SCOMM

#35:1

SCOM 35

1983 SPECIAL JOINT LEGISLATIVE REFORM
MINUTES AND TAPE INVENTORY

TAPE #	DATE	BILL NUMBER AND TAPE INFORMATION
1. 022283	Feb. 22	Orientation
2. 022483	Feb. 24	Committee's Priorities
3. 030383	Mar. 3	Attorney General's opinion; National Conference on State Legislature
4. 031083	Mar. 10	Update and status on committee events
5. 032183(1)	Mar. 21	Ethics Commission, Conflict of Interest
6. 032183(2)	Mar. 21	Ethics Commission, cont.
7. 032283(1)	Mar. 22	* Ethics Commisson
8. 032283(2)	Mar. 22	* Ethics Commission, cont.
9. 032583	Mar. 25	Guidelines for Ethics Commission
10. 032883	Mar. 28	Ethics Commission, Conflict of Interest, AG's draft
11. 033183	Mar. 31	Proposed committee substitute for Ethics Commission
12. 040783(1)	Apr. 7	Ethics Commission
13. 040783(2)	Apr. 7	Ethics, cont.
14. 040783(3)	Apr. 7	Ethics, cont.
15. 040883(1)	Apr. 8	Review AG's draft and Conflict of Interest
16. 040883(2)	Apr. 8	Review, cont.
17. 041183(1)	Apr. 11	* AG's comments on revised draft
18. 041183(2)	Apr. 11	* AG's comments, cont.
19. 041183(3)	Apr. 11	* AG's comments, cont.
20. 041283	Apr. 12	Ethics Commission, Conflict of Interest, Code of Ethics
21. 041483	Apr. 14	** Ethics Commission, Code of Ethics,

* Minutes missing from this date
** Tapes missing from this date

LRL-9/84

Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Legislative Affairs Agency
Reference Library

FROM: Representative Randy Phillips RP

DATE: May 7, 1984

RE: Special Joint Legislative
Reform Committee

Please find attached are documents for permanent filing from the Special Joint Legislative Reform Committee:

1 NCR Book Special Joint Legislative Reform Committee meeting minutes for:

February 22, 1983
February 24, 1983
March 3, 1983
March 10, 1983
March 21, 1983
March 25, 1983
March 28, 1983
March 31, 1983
April 12, 1983
April 14, 1983

1 Folder Code of Ethics HCR 33:

Legislative Reform Committee Meeting, April 14, 1983
April 6, 1983 memorandum from Richard Bradley
March 7, 1983 memorandum from Richard Bradley
April 20, 1983 memorandum to Rep. Lacher and Miller
April 6, 1983 work draft of HCR 33
April 20, 1983 work draft of HCR 33
House Concurrent Resolution No. 33

Joint Legislative Reform Meeting Agendas:

February 22, 1983
February 24, 1983
March 3, 1983
March 21, 1983
March 25, 1983
April 7, 1983

Establishment of Joint Legislative Reform Committee:

SCR 2, "Establishing a Joint Special Committee on Legislative Reform.
February 2, 1983 memorandum from Senator Faiks with attachments
May 23, 1983 memorandum to Loren Smith from Senator Faiks re: Final Payment

Uniform Rule Amendment HCR 34:

May 6, 1983 memorandum to House Judiciary Committee Members from Staff
April 20, 1983 memorandum to Senators Faiks, Kelly and Josephson, and Representatives Lacher and Miller
April 6, 1983 memorandum to Senator Halford from Billy Berrier
March 21, 1983 memorandum from Billy Berrier
Meeting minutes
April 6, 1983 memorandum to Senator Halford from Billy Berrier
March 10, 1983 memorandum to Senator Faiks from Billy Berrier
March 8, 1983 memorandum to Senator Faiks from Billy Berrier
February 7, 1983 memorandum to Rep. Fuller from Billy Berrier
House Concurrent Resolution No. 34

Conflict of Interest HB 362/SB 257:

Report from National Conference of State Legislatures dated May 15, 1983
Memorandum from NCSL
Basic ethics policy questions
Draft - Sliding scale provisions for Sec. 24.60.040(1)
Casework on Cheri Jacobus
April 26, 1983 letter from NCSL
April 5, 1983 letter from NCSL
Workshop Summary
Review of SB 198 from NCSL
April 1, 1983 memorandum from NCSL
March 15, 1983 memorandum from NCSL
Provision of Alaska Law
Guidance of specific policy areas from NCSL
Letter of Intent from Richard A. Bradley

(Conflict of Interest continued)

April 15, 1983 letter to Joe Hayes from the Reform
April 11, 1983 letter from Norman Gorsuch
April 8. 1983 letter from Norman Gorsuch
Letter of Intent from the Reform
April 7, 1983 Draft Conflicts Legislation Revisions
April 6, 1983 memorandum to Norman Gorsuch from Dean Guaneli
Analysis of Proposed Bill
April 4, 1983 letter from Rep. Don Clocksin
March 30, 1983 memo to Senator Faiks from Senator Fischer
March 29, 1983 memo to the Reform from Rep. Mike Miller
March 28, 1983 memo to the Reform from Connie Halford
Review of SB 198 from Ken Wonstolen, NCSL
Outline of Main Features and Policy Consideration for
Proposed Conflict of Interest/Ethics Legislation
Schedule for March 1-4, 1983
March 1, 1983 to Senator Faiks from Cheri Jacobus, FREE
March 11, 1983 memo from Senator Faiks, info on ethics
February 28, 1983 to Senator Faiks from Rep. Flood
Iowa Law Review, Conflicts of Interest of State and Local
Legislators
Harvard Law Review, Conflicts of Interest of St. Legislators
February 23, 1983 memo to the Reform from Sen. Fischer
Feb. 23, 1983 to NCSL legislative questionnaire
Feb. 25, 1983 letter to Sen. Faiks from Rep. Flood
Feb. 25, 1983 memo to the Reform from Sen. Sturgulewski
Feb. 24, 1983 letter to Norman Gorsuch joint letter
Feb. 21, 1983 from Senator Faiks attaching: FREE cover
letter, draft of suggestions, memo for Richard Bradley,
SCS CSHB 154(Fin)
Feb. 2, 1983 to Senator Faiks from Richard Bradley
Dec. 28, 1982 to Heads of All Departments, Boards,
Commission, and Authorities from Norm Gorsuch, SUBJ:
Implementation of Conflict of Interests Opinion
Dec. 3, 1982 to Governor Hammond from Wilson Condon, RE:
Conflict of interest
Work Draft 4/6/83
Work Draft 4/7/83
Work Draft 4/8/83
Work Draft 4/11/83
Work Draft 4/12/83
Draft Law 3/29/83 #2
Draft Law 3/29/83 #1
Faiks 3/31/83
SB 198
V. Fischer

SCOMM 35 SPECIAL JOINT LEGISLATIVE REFORM COMMITTEE 1983-84

These records were received in May 1984 from the office of Representative Randy Phillips, who was co-chairman of the committee. The attached letter of transmittal details the contents of the folders.

