or that it is proper if it is not clearly prohibited. They direct legislators, legislative employees and lobbyists to follow the ethical high road, not simply to avoid punishment but to advance the grand, noble and important principles of democracy and public service.

AS 24.61.025. PRINCIPLE OF GOOD FAITH. The goals of the Legislative Ethics Act cannot be attained unless its provisions are construed and enforced in good faith. The standards of conduct, like other written regulations, are vulnerable to an endless array of evasion strategies. Unduly narrow or legalistic constructions of specific provisions, strained and insincere interpretation of facts and willful blindness to the real motives behind an act undermine the clear purpose of an ethics code and denigrate the spirit this Act. Under the principle of good faith, deliberate bad faith circumvention of these standards is itself a violation of the ethical obligations of public service and may be the basis for administrative sanction.

AS 24.61.030. PRINCIPLE OF NONPARTISANSHIP. If these standards are to rise above politics, they must be applied objectively, on the merits, without regard to party, regional or ideological partisanship.

(a) Highest Duty. The highest duty of legislators and legislative employees is to uphold the integrity of the legislature, regardless of narrow political considerations. Though partisan politics based on party, region and ideology are an integral and often constructive part of the American political structure, it is essential that the ethical responsibilities arising from these standards of conduct -- including consideration of a complaint, imposition of sanctions, appointment of members of the Legislative Ethics commission and appropriation of the commission's budget -- be unfailingly treated as nonpartisan, public interest issues of great importance.

(b) Playing Politics With Ethics. The ethical quality of democracy and the integrity and stature of the legislature are inherently nonpartisan issues. Playing politics with ethics issues creates two very significant harms. First, it undermines the effectiveness and moral authority of the ethical rules themselves. Second, the elevation of politics over ethics is invariably perceived by the public and the press in a way that dramatically increases public cynicism and disrespect for the legislature -- the very things these standards are designed to prevent. Thus, it is a violation of this provision for a legislator or a legislative employee to bring an ethics complaint for political reasons or to seek to influence any action under this chapter based on an appeal to political partisanship.

(c) Need for Long Term Perspective. Unfortunately, it is often difficult to maintain a nonpolitical, nonpartisan perspective in the context of competitive politics. The disposition of ethics-based charges may have profound political implications, not only on the careers of the persons directly involved, but often for political parties and other individuals vying for power. Ethics issues are often raised for political motives and it takes great restraint and a powerful long term public perspective to separate the motives of a charge from the merits of it. While the political dimension of legislative actions regarding matters of ethics may never be entirely removed, with discipline and commitment to principle, it can be consciously subordinated to a broader view of the legislator's role and of the public interest.

AS 24.61.035. PRINCIPLES OF PUBLIC TRUST. There are two separate dimensions to the obligation to ensure public trust: 1) avoiding actual wrongdoing -- violating laws, legislative rules or doing any other act which involves dishonesty, a lack of integrity, or disregard for ethical standards; and 2) avoiding the appearance of wrongdoing -- engaging in conduct which is likely to generate cynical attitudes and suspicions about government and the people who administer it.

(a) Importance of Perceptions. The concept of trust is as much a creature of perceptions and beliefs as it is of reality. Thus, conduct which a person knows or reasonably should know is likely to create in the minds of reasonable objective observers the perception that government office has been or may be used improperly, violates the obligation to safeguard public trust even if the conduct does not actually misuse public office.

(b) Reasonable Person Standard. The standard to determine whether something is improper is not set by the most suspicious and cynical members of society who are predisposed to assume bad faith or corrupt motive. The standard is whether reasonable, objective and fair-minded citizens find the conduct improper. In applying this test, however, it is important to remember that such citizens will make their judgments with no special knowledge of the facts or private intentions of the parties.

(c) Responsibility to Act. It is not always right to avoid an act simply because it will look wrong. The ethical obligation to avoid the appearance of impropriety should not be used as an excuse for inaction where, on balance, the action is proper. Excess timidity in the face of possible criticism is no more justifiable than callous disregard for improper appearances. In some cases, legislators should be willing to confront criticisms and endure unfair denunciations, choosing to explain and justify their behavior rather than alter their conduct to suit the cynical perceptions of a misinformed press or public.

(d) Avoiding Bad Decisions. A balance must be found between the need to preserve public confidence by avoiding appearances of impropriety and the responsibility to make sound decisions on the merits. The requirement that legislators avoid even the appearance of impropriety can sometimes undermine the public interest and cause bad decisions. For example, it may lead to discrimination against friends or political supporters simply because a transaction may look bad to the public. Sensitivity, thoughtful discrimination and restraint is important in this area. But if a friend or political supporter is clearly the best qualified person available to perform a needed public task, it is unfair and unwise to automatically and invariably disqualify them.

(e) Accountability. Occasionally, a conscientious legislator or legislative employee will decide to override the appearance of impropriety test in order to do what he or she thinks is "right" under the circumstances. In such cases, there is a responsibility to reduce the harm to public trust by taking affirmative steps to assure that all facts relevant to the choice are made public and that the process of decision making is open to and can withstand close scrutiny.