Membership of the committee was as follows:

Senator Jan Faiks, co-chairman
Representative Randy Phillips, co-chairman
Senator Bill Ray (resigned 4/5/83)
Senator Joe Josephson (appointed 4/5/83)
Senator Tim Kelly
Representative M.M. Miller (Juneau)
Representative Barbara Lacher

ref: HJ p. 312 (2/21/83), p. 319 (2/23/83)
SJ p. 223 (2/21/83), p. 583 (4/5/83)

3 1/2 inches of folders; 7 in all
Minutes are available on the Legislative Computer, Committee Minutes (CM13) data base under committee abbreviation "JLR." In addition, the Library has one paper copy of the minutes in a notebook. Tapes of the meetings are also available. Related tapes include the Conference Committee meetings in 1983-1984 on the Ethics bill, SB 257.

Folder listing:

1. General Information folder

2. Code of Ethics HCR 33

3. Joint Legislative Reform Meeting Agendas

4. Establishment of Joint Legislative Reform Committee

5. Uniform Rule Amendment HCR 34

6-7. Conflict of Interest HB 362 / SB 357

(processed 3/85 -KHS)

SCOMM

#35:2

see page 12 & 13

Legislative Reform Committee Meeting
April 14, 1983
Tape 1, Side B

CODE OF ETHICS

Faiks: Mr. Chairman, I move the section .010.

Phillips Senator Faiks? Any objections. Okay. Motion passes. Now we'll look at page 2, line 8, dealing with .020, conduct of a legislator.

Josephson: Mr. Chairman.

Phillips: Senator Josephson?

Josephson: Are there any sanctions for not adhering to the conduct of a legislator in 020?

Phillips: I purposedly left that out because I think we'll discuss that, you know, at the end.

Josephson: I'd like to know that now (laughter) before I agree to the text and the reason I state because I'm always a little worried about the spirit of the law and the letter of the law and, by golly, I'd hate to have somebody say well no he didn't do that and he didn't do that but the spirit is broken. I don't mind that as part of the Boy Scout oath and we'll all do our best but I do mind it if it is suddenly going to become a question of expelling a member from the Senate because there's no literal violation of the rules but we don't think the spirit was

Phillips: Well, Senator, it is the intent of the chair to have some simple code of ethics that which all six of us can at least agree on. If you don't want any penalities that's fine with me. I think, you know we ought to work on a code that we think the Legislature will accept as you know code of conduct. Senator Kelly? I'm just saying that

Kelly: I'm just wondering why you want to put this in statute. I would think that this belongs as a preamble to the Uniform Rules or something of that nature or accepted as a code of ethics for the Legislature. I'm just, I don't know why you want to put it into statute. You know, the statutes, most of this stuff, a lot of this stuff is covered in the bill that we've just beeing working on, you know. Other stuff is covered other wears. This is just kind of a, you know, as Joe was saying this is kind of a general thou shalt not and thou shalt and it just seems to me that where we really need this is somewhere within the legislative branch in front of the Uniform Rules as a preamble. Something of that nature. Just rather than

Phillips: Good point, good point. Okay then what's the feeling of the committee? Should this be in the rules. Cause we do have, the next item we're taking up is uniform rules and we can incorporate it this code with the rules as a suggestion to the Legislature to adopt. Senator Josephson?

Josephson: I would have no problem with the having it in the rules. I would also have no problem with perhaps having some kind of written oath supplementing the oath we take when you're sworn in that says that you will not, you know, accept favors or benefits or that sort of thing. Make that a requirement of the office.

Phillips: Let me ask Mr. Bradley. Can that be done?

Bradley: Can you do what?

Phillips: Put this in the uniform rules.

Bradley: Well, I would say that the Boy Scout aspects sort of cease with section 20. I think that 30 and on become a bit more substantive.

Phillips: Senator Faiks?

Faiks: Mr. Chairman, one through ten in 010 are appropriate for in front of the Uniform Rules, I would think, but I agree with Mr. Bradley that there are definite thou shalt nots in 030 on. Specific things.

Phillips: Senator Kelly?

Kelly: What we could do is take the provisions that fit and adopt it by concurrent resolution in both houses and have it printed in the same booklet that the uniform rules are printed so that we don't have to renumber the uniform rules but it will be printed on the inside cover or printed on the front page of the Uniform Rules or something like that. But we will have established a code of ethics adopted by both houses.

Phillips: Senator Halford?

Halford: Yeah, I just want to say something specifically on 020 you're saying the ten commandents, expose corruption wherever discovered and in 020(a) you say engage in conduct that reflects creditably on the legislature. At times investigation (indiscernable) reflect creditably on the legislature. There's a direct conflict in the ninth commandent and 020 worded as they are now.

Josephson: Well

Phillips: Senator Josephson?

Josephson: I wouldn't read "reflect creditably" to mean that you have to participate in a coverup of wrong doings. There is that theory always that you hear that well don't say anything because the public will not like the legislative branch (undiscernable) but I hope that is not what is meant by 020.

Phillips: Senator Kelly?

Kelly: Mr. Chairman, just -- let me just make a suggestion here to get us off the mark here.

Phillips: Right. Go ahead.

Kelly: That we take section 24.60.010 and put that into a separate concurrent resolution that hopefully would be adopted by both houses and printed in the, along with the uniform rules.

Phillips: Is that in the form of a motion?

Kelly: I would so move. And now as we go through, we might want to add other stuff to that or the other stuff could go somewhere else. I would so move.

Phillips: Is there any objection or discussion?

Josephson: Well, I would like

Phillips: Senator Josephson

Josephson: to discuss it more as to how if we are going to have some statute maybe we ought to might as well do the whole thing by statute.

Phillips: Well that was what I was going -- I would think it would be pretty awkward here we have, if I can use the words loosely, the ten commandments, and then we're getting down to campaign funds, funds raising, use of personal staff, compensation, discrimination, so on and so forth

Faiks: That's all covered (undiscernable)

Kelly: Mr. Chairman?

Phillips: Senator Kelly?

Kelly: Let me try again.

Phillips: Okay

Kelly: What I would do on conduct of a legislator (a), I would put (a) above the beginning of it.

Phillips: For a new bill?

Kelly: On a resolution that the legislature would adopt. So I would incorporate 20 into 10 and I would probably put paragraph (a) above general precepts. I mean, "A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature and (1) and (2) and (3)

Faiks: There you go. That's perfect

Kelly: Okay? And then we get down to campaign funds. But I think some of this stuff

Phillips: Can be in the uniform rules or at least

Kelly: No. Well, I think some of this stuff should be in statute but it just seems to me that some of this stuff doesn't fit with the first two sections.

Phillips: Okay.

Lacher: Representative Phillips?

Phillips: Representative Lacher?

Lacher: Isn't section 030, campaign funds, already in APOC statute? And certainly some of these other things are already in the conflict of interest bill that we've passed.

Bradley: Maybe there by implication (undiscernable) clearly (undiscernable)

Lacher: Oh.

Phillips: Senator Faiks?

Faiks: Well, in that case, I'd like it in statute.

Phillips: Okay.

Kelly: Okay, but where it belongs is in the APOC

Lacher: APOC statute

Kelly: statute. (undiscernable) I mean it doesn't

Phillips: Mr. Miller?

Miller: Well, I was just going to (undiscernable). As a matter of fact we are going much beyond the APOC statute. According to the APOC statute (car noises) campaign disclosure statutes what you do with campaign funds after the election is over is completely your own business. You can comix them, you can sit up a separate account, you can go to Hawaii, you can do anything you want to

Lacher: Really?

Various: Oh yeah. That's right

Undiscernable.