AS 24.61.040. PRINCIPLES OF PUBLIC INTEREST.

(a) Purpose of Government. Subsection (a) establishes one of the most fundamental principles of public service ethics -- pursuit of public interest. The purpose of state government is to advance the public interest by assuring justice, providing educational opportunities, protecting health and the environment, securing public safety, creating economic stability and development, and safeguarding the liberties and rights of the people, among other things. Legislative office and authority should be used only to pursue these and similar public interests. The duty to only use public office in pursuit of the overall public interest is a positive one. Although it precludes using government position for private gain, it also precludes use of public resources, power or prestige for any nonpublic purpose, even if the actor does not personally benefit.

(b) Principle Over Expediency. Subsection (b) precludes unlawful conduct or improper use of office to achieve a "greater good" on the theory that the end justifies the means. In a democracy, the primacy of state and federal constitutions require that each public servant's vision of the public interest be pursued only through lawful processes which acknowledge and respect the separation of powers among government branches and the role of other public officials in the formation and implementation of public policy.

(c) Determining the Public Interest. Subsection (c) is designed to provide guidance to legislators and legislative employees who must often unravel conflicting loyalties and duties. It uses the term "should" rather than "shall" because the principles stated in this provision are not amenable to uniform interpretation or enforcement. Still, the principles and rationales stated in this provision and the following commentary are deeply rooted in democratic political philosophy, and they are important. Legislators are accountable to a complex network of competing loyalty obligations -- to country, state, community, constituency groups, political supporters, colleagues, subordinates, family and self. In many political situations, these loyalties conflict. What is best for the country or state may not be good for a particular community; what is good for an individual constituent or interest group may not be in the best interest of other constituents or interest groups; and the highest public interest may conflict with personal career ambitions. Inevitably, legislators must resolve conflicting interests by ranking their loyalty obligations. Though decisions have to be made on a case-by-case basis, the principle of public service generally requires elected officials to pursue the greatest long term good for the greatest number by placing larger, broader interests over smaller, narrower ones: country over state, state over community, community over individuals, and principle over party.

(d) Representative and Administrative Duties of Legislators. A major duty of state legislators is to pursue laws and policies which improve the social and economic conditions of their districts. They are also expected to represent the views and advocate the interests of their constituents and, as an aspect of this responsibility, they often perform an ombudsman function by assisting constituents in their relationships with government to assure that they are treated fairly and efficiently. In addition to these representative responsibilities, however, all elected officials have policy and law-making obligations which impose a duty to use independent objective judgment to pursue the overall public good. In exercising these responsibilities -- allocating public funds and formulating public policies relating to pressing social issues such as the environment, education, health and safety -- they should transcend their role as advocates of narrow constituent interests. They should perform a role closer to that of a neutral administrator or judge, evaluating information objectively and deciding what is best for the public as a whole.

(e) Conflicts in Constituent and Public Interests. Representation of specific constituent interests usually raises no substantial conflict with public interests. But when it does, the dilemma generally should be resolved in favor of the wider public interest in spite of political risks. For example, the public interest may require taxes that individuals do not want to pay, especially for programs with low constituency support but high public importance (for example, correctional facilities, waste disposal sites, providing aid to homeless or otherwise impoverished but politically powerless groups). Similarly, the public interest may require budget cuts and the elimination of government facilities, public works projects or jobs though the cost of such measures will be felt disproportionately in the districts most directly affected. When decisions about programs and expenditures are controlled by the desire to steer money and jobs to particular districts, the quality and efficiency of government programs inevitably are compromised. This type of decision making is especially dangerous when public health or safety are involved. It also contributes to the cynical impression that political decision makers are more concerned about their political careers than the public good. It is said that a politician thinks of the next election, a statesman thinks of the next generation. Politicians who consider staying in office a moral imperative will be unwilling or unable to take such risks. Those who view their role more broadly, however, will see it as their obligation to do so.

(f) Loyalty Conflicts Within Organizations. A common loyalty conflict arises where the interests of an organization are inconsistent with those of individuals within the organization. The problem gets even more complicated when loyalty to a particular person within the organization conflicts with loyalty obligations to others. Under the principles of public interest, the responsibility of office generally demands the placing of institutional interests above individual loyalties though decisions which advance the institution at the cost of individuals should be made and executed with compassion, sensitivity and respect.

AS 24.61.045. PRINCIPLES OF ACCOUNTABILITY. There are several dimensions to accountability: 1) citizens must have the information they need about the actions of their representatives and the legislature as a whole so they can meet their personal responsibilities as citizens to participate as informed voters; 2) constituents are entitled to have specific information about the conduct of their own representatives so they can hold those representatives accountable for them both in discussions and at the polls; and 3) government officials who delegate authority have a responsibility to assure that those to whom power has been assigned use it properly and efficiently.

(a) Individual Citizens Are Personally Accountable. In a democracy every citizen is a public servant. Bottom line responsibility for government rests with the people. As a result, those who perform government functions do so as representatives on behalf of the citizenry. Legislators have the special duty to educate their constituents about the major issues of government so that they use their franchise to vote intelligently.