Josephson: For tax purposes, for federal tax purposes

Miller: You have to report it, yes. But in any case, what this suggests with that idea we should be very much aware that we are making a major change in APOC (undiscernable)

Various: undiscernable

Miller: doing it without all that other language in front of us and not having some commentary from the Commission itself and I'm a little bit confused by what it means when it says that a member may not expend, may expend no funds from a campaign account not attributable to a bona fide campaign purpose, where for instance a person might end up an election a loser but with say $400 left over. Other than a conslation party or something like that what other bona fide activity can you put that money to? I guess you can give it to some other guy, somebody else's campaign next year or you could return it, I guess.

Phillips: Senator Josephson?

Josephson: We didn't get that from the Congress of the United States, I can assure you of that because they use campaign funds, I think, for special events to entertain (undiscernable) am I wrong? So that is a major policy issue and you could be an incumbent who does not plan to run ever again and you have a $500 surplus and it's not really quite clear what you do. Is this our last meeting?

Phillips: I think so.

Josephson: Then in (b) "A member of the legislature may not use appropriated funds or state supplies and equipment merely for campaign activity " bothers me because it implies that you can use it for campaign activities that you can use it for campaign activity and something else.

Faiks: (undiscernable)

Kelly: Let me try this again, Mr. Chairman.

Phillips: Okay, let's

Kelly: We take conduct of a legislator (a)

Phillips: Right.

Kelly: put it in front of 010

Phillips: 010

Kelly: and actually it should say "a member of the legislature shall at all times engage in conduct that reflects creditably on the legislature" and then the next sentence should be "a person in the legislative branch" so that also includes all of our employees.

Phillips: Okay.

Kelly: And let's introduce that as a resolution

Faiks: Good

Kelly: And in the resolution it would state that it would be printed in the

Phillips: Uniform Rules

Kelly: same, that this is the code of ethics and that it would be printed in the uniform rules, in the same booklet or whatever. And then if you want to do anything on these other things, then put them where they belong in statute. But I don't think we have time, if this is our last meeting, we're not going to be able to do that. It's going to take individual. I can't see anything else in here that kind of goes along with the ethics code

Faiks: What about 070?

Kelly: Yeah, I can see that.

Faiks: 070 I think would be terrific

Phillips: Okay are you suggesting

Kelly: I may not understand it, but I can see it.

Phillips: Senator Josephson?

Josephson: Um

Phillips: Senator Kelly, would you also include 070 as part of that?

Kelly: Yes, yes.

Phillips: Ten commandments?

Josephson: Oh

Phillips: Senator Josephson?

Josephson: I would like to see if we are going to print it in the uniform rules, I would like to see that oath given by the Lt. Governor's office to all candidates for the legislature at the time of filing so that as you, so that you know what your obligations are?

Phillips: Okay. Is that in the form of a motion, Mr. Kelly?

Kelly: Yeah.

Phillips: Would you restate that?

Kelly: I would say that we introduce a concurrent resolution that starts out to the effect of a, conduct of a legislator, a member of the legislature shall at all times engage in conduct that reflects creditably on the legislature, and then the next sentence is a person in the legislative branch should, list everything in 010 and then go and then also add 070, official business of the legislature, but I think it should be done in a manner that I don't think it should be written like statute, per say, you know, but it kind of also should be done in a long hand ethical, but it should be listed in a different way that this is.

Unidentified: Is this going to be a uniform rule?

Phillips: Yes.

Kelly: It would not be a rule, per say. It would be the legislative code of ethics, it would be printed

Phillips: It would be something like this

Kelly: along with the Uniform Rules. Plus the oath

Phillips: Senator Josephson?

Josephson: Let me address a very important question. If, correct me, if I'm wrong, but I thought -- can you be expelled from the Legislature for violating a rule?

Various: (undiscernable)

Bradley: I don't think once (undiscernable) you can be expelled for anything.

Josephson: So if we, if we do it Senator Kelly's way, the legislature could still impose sanctions on a member who did not comply with these standards.

Various: (undiscernable)

Kelly: We can do that right now. The Legislature is the judge of

Phillips: of (undiscernable)

Kelly: its own members. Anybody at anytime can be expelled from this body with 14 votes and 27.

Josephson: Is that right?

LAUGHTER

Phillips: Mr. Miller?

Miller: On that motion. (undiscernable). It seems like everybody kind of likes 070 but me but I don't understand what 070 was seeking to do. I'm not aware of anybody ever abusing and I don't know what this means when it says you can't use the phrase "Alaska House of Representative, Alaska Senate or a variant without proper authority and except for official business." If, what's proper authority? Is the Speaker going to have to give us permission to be introduced at a banquet as House of Representatives, member of the House of Representatives, or I don't know

Phillips: Senator Kelly ?

Miller : I'm not aware that anybody has ever abused this privilege of being called a legislator.

Faiks: Representative Miller, I guess, I've seen it abused. I've heard it abused. I've heard phone calls for tickets to airlines or whatever and the word a senator or representative used to get a little faster service or to go to the head of the line

Miller: Now wait a minute are you saying when you call up to go to Anchorage that you can't say that this is Representative Mike Miller calling?

Faiks: No, I'm saying if you've got official business up there that's fine, but I'm talking about at the end of summer or whenever, private use. There's absolutely no official contact at all used. I think it's good for the committee to talk about that. I've seen it enough. It's always been kind of a click in my head that gee that's using that time for personal gain for personal convenience.

Miller: (undiscernable) don't get to keep the title

Phillips: Representative Lacher?

Lacher: Yeah, I would like to ask Senator Faiks -- are you suggesting, Senator Faiks, then that when we are not in session doing the state's business that I am no longer Representative Lacher?

Faiks: No, I'm not saying that

Lacher: Okay. so then I guess that I would need to know how you can define this. If I could never be Representative Lacher I could deal with that but if I could only be Representative Lacher if it appears to somebody that I'm not using that to get to the head of the line or get my tickets faster, I'm concerned because who is that somebody going to make that decision. I mean it's easy for me to not be Representative Lacher when I'm not here, that I could deal with but to have this little vague thing out there. If someone is going to make a decision about whether or not

Faiks: Well, lets make it real simple, if I may, Mr. Chairman. I want to get an American Express credit card. I write them and make sure my application is on my letter. I pay my gas bill in Anchorage, make sure that my envelope is my legislative envelope. It just happened to be there it was real easy, I mean why not?

VARIOUS undiscernable

Phillips: Senator Josephson?

Josephson: There's an area here -- there was a case once where a legislator allegedly, and I stress that, used official legislative stationery to correspond with the president of the University of Alaska about a contracting job and I saw that -- and when I saw allegedly, I saw a xerox of that and I thought that was pretty shocking. (undiscernable) legislature was in session. That I think is illegitimate and contrary to the public interest but I think the kind of things that you've mentioned are poor taste but not really, I mean we could get awfully diverted with that

Phillips: Mr. Bradley?

Bradley: I suppose I would have to admit that the section is poorly drafted if its susceptible to this interpretation because I think in context the U S House of Representatives' rule is clearly talking about the use of stationery and that kind of thing. That is what it is seeking to address. I (undiscernable) if it's susceptible to that interpretation then it is poorly drafted.

Phillips: Senator Josephson?

Josephson: It's not, it's not a violation of the Hippocratic Oath for someone to call Yancey's and say "This is Dr. Smith and I'd like a table by the window." I don't see why we should be worried about calling up and saying "This is Senator Faiks and I'm having a dinner party for four people. Could I get a nice table?" Maybe that, maybe in the (undiscernable) favor, Senator, that shouldn't be done. But I don't hardly think that's

Miller: Just give another example. In Juneau, incredibly, there are four Mike Millers. Sometimes there have been even more, but right now there are four adult Mike Millers. So that people know who to call for me when they go to call me, I have "Rep" written in front of my name and I didn't do that for several years and I had lots of complaints that people had to go through four Mike Millers before they finally got to the one they want

Phillips: Now you've got two in the Legislature

Miller: Yeah, now they've got two in the Legislature but that's a separate problem: But I don't think I could do that, I don't think I could list myself as Rep. Mike Miller in the phone under this rule, at least if I wanted to. I don't think anyone is going to prosecute me but

Faiks: I think that is your official capacity in the phone book like that.

Miller: Well, if I go up to Anchorage (und. cernable) but I'm still Rep. Mike Miller (undiscernabl)

Kelly : Mr. Chairman. It seems to me that if we can't agree with (undiscernable) let's stick to what we can agree on and get something in tomorrow because it's our last meeting and if we have problem here, then we're going to have problems getting this whole thing through anyway and the object is to get something through.

Phillips: Barbara?

Lacher: Mr. Chairman, one more thing. I think that we have allowed Senator Faiks to somehow mislead us. This doesn't address what she says. This doesn't say that I can't be Representative Lacher at all. It says I can't use the phrases "Legislature of the State of Alaska, or Alaska House of Representatives" or

Faiks: I never said that. I said stationery.

Lacher: Right. We got carried away.

Faiks: Yeah, you guys did. You guys took it (undiscernable) I was sticking with these phrases right here.

VARIOUS

Phillips: Senator Kelly would you restate the motion

Kelly: Okay, my motion is I want to drop 070 out and if someone wants to put it in later in committee when they come up with good language. Fine. So my motion stands, dropping out 07.

Phillips: Senator Josephson?

Josephson: I would like to keep 070 but refine it to printed materials containing the phrases

Faiks: I'll live with that

Kelly: Well, I've got a couple of problem. Number one, it doesn't belong. It's not at the same level as the code of ethics, you know, I mean this is a minor thing. It's not on the same level as these other principles. It's not a principle, it's a ticky tacky little thing. Okay, that's why I oject to it and I'm not. You know, who the hell wants to take an oath about using printed stationery, you know.

Phillips: Rick?

Halford: You've got two kinds of stationery in this process. One, you've got committee stationery which is funded at state expense and you've got office stationery for specific offices in the legislative process that the state pays for. That should all say "official business" on it and you don't own that and you haven't got the right to use that for your own personal business. Anybody else goes out and buys their stationery. I've still got stationery that says "Representative Rick Half---Halford" on it. I send it to my family to get rid of it when I'm writing a letter to my mother. Who the hell cares? It's not paid for by the state of Alaska. It's part of an allowance which all of overspend substantially and put our own money into dealing with the constituents. It's the official business that is paid for by the state and that's misuse of state property when you use that stationery.

UNDISCERNABLE

Phillips: I think we ought to have a finality to this because, you know, we're a long way off here and dealing with Uniform Rules I'm sure is going to take --

Josephson: No controversy there

Phillips: No controversy?? Okay, Senator Kelly, state your motion please and then we'll vote.

Kelly: We take 24.60.020, paragraph (a), place it in front of and get rid of the title, just call it Legislative Code of Ethics, place it in front of 010, and then it goes "a person of the legislative branch should" and then run out until number 10, and put an oath thing in it, put a requirement for an oath in there so that everybody is aware of what. My conception is that everybody would read this and then swear to it, something like that, Joe?

Josephson: Yeah.

Kelly: All right. So put a requirement that it would be included

Josephson: I would like to see it, can we constitutionally do it, as a requirement of the office

VARIOUS undiscernable

Kelly: Or we can refine it that the President read this to everybody upon election to the chair, the presiding officer will or upon organization of each legislature this will be read aloud

Phillips: Lt. Governor?

Kelly: to each house and it could be read by the Secretary of the Senate or the Clerk's office or something

Phillips: Or the Lt. Governor?

Kelly: So that everybody is aware of it

Phillips: Tim, the Lt. Governor could do this when you're swearing

Kelly: I don't want the Lt. Governor to do this stuff. As long as it is read to all of the members upon organization.

Faiks: Got it.

Phillips: Okay.

Kelly: Effective date. It seems to me that this should go into effect the same time the other stuff goes into effect to let everybody get used to it. If you can't abide by this, it gives you plenty of time to get out.

Faiks: That's right.

Kelly: That's legislators and employees. Was the other effective date January 9, 1984? You didn't put an effective date?

Phillips: Well this is going to be a House Joint resolution

Kelly: What was the effective date?

Miller: (undiscernable)

VARIOUS (undiscernable)

Kelly: You could include it in the resolution couldn't you?

Phillips: Yes, we can.

Faiks: We had a long discussion on that.

Phillips: Okay, any discussion? Any objections?

Lacher: I object.

Phillips: Okay, all those in favor of the motion signify by raising your right hand. All those opposed. Five to one, motion passes. Okay, what about 030 and 040, 050, 060, and I think we pretty much discussed 080 and 150. Any interest in those.

Miller: Mr. Chairman?

Phillips: Mr. Miller?

Miller: I move that this material be provided to the presiding officer of each house for consideration by the committee to be turned into legislation if they desire or just make this research available to each house (undiscernable) want to deal with it.

Phillips: Okay, are you saying that in the form of a bill or just make them aware?

Miller: No, just make them aware (Noises)

Phillips: Discussion? All those in favor of the motion, signify by raising your right hand. All those opposed. Motion passes.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 6, 1983

SUBJECT: Ethics legislation
(Work Order No. 13-0928)

TO: Representative Randy Phillips

FROM: Richard A. Bradley
Legislative Counsel

I have done this bill for you in draft because of the elimination of references to non-legislative personnel in former sec. 1 cause a measurable amount of adjustments.

I am satisfied that I can adhere to your schedule for the bill notwithstanding this delay.

If I may be of further assistance, please advise.

RAB:ljb

Enclosure
13/025

13-0928
Bradley
4/6/83

IN THE HOUSE BY PHILLIPS

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ethics in the legislature; and providing for an effective date."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. ETHICS.

Sec. 24.60.010. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance

of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Sec. 24.60.020. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Sec. 24.60.030. COMPENSATION TO A LEGISLATOR. (a) A member of the legislature may receive no compensation, beyond the compensation payable under AS 24.15, under circumstances where the compensation may be construed by reasonable persons as influencing the performance of official duties.

(b) A member of the legislature may not receive compensation beyond the compensation payable under AS 24.15, indirectly or directly, for services rendered in any matter or proceeding before an agency of the state in which the state is a party or has an interest. This subsection does not apply to matters or proceedings before a court of the state.

Sec. 24.60.040. SPEECHES AND PUBLICATIONS. A member of the legislature may not accept an honorarium for a speech, writing for publication, or other similar activity from a person in excess of the usual or customary value of the services.

Sec. 24.60.050. CAMPAIGN FUNDS. (a) A member of the

legislature shall keep campaign funds separate from personal funds. A member of the legislature may not convert campaign funds to personal use in excess of reimbursement for a legitimate and verifiable prior campaign expenditure. A member of the legislature may expend no funds from a campaign account not attributable to a bona fide campaign purpose.