(b) Representatives Are Accountable to Citizens. A separate aspect of accountability concerns the public official's responsibility to employ public authority openly, to state important policy positions and beliefs candidly and publicly, and to assure that their own official conduct and that of other government officials is subject to public scrutiny. Citizens have the obligation to hold their representatives accountable both in public dialogue and at the ballot box. Elected representatives have a corollary obligation to act in a way that allows the public to hold them accountable. See also AS 24.61.430.

(c) Representatives Must Hold Their Agents Accountable. Each public servant is government is responsible to strive to make government as open, efficient, equitable and honorable as possible. In pursuing this responsibility, they must exercise proper oversight with regard to delegated functions. See also AS 24.61.430.

(d) Affirmative Duty to Improve System. This affirmative duty arising from the principle of accountability is not intended to be enforced or to provide the basis of any charge or sanction. It does, however, state an important ethical obligation of those who serve the legislature, especially staff members who might otherwise believe that the fairness and efficiency of government is not necessarily their responsibility. Legislators and legislative employees should take whatever actions they can to correct problems, streamline procedures and improve services. Where desirable changes exceed authority, public servants should promptly and forcefully recommend reform to the appropriate person or body. There is a tendency in all organizations to define one's responsibilities narrowly, fostering an "it's-not-my-job" mentality with respect to defects in policy or implementation. It is every public servant's job to see that the government serves the people well by assuring that it is responsive, respectful, efficient, economical and fair.

(e) Self-Policing. Public servants are often in the best position to observe and take actions against unlawful and unethical uses of public position, authority and resources. In fact, many such uses could not occur without the active involvement or, at least, the acquiescence of colleagues and subordinates. The principles of public trust and accountability combine to place a special obligation on persons in public office to refuse to cooperate, to actively discourage, and if necessary to prevent improper conduct, to report violations of both law and ethical standards. It is important to establish an atmosphere in government where potential wrongdoers undertake very high risk in seeking to misuse government office. This occurs when it becomes known that the pride and ethical commitment of all public servants impels them to police their own profession. The person who violates the public trust, not the one who prevents or reports such violations ought to bear the brunt of disapproval from the public and government colleagues.

AS 24.61.050. PRINCIPLE OF REPRESENTATIVE DEMOCRACY.

(a) Legitimate and Illegitimate Tactics It is sometimes very difficult to distinguish legitimate political tactics to advance public policy positions from illegitimate ones. An illegitimate tactic is one that tends to disregard any of the overarching ethical principles of public service and places ends over means. The essence of representative democracy is "means." In other words, the procedures for setting policies and resolving disputes established by the federal and state constitutions and by other duly enacted laws is all that sets a republic apart from a dictatorship. The notion that this is a nation of laws, not of men, cautions us remember that even well-meaning persons who seek only their vision of the public good, must defer to democratic due process.

(b) Principles of Representative Democracy. This provision is likely to seem naive to some who believe that "all is fair in love and politics" but this is, after all, a statement of ethical principles. The fact is, that notwithstanding various "might makes right" power theories, the ideals of democracy are clear -- one person, one vote; the majority rules but never in a way that tramples the rights of the minority; matters of import should be decided on their merits after full and open debate, not on the basis of power politics which squelches dissent and coerces compliance. Though it is unlikely that a provable violation of this provision will arise, conduct which is inconsistent with this representative democracy standard is serious in spite of contrary customs, traditions and political rationalizations.

(c) Abiding by the Spirit as Well as the letter of the Law. Legislators and legislative employees should not engage in artifices and schemes to exploit loopholes or ambiguities in the law in a way that undermines their spirit and purpose. When public servants seek to circumvent the spirit or purpose of laws they tend to undermine the public's confidence in government and diminish the public's commitment to civic responsibility by legitimizing self-interested evasions of public policy.

(d) Fairness in the Use of Procedural Rules. In using procedural rules, legislators and legislative employees should maintain the integrity, fairness and efficiency of the process by honoring the substance and spirit of the rules and by refraining from conduct which undermines the principles of representative democracy. The importance of technical procedures in the legislative and administrative process encourages legalistic manipulation to achieve political goals. While this in not inherently improper, there is a tendency to adopt an "ends-justifies-the-means" philosophy which can elevate process over substance and power over principle in a way that undermines fundamental assumptions of democratic government. The public interest is not served when public servants engage in trickery or procedural extortion to achieve their ends. Generally, the public views parliamentary machinations with cynicism. Responsible public servants recognize that no specific political victory is worth damaging the delicate structure of democratic government. Legalistic maneuvering which creates unfair or antidemocratic results inevitably spawns ill will and draconian countermeasures. Too often political scheming becomes so prevalent that it demeans the inherent nobility of the democratic process and reduces politics to a cynical game. For example, a fundamental rule of fairness is notice. Thus, it is improper to suspend the rules or force a vote in a way that violates customary practices and expectations of fair notice and, therefore, prevents legitimate opposition from having its say.