(b) A member of the legislature may not use appropriated funds or state supplies and equipment merely for campaign activity.

Sec. 24.60.060. PROCEEDS OF A FUND RAISING EVENT. A member of the legislature shall treat as a campaign contribution all of the proceeds from a fund raising event.

Sec. 24.60.070. COMPENSATION OF PERSONAL STAFF. A member of the legislature may not employ personal staff who do not perform duties commensurate with the compensation received. An employee of a member of the legislature may not be required to divide or share compensation earned from the legislative employment with another person and may not be required to spend personal funds to benefit a member of the legislature or the operations of the office of the member of the legislature. An employee of a member of the legislature may not be required to perform nonofficial, personal, or campaign duties on behalf of the member of the legislature or anyone else.

Sec. 24.60.080. DISCRIMINATION. A member of the legislature may not discharge or refuse to employ an individual with respect to compensation, terms, conditions, and privileges of employment for reasons that would constitute a violation of AS 18.80.220.

Sec. 24.60.090. OFFICIAL BUSINESS OF A LEGISLATOR. A member of the legislature may not use the phrases "Legislature of the State of Alaska", "Alaska House of Representatives", "Alaska Senate", a phrase describing a committee of the legislature, or a variant on the phrases

without proper authority and except for official business.

Sec. 24.60.100. FINANCIAL INTERESTS AND DISCLOSURE. A member of the legislature shall comply with the requirements of AS 39.50. A member of the legislature may establish a blind trust to which assets or their control may be transferred to avoid a conflict of interest.

Sec. 24.60.150. APPLICATION OF CHAPTER TO PERSONAL STAFF. The provisions of AS 24.60.010 - 24.60.100 apply to an individual on the personal staff of a legislator.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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 March 7, 1983

SUBJECT: Ethics in government
(Work Order No. 13-0928)

TO: Representative Randy Phillips

FROM: Richard A. Bradley
Legislative Counsel

I believe the enclosed bill is responsive to your request.

The bill is modeled closely after two documents: the "Code of Official Conduct" of the U. S. House of Representatives as well as the "Ethics Manual for Members and Employees of the U. S. House of Representatives."

Section 1 of the bill applies generally to government; it is derived from the "Ethics Manual" at page 9.

Section 2 of the bill is derived from the "Code of Official Conduct". While this may oversimplify, I believe it is fair to say that the material from the "Code" is contained in the sections of the bill; to the extent that subsections are added in the draft enclosed, they are almost uniformly concepts that seemed a necessarily implied elaboration because the so-called "Code" has an elaborate gloss derived from its interpretations. The U. S. House of Representatives uses the "Code" but the interpretations in the "Manual" are themselves also a part of the "Code"; because the "Code" is, therefore, a deceptive skeleton, I have fleshed it out. But I believe that if this is more than you wanted, you may wish simply to strip off the subsections of the draft enclosed; it would then closely resemble the "Code".

Under that scenario, section 1 would be deleted, the title would be changed to ". . . legislative ethics . . ." and the subsections would be stripped off (except for Sec. 24.60.010 which incorporates the first two sections of the "Code").

If you do that (and maybe even if you do not do that), you may wish to establish an ethics committee of the legislature to provide the interpretations that are a measurable part of the result that the U. S. House has established.

I am enclosing the "Code" and the "Manual" for your use.

If I may be of further assistance, please advise.

RAB:ljb

Enclosures
1/007

13-0928
Bradley
3-7-83 ✓✓

IN THE HOUSE BY PHILLIPS

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ethics in government; and providing for an effective date."

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

* Section 1. AS 39 is amended by adding a new chapter to read:

CHAPTER 08. ETHICS.

Sec. 39.08.010. GENERAL PRECEPTS OF ETHICAL CONDUCT FOR GOVERNMENT SERVICE. A person in state government should

(1) put loyalty to the highest moral principles and to country above loyalty to persons, party, or the department of government;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) give a full day's labor for a full day's pay, giving to the performance of assigned duties earnest effort and best thought;

(4) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(5) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(6) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of assigned duties;

(7) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(8) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of government duties;

(9) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(10) expose corruption wherever discovered;

(11) uphold these principles, ever conscious that public office is a public trust.

* Sec. 2. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. ETHICS.

ARTICLE 1. MEMBERS OF THE LEGISLATURE.

Sec. 24.60.010. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Sec. 24.60.020. COMPENSATION TO A LEGISLATOR. (a) A member of the legislature may receive no compensation, beyond the compensation payable under AS 24.15, under circumstances where the compensation may be construed by reasonable persons as influencing the performance of official duties.

(b) A member of the legislature may not receive compensation beyond the compensation payable under AS 24.15, indirectly or directly, for services rendered in any matter or proceeding before an agency of the state in which the state is a party or has an interest. This subsection does not apply to matters or proceedings before a court of the state.

(c) A member of the legislature may not directly or indirectly hold, execute, undertake, or enjoy in whole or in part a contract with the state. This subsection does not prohibit a contract entered into by a corporation for the general benefit of the corporation and does not prohibit a loan made to a member of the legislature by an agency of the state if the conditions for the loan are stated in the law permitting the loan and the exercise of discretion is not required by officers of the state agency in the review and approval of the loan.

Sec. 24.60.030. GIFTS TO A LEGISLATOR. (a) A member of the legislature may not accept a gift directly or indirectly of more than $35 in value or aggregating more than $100 in value in a calendar year from a person having a direct interest in legislation before the legislature. For the purposes of this section,

(1) an individual who is required to register as a lobbyist under AS 24.45 is considered to have a direct interest in legislation before the legislature;

(2) "gift" does not include personal hospitality from an individual or with a fair market value of $35 or less;

(3) "personal hospitality" means hospitality extended for a nonlegislative purpose by an individual, not by a corporation or organization, on property owned by the individual or the family of the individual.

(b) The receipts from a fundraiser or a testimonial for a member of the legislature are campaign funds and not gifts.

(c) The following are not gifts under this section:

(1) a bequest or inheritance;

(2) a loan made in a commercially reasonable manner with the requirement that the loan be repaid and that a reasonable amount of interest be paid;

(3) contributions to a campaign fund that are required to be reported under AS 15.13;

(4) food, lodging, transportation, and entertainment provided on an official basis by federal, state, or municipal governments;

(5) communications to the office of a member of the legislature, including subscriptions to newspapers, magazines, and other periodicals;

(6) bona fide awards presented in recognition of public service and available to the general public;

(7) suitable mementos of a function honoring the member of the legislature;

(8) consumable products provided by constituents of the member of the legislature to the office of the member that are primarily intended for consumption by persons other than the member of the legislature or legislative staff; and

(9) food and beverages consumed at banquets, receptions, and similar events.

Sec. 24.60.040. SPEECHES AND PUBLICATIONS. A member of the legislature may not accept an honorarium for a speech, writing for publication, or other similar activity from a person in excess of the usual or customary value of the services.

Sec. 24.60.050. CAMPAIGN FUNDS. (a) A member of the legislature shall keep campaign funds separate from personal funds. A member of the legislature may not convert campaign funds to personal use in excess of reimbursement for a legitimate and verifiable prior campaign expenditure. A member of the legislature may expend no funds from a campaign account not attributable to a bona fide campaign purpose.

(b) A member of the legislature may not use appropriated funds

or state supplies and equipment merely for campaign activity.

Sec. 24.60.060. PROCEEDS OF A FUND RAISING EVENT. A member of the legislature shall treat as a campaign contribution all of the proceeds from a fund raising event.

Sec. 24.60.070. COMPENSATION OF PERSONAL STAFF. A member of the legislature may not employ personal staff who do not perform duties commensurate with the compensation received. An employee of a member of the legislature may not be required to divide or share compensation earned from the legislative employment with another person and may not be required to spend personal funds to benefit a member of the legislature or the operations of the office of the member of the legislature. An employee of a member of the legislature may not be requested to perform nonofficial, personal, or campaign duties on behalf of the member of the legislature or anyone else.

Sec. 24.60.080. DISCRIMINATION. A member of the legislature may not discharge or refuse to employ an individual with respect to compensation, terms, conditions, and privileges of employment for reasons that would constitute a violation of AS 18.80.220.

Sec. 24.60.090. LEGISLATIVE ACTIVITY AFTER CERTAIN CONVICTIONS. A member of the legislature should refrain from participation in the business of a committee of the legislature and should refrain from voting on any question before a house of the legislature after conviction of a crime for which two years' imprisonment may be imposed until judicial or executive proceedings result in the reinstatement of the presumption of innocence or until after a reelection to the legislature.

Sec. 24.60.100. OFFICIAL BUSINESS OF A LEGISLATOR. A member of the legislature may not use the phrases "Legislature of the State of Alaska", "Alaska House of Representatives", "Alaska Senate", a phrase

describing a committee of the legislature, or a variant on the phrases without proper authority and except for official business.

Sec. 24.60.110. FINANCIAL INTERESTS AND DISCLOSURE. A member of the legislature shall comply with the requirements of AS 39.50. A member of the legislature may establish a blind trust to which assets or their control may be transferred to avoid a conflict of interest.

ARTICLE 2. PERSONAL STAFF OF MEMBERS OF THE LEGISLATURE.

Sec. 24.60.150. APPLICATION OF CHAPTER TO PERSONAL STAFF. The provisions of AS 24.60.010 - 24.60.100 apply to an individual on the personal staff of a legislator.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

TO: REPRESENTATIVE BARBARA LACHER
REPRESENTATIVE MIKE MILLER

FROM: REPRESENTATIVE RANDY PHILLIPS RP/jp

DATE: APRIL 20, 1983

RE: SPECIAL LEGISLATIVE REFORM COMMITTEE

Enclosed is the proposed draft of the resolution concerning the Code of Ethics.

Please review the enclosure and advise me regarding this resolution. Your prompt advice would be appreciated.

Enclosure

13-1292
Berrier
4-20-83

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Part 3. READING PREAMBLE. When a temporary presiding officer has assumed the chair under Rule 1(b) the temporary presiding officer shall have this preamble read to the members before calling for nomination of the permanent presiding officer.

Code

13-0928
Bradley
4/6/83

IN THE HOUSE BY PHILLIPS

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ethics in the legislature; and providing for an effective date."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. ETHICS.

Sec. 24.60.010. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

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Sec. 24.60.030. COMPENSATION TO A LEGISLATOR. (a) A member of the legislature may receive no compensation, beyond the compensation payable under AS 24.15, under circumstances where the compensation may be construed by reasonable persons as influencing the performance of official duties.

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Sec. 24.60.050. CAMPAIGN FUNDS. (a) A member of the

legislature shall keep campaign funds separate from personal funds. A member of the legislature may not convert campaign funds to personal use in excess of reimbursement for a legitimate and verifiable prior campaign expenditure. A member of the legislature may expend no funds from a campaign account not attributable to a bona fide campaign purpose.

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Sec. 24.60.070. COMPENSATION OF PERSONAL STAFF. A member of the legislature may not employ personal staff who do not perform duties commensurate with the compensation received. An employee of a member of the legislature may not be required to divide or share compensation earned from the legislative employment with another person and may not be required to spend personal funds to benefit a member of the legislature or the operations of the office of the member of the legislature. An employee of a member of the legislature may not be required to perform nonofficial, personal, or campaign duties on behalf of the member of the legislature or anyone else.

Sec. 24.60.080. DISCRIMINATION. A member of the legislature may not discharge or refuse to employ an individual with respect to compensation, terms, conditions, and privileges of employment for reasons that would constitute a violation of AS 18.80.220.

Sec. 24.60.090. OFFICIAL BUSINESS OF A LEGISLATOR. A member of the legislature may not use the phrases "Legislature of the State of Alaska", "Alaska House of Representatives", "Alaska Senate", a phrase describing a committee of the legislature, or a variant on the phrases

without proper authority and except for official business.

Sec. 24.60.100. FINANCIAL INTERESTS AND DISCLOSURE. A member of the legislature shall comply with the requirements of AS 39.50. A member of the legislature may establish a blind trust to which assets or their control may be transferred to avoid a conflict of interest.

Sec. 24.60.150. APPLICATION OF CHAPTER TO PERSONAL STAFF. The provisions of AS 24.60.010 - 24.60.100 apply to an individual on the personal staff of a legislator.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

13-1292
Berrier
4-20-83

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Part 3. READING PREAMBLE. When a temporary presiding officer has assumed the chair under Rule 1(b) the temporary presiding officer shall have this preamble read to the members before calling for nomination of the permanent presiding officer.

Introduced: 4/25/83
Referred: Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 33

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

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(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

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(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

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(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Part 3. READING PREAMBLE. When a temporary presiding officer has assumed the chair under Rule 1(b) the temporary presiding officer shall have this preamble read to the members before calling for nomination of the permanent presiding officer.

SCOMM #35:3

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

AGENDA

Joint Legislative Reform Committee

February 22, 1983, 1:30 pm

Butrovich Room, Capitol Building

1. Call to Order — Phillips
2. Update — Faiks
   a. Compile information for NCSL
   b. Work plan and time schedule
   c. Contract
3. Assignments — Phillips
   a. Persons to interview - former legislators, current legislators, staff (personal, standing committee, Leg. Finance, Leg. Affairs), executive staff (AG and OMB), general public.
   b. Individuals and organizations to contact.
   c. Review HB 20, FREE suggestions, other recommendations.
4. Comments and suggestions — Phillips
5. Schedule future meetings — Phillips
6. Adjourn — Phillips

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

AGENDA

Joint Legislative Reform Committee

February 24, 1983, 2:00 pm

Butrovich Room, Capitol Building

1. Call to Order
2. Update
3. Lists of People to Contact
4. Discussion of Conflict of Interest Proposals
5. Adjourn

Next meeting Tuesday, March 1, time to be decided.

2124

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4948

BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4948

Representative Randy Phillips

HOUSE DISTRICT~~XX~~ 15

LIST OF SUGGESTED CONTACTS FOR NCSL REGARDING LEGISLATIVE REFORM COMMITTEE:

Darlene Chapman, Chairman, District 15 Republican Party, PO Box 165, Eagle River, AK 99577. Telephone: (907) 694-2606.

Sam Cotten, former State Representative, PO Box 296, Eagle River, AK 99577. Telephone: (907) 694-9385

Jay Hogan, former Director of Legislative Finance, Governor's Office, Pouch A, Juneau, AK 99811. Telephone: (907) 465-3500

Dick Randolph, former Libertarian State Representative, 1105 Cushman, Fairbanks, AK 99701. Telephone: (907) 456-8480.