(e) Use of Leadership Power. Legislative leaders and committee chairs should use their leadership powers only in a manner consistent with fairness, accountability and the principle of representative democracy . Within a legislative body, special powers are delegated to leaders including committee chairs. The purpose of such delegation invariably should be to improve the process so that the organization's general will can be carried out more effectively; never to provide individual legislators with almost dictatorial power to subvert or make public policy in a manner that derogates the prerogatives of the policy-making body as a whole or any other legislator. Legislative committees must sort through and prioritize an overabundance of bills, some which were probably introduced for reasons other than a full commitment to their merits. Since there are no limitations on the number or regulations concerning the quality of bills offered, the committee is empowered to screen proposed legislation to assure that the time of the members is only spent on matters which have a reasonable chance of success. Skilled committee chairs can properly use leadership power to bring factions together, to fashion compromises and to break unhealthy gridlock situations. On the other hand, Lord Acton's admonition that "power corrupts and absolute power corrupts absolutely," applies to legislative leaders who use their position in inappropriate ways to block consideration of important issues, to bully, bribe or intimidate fellow legislators to support positions and programs favored by the leader. A legislator who controls the parliamentary process or is otherwise in a position to facilitate or prevent the consideration of an issue, has an ethical obligation to avoid any use that effectively undermines representative democracy.

(f) Improper Uses of the Power to Move or Bury a Bill. There are a number of proper reasons to move or bury a bill but there are some that are clearly improper because they violate fundamental principles of democracy, fairness, due process and the notion that government is to be run by laws not men. Thus, a legislative leader or committee chair should not prevent a measures from receiving appropriate consideration because they dislike the sponsor of the bill, to get even, or because "burying" the bill creates political advantages sought by the leader or chair. It is also improper and anti-democratic for an individual, or small group of individuals, to use their power to move or bury a bill as a means of extracting concessions or affecting the behavior of other legislators. Persons who abuse their poser in this way should be subjected to internal discipline.

(g) The Ideologically-Driven Veto. The hardest case concerns the use of leadership position to effectively veto a bill on ideological grounds. A legislator who believes that a particular bill, though sincerely offered and vigorously pursued by one or more colleagues is bad policy may have the power to prevent it from leaving a committee. Some believe this is a proper incident of democracy but it is not. Committee chairs are not chosen by any true democratic process which provides them with the legitimate power to act as an ideological filter over the entire body. Nor is the fact that a dozen or more committee chairs may assert similar prerogatives a justification. History is full of circumstances where one person has, through the use of committee power, effectively imposed a personal ideology on a whole legislative body in a way that stymies democracy and elevates single individuals above their colleagues. This disenfranchises individual legislators and their constituents. A democratically-committed representative must be willing to lose rather than give in to the end justifies the means rationale.

(h) Civil Disobedience. In rare cases, a legislators or legislative employees may exercise the prerogative of conscientious objection by disobeying the law. In such cases, the illegal behavior should be open and the official should be willing to bear the appropriate legal and political consequences. There is a long and revered history in this country of civil disobedience--the open and public refusal to abide by a law as a means of protest and as an impetus to change the law.

AS 24.61.055. PRINCIPLE OF RESPECTABILITY -- CONDUCT BEFITTING THE LEGISLATURE

(a) Legislators Must Not Discredit the Legislature. Legislators and legislative employees are visible leaders in society and they properly are held to high standards of personal probity. Acts which demean or discredit government or demonstrate defects in their character and judgment set a bad example and injure the reputation of the legislature. While public servants are not expected to be perfect, they should realize their special responsibilities. They should strive to conduct their professional and personal lives so as to reveal character traits, attitudes, and judgments that are worthy of honor and respect and demonstrate fitness for public office. Thus, conduct which violates this rule is independently sanctionable.

(b) Honesty and Integrity. Legislators should be scrupulously honest, avoiding any form of lying, deception, deviousness, hypocrisy and cheating in their professional and personal lives. Dishonesty by a legislator is wrong in itself but it also violates principles of public service ethics by seriously undermining the credibility of government. Technical or literal truthfulness is not all that is required; honesty precludes any deliberate deception including the raising of false inferences. Legislators and legislative employees should also reflect personal integrity in all matters, placing principle over expediency and demonstrating courage of convictions. Although it is necessary and proper for elected officials to represent the views of their constituencies it also is necessary that they have pronounced and strong personal convictions--things they stand for. Legislators should offer principled leadership.
(c) Illegal and Dishonest Conduct. Activities which are illegal but not directly related to legislative service (for example, drunk driving, drug use, tax evasion, assault, hiring prostitutes) discredit the individual and the legislature itself. Similarly, private conduct, even if legal, discredits the body if it reveals dishonesty, deviousness, or hypocrisy. All such acts by legislators or legislative employees tend to undermine public respect and confidence and, therefore, they violate the principle of respectability.
(d) Private Personal Conduct. The most difficult area of private conduct concerns legal behaviors that subject the actor and the legislature to criticism or ridicule because it violates the moral sensibilities of a significant portion of the public. The obligation of public servants to lead exemplary lives for the sake of the reputation of government in general must be balanced against a real and important right to a private life which may involve choices and behaviors that raise moral issues. Acts of adultery, homosexuality or promiscuity, for example, concern personal matters that should not be the basis of any charge or sanction under

these rules unless it is clear that the behavior bears on the fitness to serve or the ability to carry out duties. Whether or not lawful private acts which do not bear in any direct way on the responsibilities of public office are proper subjects of press disclosure and public scrutiny, they are not appropriate concerns under this Act. No separate sanction for private conduct in the "moral arena" is contemplated. Such matters should be left to the electorate.