Ken Fanning, former Libertarian State Representative, PO Box 80929, College, AK 99708. Telephone: (907) 479-6178.

Chugiak-Eagle River Republican Women's Club, Barbara Franklin, 5710 David Street, Eagle River, AK 99577. Telephone: (907) 694-9243.

Chugiak-Eagle River Chamber of Commerce, William E. Reedy, Jr., President, PO Box 353, Eagle River, AK 99577. Telephone: (907) 694-3198.

Common Sense for Alaska, Inc., 101 West Benson Boulevard, Anchorage, AK. Telephone: (907) 276-7648

Republican Party of Alaska, Ken Stout, Chairman, 515 D Street, Anchorage, AK 99501. Telephone: (907) 276-4467

Libertarian Party of Alaska, c/o Libertarian Party of Anchorage. Telephone: (907) 272-2234.

Brad Bradley, former State Senator, 1530 Beaver Place, Anchorage, AK 99504. Telephone: (907) 337-1060.

Joe LaRocca, reporter, All-Alaska Weekly, Press Room, Capitol Building, Second Floor, Juneau, AK 99801. Telephone: (907) 586-3260.

FREE Committee

Marianne Helms

Democratic Party of Alaska

Alaska State Chamber of Commerce

AGENDA

Joint Legislative Reform Committee

March 3, 1983

Beltz Room, Capitol Building

1. Call to Order
2. Update AG.
3. Introduction of NCSL Personnel and Report
4. NCSL Contract
5. Adjournment

Next Meeting Thursday, March 10, noon, Beltz Room

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

NATIONAL CONFERENCE OF STATE LEGISLATURES
1125 17th Street, Suite 1500
Denver, Colorado 80202

CONTRACT AMOUNT $22,624

The parties to this agreement are the Legislative Affairs Agency on behalf of the Joint Special Legislative Reform Committee, hereinafter referred to as the "Agency", and The National Conference of State Legislatures, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS AGREEMENT is to provide the Joint Special Committee on Legislative Reform a comprehensive review of legislative rules and procedures, ethics legislation and the legislative budget process in an effort to develop specific recommendations for ways to strengthen and streamline legislative operations.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall conduct a study of the Alaska Legislature's Uniform Rules, relevant state statutes dealing with conflicts of interest for public officals, code of ethics and the legislative budget process. The project will include: (A) A detailed review of relevant documents, statutes, reports, manuals and rules; (B) On-site and telephone interviews with legislators, legislative staff, interested citizens, and participants in the legislative process; (C) Collection and analysis of data from other state legislatures and possible procedural alternatives and recommendations; (D) Organization of a public hearing by audio teleconference for the joint study committee public hearing on possible changes in ethics legislation, soliciting the testimony of recognized national authorities on legislative ethics; (E) Preparation of a final report with recommendations.

The Consultant shall submit a preliminary report of its findings and recommendations on ethics legislation to the Joint Special Committee on Legislative Reform by April 1, 1983. A final report of the entire project including the Consultant's findings and recommendations on the legislative budget process and legislative rules and procedures will be submitted by May 15, 1983.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

The work under this contract shall be performed from March 1, 1983 to May 15, 1983.

CLAUSE III - PROJECT DIRECTORS

The Project Directors shall be Senator Jan Faiks and Representative Randy Phillips, Co-Chairmen of the Joint Special Legislative Reform Committee.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

(A) For the work specified in this contract, the Consultant shall be paid $16,000 (Sixteen Thousand Dollars) on April 1, 1983. Upon approval from the Project Directors, $6,624 (Six Thousand, Six Hundred Twenty-four Dollars) will be paid on May 15, 1983.

(B) Total payments under this contract, including expenses shall not exceed $22, 624.00 (Twenty-two Thousand Six Hundred Twenty-four Dollars).

CLAUSE V - OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support of the Consultant that will be necessary to carry out his obligations under this contract shall be supplied by the Agency at no cost to the Consultant.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The Consultant shall maintain accurate records, including detailed time records, as may be required by the Project Directors. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the State of Alaska and, on completion of the work or at the termination of this contract, shall be delivered to the Project Directors for disposition under Rule 23 of the Uniform Rules of the Alaska State Legislature.

CLAUSE VII - DISPUTES

A dispute concerning a question of fact arising under this contract which is not disposed of by agreement between the Agency and the Consultant shall be decided by the Project Directors; the decision shall be reduced to writing and delivered to the Consultant at the address specified in Clause VIII, Paragraph (A) of this contract. The decision of the Project Directors is final and conclusive.

CLAUSE VIII - TERMINATION

(A) This contract may be terminated by the Agency upon delivery of written notice to the Consultant delivered to the following address: 1125 17th Street, Suite 1500, Denver, Colorado 80202.

(B) If this contract is terminated, the Consultant shall be compensated for services provided under the terms of this contract to the date of termination if the Consultant provides the Agency with a written report containing a description of any research or analyses performed, a statement of the result or conclusions formed based upon the research or analyses and a copy of all data acquired by the Consultant in conjunction with this contract.

CLAUSE IX - REPORTS

The Consultant shall provide progress reports in a form approved by the Project Directors as required by the Agency.

CLAUSE X - CERTIFICATION

Execution of this contract by the Executive Director or his designee, hereby constitutes a certification that funds have been appropriated and encumbered for the amount of this contract.

CLAUSE XI - MODIFICATIONS AND PREVIOUS AGREEMENTS

This contract contains the entire agreement between the parties. A statement, promise or inducement made by a party or an agent of a party is not valid or binding unless the statement, promise or inducement is contained in this written contract. This contract may not be enlarged, modified, or altered except upon written agreement signed by all parties to the contract.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated.

CONSULTANT

BILL POUND Date
NATIONAL CONFERENCE OF STATE LEGISLATURES IRS# _____

Accepted:

SENATOR JAN FAIKS, CO-CHAIRMAN
LEGISLATIVE REFORM COMMITTEE

REP. RANDY PHILLIPS Date
CO-CHAIRMAN, LEGISLATIVE REFORM CMTE.

SENATOR JALMAR KERTTULA Date
PRESIDENT OF THE SENATE

LEGISLATIVE AFFAIRS AGENCY

M. R. CHARNEY Date
EXECUTIVE DIRECTOR

Approved as to form:

BILLY G. BERRIER Date
AGENCY LEGAL COUNSEL

REP. JOE L. HAYES Date
SPEAKER OF THE HOUSE

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

AGENDA

Joint Legislative Reform Committee

March 10, 1983, 12:00 p.m.