24.61.060. PRINCIPLE OF INDEPENDENT JUDGMENT.

(a) Independent Judgment and Conflicts of Interest. The most heavily regulated area of government ethics relates to conflicts of interest, especially financial conflicts. This provision overarches the individual conflict of interest provisions in this code and states clearly the nature of the ethical obligation. Essentially, a conflict of interest exists whenever a person has personal interests which are inconsistent with professional obligations. In the case of public service, the primary obligation is to exercise independent objective judgment in the public interest and scrupulously avoid interests that are likely to impede the ability to make such judgments. In addition to the need to safeguard one's own ability to make independent objective judgments on the merits, public servants also are obligated to respect the duty of other government officials to the same. Thus, it is improper to engage in any act designed to cause another public official to violate the duty of independent judgment.

(b) Spending Taxpayer Funds. All expenditures of public funds, whether hiring employees or making purchasing or other decisions with economic impact, involve the use of public resources. Those who have the authority to spend taxpayer money are obligated to do so with scrupulous consideration of the public interest and avoid the temptations to favor family, friends or acquaintances or discriminate against personal enemies and political foes.

(c) Employment Decisions. Legislators and legislative employees should make all employment decisions on the merits, only choosing those who are well qualified. This provision expands specific anti-nepotism rules. In spite of the long tradition of patronage in American politics, public jobs should not be treated as the spoils of victory. Cronyism and patronage inevitably undermine the efficiency and integrity of government.

(d) Fair Distribution of Public Funds. A common derivative of the spoils system mentality is sometimes seen in the allocation of funds by legislative leadership so that majority party members receive substantially more staff support, office equipment, and travel budget than their minority colleagues. This form of favoritism is so traditional that its ethical implications often go unnoticed. For some, it is simply part of the "game." Ultimately, however, a disproportionate allocation of public funds may shortchange the constituents of minority members who have substantially less resources to serve their districts than their brethren on the other side of the aisle. There are many legitimate advantages that the majority may enjoy but leadership ought to make substantial efforts to assure that minority members receive a fair share of legislative resources.

Article 2. STANDARDS OF CONDUCT

AS 24.61.100. MISUSE OF OFFICE FOR PRIVATE GAIN. The obligation to use public office only in the public interest and not for private gain underlies many of the specific provisions of this code. It is impossible, however, to envision and specify all the possible ways that this principle may be violated as the range of private interests and improper motives is almost inexhaustible. This provision makes it clear that it is improper to make any use of office or position primarily to attain personal benefits, whether they are financial, social or political. This statement of principle is somewhat broader but not inconsistent with AS 39.52.120, "Misuse of Official Position," which prohibits non-legislative public officers from using or attempting to use, an official position for personal gain or to secure or grant unwarranted benefits or treatment.

AS 24.61.110. IMPROPER BENEFIT FROM PERFORMANCE OF PUBLIC DUTIES.

(a) Benefit Need Not Affect Conduct. Legislators and legislative employees have an obligation to perform their duties diligently, promptly, efficiently and fairly. In representing constituents from their districts they have the additional responsibility to exercise oversight over administrative agencies and, in some cases, to assist constituents in a reasonable manner that does not unduly interfere with the independent judgment of administrators (see AS 24.61.380). The only lawful compensation for properly performing these services is official salary and allowances paid by the state. It is improper to seek or receive anything of value from a citizen as a reward, expression of gratitude or payment for the performance of public duties even if the benefit had no actual affect on public decisions or actions.

(b) Unsolicited Gratuities. Even unsolicited gratuities otherwise permitted under AS 24.61.350 create an appearance of impropriety when they are given to a legislator or legislative employee after or in anticipation of an official action or informal representation within the normal scope of duties. Though the recipient may not have anticipated the gift and, therefore, could not have been influenced by its prospect, a reasonable observer might believe it was a payment or reward for services rendered. Minor courtesy items such as ceramic coffee cups, a desk memento, flowers or a box of candy may be accepted, but generally, gifts ought to be returned with a polite but clear message that the gesture was unnecessary and could be construed as improper. If this is not feasible, they ought to be given to charity or otherwise handled in a way which makes it clear that the public servant has not accepted and does not want any personal benefit for official actions.

(c) Avoiding the Appearance of Selling Access. The ability of a citizen to confer directly with a legislator is frequently referred to as access. Because of the great press of duties and demands on the legislator's time, it not always possible for a legislator to personally talk with everyone who seeks an audience or to give them all the time they would like. The legislator's time is a crucial asset which must be carefully allocated among competing demands. It is important, however, that access is not determined by the willingness or ability of the person to provide any benefit to the official whether it be in the form of a gratuity, an honorarium or even a campaign contribution (regulations dealing with improper means of acquiring political support are stated in AS 24.61.230).

(d) Duty to Reject Improper Offers. Subsection (b) concerns improper offers and the obligation to reject them. Under Alaska's criminal law, AS 11.56.100, "a person commits bribery if the person confers, offers to confer, or agrees to confer a benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of official discretion." If the benefit conferred is accepted with the intent to use one's - government position for private gain, the public servant is also guilty of bribery -- even if no act was actually performed. It is critical to recognize, therefore, that the acceptance by a legislator or legislative employee of benefits of any sort from persons who seek to influence official actions raises criminal as well as ethical issues. Although the high standard of proof and other procedural safeguards of a criminal trial make it difficult to establish the crime of bribery, the ethical obligation to avoid transactions which cast doubt on the integrity of government is not delimited by the standards of provable bribery. Legislators and legislative employees must avoid both the appearance and the reality that public office was used for private gain. Therefore, it is improper to accept any benefit, whether in the form of compensation for services or a gratuity, from a person with a corrupt motive. It is not enough that the public servant has no intent to do anything improper or, in fact, that nothing improper is done.

AS 24.61.120. DUTY TO REPORT IMPROPER OFFERS. It is not always sufficient to turn down an improper offer of gifts or other benefits. Any attempt to unduly influence a public official warrants some action that at least educates the offeror of the impropriety and risk of such conduct. Occasionally, an improper offer is made by an unsophisticated individual who should have, but did not know any better. A polite but firm warning may be sufficient. On the other hand, improperly motivated gratuities are attempted bribes and when the source is a registered lobbyist or otherwise appears to be well aware of the significance and impropriety of the action, the matter should be handled with great seriousness. A failure to react with indignation or report improper offers to the authorities can be viewed as wrong in itself. (Imagine how would it look on the nightly news to learn that a public official was offered a bribe and he merely said, "No thank you.").

AS 24.61.130. MISUSE OF STATE PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.

(a) Authorized Use of Government Property to Aid Private Enterprises. Subsection (a) covers situations where a legislator or legislative employee improperly uses state property or resources for personal gain or for the gain of another. In certain cases, economic development activities authorized by law involve using state resources to assist private enterprises. This is permitted.

(b) Misuse of Government Property for Personal Gain. Subsection (a) also establishes the basic rule that state facilities, equipment and services (office space, typewriters, word processors, telephones, postage, computer data, stationery, mailing facilities, photocopying, etc.) may not be appropriated for personal gain or advantage. Common sense and fairness requires that this provision be interpreted reasonably. Though government facilities should certainly not be used for personal purposes on a substantial, regular or ongoing basis, occasional and limited usage should be permitted so long as the conditions of subsection (a) are met. For example, interpretation of these limitations should take into account the reasonable needs and expectations of employees and permit them to make and receive occasional personal phone calls of short duration or makes an occasional personal copy on a state photocopy machine.

(c) Frequent Flyer Points. Unless otherwise provided by law or regulation, the frequent flyer points or other bonuses related to air travel paid for by the state, should be treated as the personal property of the employee. While a strong logical case can be made that the collateral benefits of state-paid travel should accrue to the state, the practical and morale problems entailed in administering such a position do not justify the small gain. The state, of course, has an interest in seeing that public resources are used economically and only spent in the public interest. Allowing public employees to personally benefit from bonuses attributed to government travel raises a potential conflict of interest as it creates an incentive for the employee to select a carrier based on private economic advantage rather than state interests. This conflict is not a major one, however, especially in Alaska where the number of carriers and flights tend to limit options. Moreover, the prohibition against using public authority or funds for personal gain would make selection of a carrier on inappropriate criteria improper. Any legislator or legislative employee who actually allows the desire to earn frequent flyer points or bonuses to influence official decisions violates this provision and is subject to sanction notwithstanding the fact that any points earned are the property of the legislator or employee. This should provide a sufficient deterrent to protect the state's interests.

(d) Misuse of Legislative Employees for Personal Gain. Subsection (d) prohibits misuse of legislative employees whose time is and should be treated as public property which should not be misappropriated to personal use. Publicly paid employees simply must not be used as personal secretaries or private staff. Overly strict application of this provision, however, is inappropriate. For example, a legislator should be permitted to make use of staff to help organize and schedule the legislator's calendar, appointments and travel plans -- including some events of a political or private nature. Similarly, a legislator may occasionally ask a legislative employee to assist the legislator in performing personal services in unusual situations where the service permits the legislator to perform pressing official duties. For example, a legislator who is tied up in committee hearings or legislative sessions may need assistance in picking up dry cleaning or getting cash for an impending trip. And, it is not inappropriate for a legislator while working to ask an employee to order and pick up lunch or dinner. On the other hand, it is not proper for a legislative employee to regularly perform personal tasks such as making bank deposits, handling personal bills or arranging for auto repairs. Several issues are involved. In addition to the fact that such use of publicly paid staff results in an improper personal benefit, more than infrequent use of staff for personal tasks is not consistent with professional status of a legislative employee. Finally, there is the problem of the appearance of impropriety. Even if the employee is fully comfortable with the assigned tasks, the use of public employees for personal services creates an appearance of abuse of position. Both the legislator and the employee should be careful to avoid actual abuse as well as the creation of the appearance of unreasonable use of public personnel.

(e) Use of Employee's Own Time. Generally, employees do not voluntarily contribute their personal time to benefit their employers. Yet public officials sometimes claim that employees willingly perform personal services "on their own time" -- during lunch hour, after normal working hours. Such claims should be examined with skepticism as there is a high risk that the employees believed that they were required to perform personal work as part of their jobs. In such cases, there is at least an appearance of improper exploitation and such use of public personnel should be avoided. If a legislative employee is asked to perform any personal service, it is best if the employee is paid for his or her time out of the official's private funds.

AS 24.61.140. MISUSE OF STATE PROPERTY AND RESOURCES FOR POLITICAL PURPOSES.

(a) Misuse of Resources or Staff for Political Purposes. Subsections (b) - (c) regulate the use of government resources, including legislative employees, for political or campaign purposes. It is often difficult to distinguish legitimate political work within the scope of official duties from campaign activities but the basic rule is clear: public resources should not be used for political purposes as the taxpayer should not be forced to subsidize campaign or other partisan political activities. In general, the use of public employees is justified in activities where there is a substantial and bona fide public purpose to the activity and there is no personal profit (as with the writing of a book for royalties). Materials which express the legislator's opinions or views are generally proper whether in the form of a speech, article, newsletter, or position paper. They can be worked on by legislative staff even if these materials will and are intended to be used as part of a campaign for legislative office.

(b) Special Problems With Senior Aides. Many legislators are assisted by a senior aide who also serves as a major campaign adviser. It is unrealistic to expect that such persons will not be involved intimately in the full political life of their employer. So long as the senior aide "does a full day's work for a full day's pay" to justify the government salary, party and campaign activities above and beyond public duties should be tolerated. In some cases, portions of the aide's salary ought to be paid out of campaign funds. Once one begins to use other legislative staff, however, a serious problem arises and unless the use is expressly justified by regulations promulgated by the legislature or the commission it shall be regarded as improper.

(c) Advice of Commission. A legislator or legislative employee who is unsure about the propriety of a use should seek advice from the commission.

(d) Contents of Newsletters. The purpose of the requirements regarding revelation of bills introduced by a legislator, as well as the legislator's votes on significant bills acted on by the legislator's house is to provide constituents with detailed relevant information which will inform them of the actions and judgments of their representatives and empower constituents to hold the legislator accountable. In addition to drawing up regulations and guidelines which shall be approved by the commission, legislative council shall provide to legislators a list and description of the bills deemed significant which must be used by all legislators who use public funds for mass mailings. In addition, the council shall specify the amount constituting a significant contribution under subsection (d)(3). While the amount may change from time to time, the amount of $250 should be used unless the council decides another figure is more appropriate. The information required under (d) of this section must include all activity since the last mailing or, in special cases, whatever information is deemed appropriate by the commission.

AS 24.61.150. OBLIGATION OF SUBORDINATES TO REFUSE TO PERFORM IMPROPER TASKS. While it is improper for a superior to ask a subordinate to perform personal or political services, it also is improper for a subordinate, as a public servant, to accede to such requests. While tact is imperative as a practical matter, employees still have the obligation to assure that their services are not converted to nongovernmental uses. It is a violation of this Act for a supervisor to harass, pressure, embarrass, intimidate or punish an employee who properly refuses to perform improper personal services. This provision will be difficult for some employees to comply with yet its existence and their duty to do so provides the best protection against abuse. It is very likely that improper requests will be sharply reduced by the knowledge of this obligation and the fact that the employee subjected to such requests has no discretion to accede to them.

AS 24.61.170. USE OF NONPUBLIC AND CONFIDENTIAL INFORMATION FOR PRIVATE GAIN.

(a) What Nonpublic Information Is. In the course of their official duties, legislators and legislative employees may acquire information confidential as a matter of law and other information not generally known or accessible even though it is technically available to the public. In some cases, simply learning of information before it is generally available can provide a substantial advantage for those who use or disclose it. A legislator or legislative employee may not actually or reasonably appear to gain special personal benefits by virtue of access to information resulting from public service.

(b) Improper Exploitation. This provision addresses the improper use of information gained in government service for private gain. It forbids the exploitation of not only information which is labeled "confidential" or is treated as confidential by law, it also prohibits the private use of other valuable information not available to the general public which was acquired by the legislator or legislative employee by virtue of public position. For example, "inside information" about state plans or negotiating strategies, information revealed to legislative committees with the expectation that it be only used for official purposes, financial data, computer data and lists obtained during legislative service may not be used to obtain private or political advantages nor conveyed to others to give them such undue advantages. A similar, but narrower, provision is contained in AS 39.52.140 as part of the Code of Ethics for nonlegislative public officials.

AS 24.61.180. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.

(a) Objective. The objective of these provisions is to prohibit legislators and legislative employees from affording themselves and others unwarranted advantages by the inappropriate use of official title or the prestige of office. Because of the great power and authority of the legislature, the prestige and implied "clout" that usually accompanies legislative service is often a marketable asset. Some dimensions of this prestige are intimately associated with the person who attained the position and they constitute valid qualifications. It is important, however, that it not appear that a legislator or legislative employee has sought or obtained undue personal benefits from the office, especially in a way that discredits, cheapens or commercializes government service or connections. This provision includes, but is not limited to, a prohibition against the use of authority, title, or prestige to obtain employment, contracts for goods or services, clients, grants, or loans.

(b) Use of Title in Conducting Business. It is improper to use or permit the use of official title in any manner which would lead reasonable observers to believe that legislative office is being exploited to derive direct financial gain or enhance the stature, reputation or business opportunities of an individual, corporation, or organization. It is common to use the stature and prestige of legislative office by direct reference to title or position or by use of official letterhead in communications. When carrying out the business of government, use or mention of official title or legislative affiliation is entirely proper. It is a different matter, however, when one is acting in a personal or private business capacity. Actual or apparent improprieties can arise from such conduct for several reasons: 1) a reference to public position may give the erroneous impression of governmental approval; 2) a person dealing with a high government official may think that the way the private matter is handled will affect treatment by the government; and 3) where legislators or legislative employees are affiliated with a private organization or business, potential clients or customers could easily conclude that the business has access to inside information or powerful connections that may be brought to bear on their behalf. For example, it is improper to use official letterhead or refer to one's legislative position as a means of inducing or intimidating persons to resolve disputes more favorably, provide preferential treatment or give free tickets, discounts, favors or other advantages.

(c) Board Membership and Consulting. Enterprises of all sorts, including nonprofit associations, charitable organizations corporations and firms involved in lobbying, public relations, law practice and consulting often seek out persons serving in government, especially legislators, to serve on boards, advisory committees or as consultants. All such associations raise ethical problems because of the possibility that public office is used by the legislator and the enterprise that employs the legislator for private benefit. Because of the conflict of interest, AS 24.61.310 generally prohibits board membership on any organization that regularly does business with the state. In other situations, however, this provision applies. While the most serious problems arise when the public servant is compensated in relation to the association, even uncompensated relationships may violate this provision if the legislator or legislative employee knows or reasonably should know that the organization intends to trade on its affiliation with someone in the state legislature.

(d) Pay Should be Commensurate With Services. It is especially important when legislators and legislative employees receive outside income that the compensation is commensurate with the actual personal services rendered. If any premium is being paid due to the public servant's position, or no significant services are being rendered, the enterprise is, in effect, improperly buying, and the public servant is, in effect, improperly selling the prestige associated with the office. In addition, premium payments may be perceived not as compensation, but as illegal gratuities.

(e) Perception of Undue Advantage. Where the compensation paid for services is proportional to the services performed by normal market standards, or the service is uncompensated, the appearance of impropriety is less severe. But even such relationships may inappropriately use public office. For example, clients or customers may seek representation by a firm employing a legislator because they think that they will have some special advantage in dealing with government. Legislators and legislative employees who associate with private enterprises have a special duty to assure that these enterprises do not suggest or imply special influence with government and that clients and customers of the enterprise are not led to expect or encouraged to think that the association of the public official with an enterprise may afford them unwarranted benefits.

AS 24.61.190. POST-SERVICE RESTRICTIONS TO PREVENT MISUSE OF PUBLIC OFFICE BY FORMER LEGISLATORS AND LEGISLATIVE EMPLOYEES.

(a) Restrictions on Post-Service Lobbying. This provision addresses the problem of the so called "revolving door." The tendency of persons to leave positions of power and influence in government to represent private interests in their dealings with government, often for compensation many times more than earned in public life, raises a number of serious concerns about the integrity of the political system. Among the concerns: 1) the former legislator or legislative assistant will unduly exploit connections and inside information to gain undue and unfair advantages for their clients or employers; 2) the legislator or legislative assistant may adjust official conduct even while in office in an attempt to attract the attention of or curry favor with prospective employers or clients; and 3) former associates may be too willing to defer to, do favors for or provide inside information to their former colleague. In any event, the perceptions of impropriety are great. Many people would ban former legislative officials from any representational activities concerning the legislature or state agencies. This provision is more narrowly drawn to prevent only formal lobbying and to allow lobbying state agencies provided that the former legislator did not have special oversight or budget authority. While this may seem to work an unfair hardship on presiding officers and certain committee chairs, their relationship with certain agencies is so close that to permit them to turn around and lobby these agencies within a year of their government service is simply not appropriate. At the same time, the potential conflicts of interests arising from other legislators lobbying state agencies seems manageable so long as there is disclosure.

(b) Improper Appearance of "Cashing In." It is unseemly and a violation of the spirit of public service ethics when present or former government officials appear to be blatantly "cashing in" on their government service by acting as consultants, lobbyists, or spokespersons for private interests in circumstances where it appears that they are peddling influence or selling the prestige and stature of their prior office. This is not to say that former government officials who have important experiences cannot serve on boards, make speeches for substantial fees or engage in consulting or lobbying. But, the circumstances including how,