Beltz Room, Capitol Building

1. Call to Order
2. NCSL Update
3. Discussion of Ethics and Conflict of Interest
   a. AG's Progress
   b. Phillips Suggestions
4. Comments by Committee Members
5. Adjourn

Items in packet:

1. Berrier review of Rule 23 - 5 day rule
2. List of people interviewed by NCSL
3. Draft of ethics by Phillips

Next meeting Thursday, March 17, 12:00 noon, Beltz Room

Alaska State Legislature

House

JUNEAU ALASKA

MEMORANDUM

TO: MEMBERS OF THE JOINT SPECIAL COMMITTEE ON LEGISLATIVE REFORM

FROM: REPRESENTATIVE RANDY PHILLIPS REP
CO-CHAIRMAN, JOINT SPECIAL COMMITTEE ON LEGISLATIVE REFORM

DATE: MARCH 10, 1983

RE: NCSL INTERVIEWS

For your information, listed below are the names of the persons interviewed by Jan Carpenter and/or Bill Pound of NCSL while they were in Juneau last week:

Senator Tim Kelly
Representative Barbara Lacher
Representative Joe Flood
Senator Arliss Sturgulewski
Senator Joe Josephson
Senator Rick Halford
Senator Bill Ray
Representative Mike Miller
Senator Don Gilman
Representative Al Adams
Senator Vic Fischer
Representative Ramona Barnes
House Speaker Joe Hayes
Representative Randy Phillips
Senate Secretary Peggy Mulligan
House Chief Clerk Irene Cashen
Max Gifford, Senate Finance Committee Staff
Tom Bergstrom, Senate Finance Committee Staff
Tom Jahnke, Attorney General's Office
Billy Berrier, Legislative Counsel
Myrt Charney, Executive Director, Legislative Affairs
Ralph Bennett, Representative Bettisworth's Office

If you have any questions, please do not hesitate to contact me.

RP:jss

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

March 21, 1983

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

AGENDA

Special Committee on Legislative Reform

1) Presentation by NCSL Staff/Ethics and Conflict of Interest

2) Presentation by Dean Gwenelli and Diane Colvin from the Attorney General's office on status of legislation

3) Discussion of Bill Berrier memo (if time allows)

March 25, 1983

Special Joint Committee
on Legislative Reform
12:00 Noon
Beltz Room

AGENDA

1) Discussion of Tuesday's NCSL Workshop (see enclosed NCSL summary sheet).

2) Goal: Reach a Committee consensus on conflict of interest legislation in hopes of preparing draft legislation.

3) Announcements

AGENDA

Special Committee
on Legislative Reform

April 7, 1983
12:00 Noon
Beltz Room

1) Discussion and mark-up session of draft proposal

2) Discussion of Ethics Legislation by Representative Phillips

3) Announcements

4/6/83 - version

.010 - Splash 6 - + pss | OK
.020 -

Alaska State Legislature

OFFICE OF THE MINORITY

POUCH V
JUNEAU, ALASKA 99811

House of Representatives

April 7, 1983

DRAFT CONFLICTS LEGISLATION REVISIONS

by Rep. Mike Miller

1. ~~Delete~~ AS 24.60.030(a), and insert the following;

Add & renumber "(a) No individual subject to this chapter shall use his public office for private advancement or gain."

Source - Model State Law, section 11(a).

2. ~~Delete~~ AS 24.60.030(b), and insert the following;

ok "(b) a conflict does not exist if ~~the commission determines that~~ no benefit or detriment accrues to the individual subject to this act, beyond that which accrues uniformly to members of the profession, occupation, group, or public at large.

Source - HB 20

3. Delete AS 24.60.060(e)

4. Amend AS 24.60.110 as follows;

Pg. 6, Ln.26, delete "a person to whom this chapter applies" and insert "a member of the legislature".

5. Amend AS 24.60.170 as follows;

Pg. 12, Ln. 1, delete "three" and insert "four".

13-1185
~~Berrier~~
4/7/83

#2

IN THE SENATE

BY THE SPECIAL COMMITTEE ON LEGISLATIVE REFORM

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature established under AS 24.20. This chapter applies when a person listed above has a direct beneficial interest in a matter,

~~whether or not the person is a party to the matter.~~ This chapter does not apply to a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies. This chapter ~~does not~~ apply to a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature established under AS 24.20.

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(b) Conflicts of interest are prohibited but there is not a conflict of interest if the commission determines that as to a specific matter there is no substantial impropriety or appearance of impropriety because

(1) ~~the legislator's interest or the interest~~ the person's interest of a person ~~employed by the legislator~~ or an agency of the legislature is relatively insignificant;

(2) ~~the legislator's authority or the authority~~ the person's authority of a person ~~employed by the legislator or an agency of the legislature is~~ relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by

delegating responsibility for official action; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the legislator, or a person employed by the legislator or an agency of the legislature belongs. deleted (d) Miller amendment

Sec. 24.60.040. CONTRACTS. A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract is $1000 or less. A person has an interest in a state contract under this section if direct or indirect financial benefits ~~inure to the person~~ that person receives. See 4/6 version

Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a legislator may be in a position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the lending agency must send a copy of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement. All records relating to a

state loan to a person to whom this chapter applies may be disclosed to the commission.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to legislators, except for loans described in (a) of this section. The list must include the name of the legislator, the date of issuance and current status of the loan.

(e) A legislator is prohibited from applying for participation in a state program or for a state loan from a loan program that was created or the class of persons who qualify for the program or loan was expanded by legislation acted on during the term for which the legislator was elected for a period of one year after the effective date of the Act which created the program or expanded the class.

(f) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. However, the regulations need not govern loans described in (a) of this section.

(g) The division of legislative audit shall annually review state loans granted to or held by legislators to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics commission by April 1.

(h) For purposes of this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person.

Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information

that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A person to whom this chapter applies shall disclose to the commission the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including pr ing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50.

(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist.

Sec. 24.60.080. GIFTS. (a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly a gift, in excess of $100, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action on the part of the person.

(b) There is no conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or ground transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person;

(4) gifts from the person's immediate family.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over the benefits to the agency.

Sec. 24.60.090. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, husband, wife, mother, father, sister or brother.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a person to whom this chapter applies may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature and a person employed by a member of the legislature may represent a client in

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

(c) A legislator or a person employed by a member of the legislature cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator who has a conflict of interest shall immediately

(1) resign the position;

(2) dispose of the matter which has resulted in the conflict or potential conflict; or

(3) may disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the commission which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session.

Sec. 24.60.120. STATE PROPERTY AND FUNDS. A member of the legislature or a person employed by a member of the legislature may not use state property or funds for personal or campaign purposes.

Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to the commission from the senate with the concurrence by roll call vote of three-fourths of the full membership of the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives with the concurrence by roll call vote of three-fourths of the full membership of the house;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the senate;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the house;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

h) The commission may employ an executive director and staff as it considers necessary. A member of the commission may not serve as executive director or on the staff of the commission.

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.140. DUTIES OF THE COMMISSION. (a) The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) recommend to the legislature legislation the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(4) publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

(b) The commission may adopt regulations to implement, clarify, and interpret this chapter.

Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter

applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential.

Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission. No complaint, other than a complaint initiated by three or more members of the commission may be received within a period of 60 days preceding a state primary or general election.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a

violation of this chapter.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission and to the person

charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing and signed by four or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation and may contain recommendations concerning penalties including imposition of civil penalties in an amount not to exceed $25,000. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

(j) A commission member or individual who divulges information concerning a charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class C felony.

Sec. 24.60.170. In this chapter, "commission" means the Legislative Ethics Commission.

JOINT SPECIAL COMMITTEE ON
ON LEGISLATIVE REFORM

Thursday, April 7:	Present committee with proposed code of ethics legislation and conflict of interest legislation
Friday, April 8:	Committee to make final decision on conflict of interest legislation
Monday, April 11:	Present committee with proposed Uniform Rules changes
Thursday, April 14:	Code of ethics legislation draft ready for committee approval.
	Committee makes recommendation on Uniform Rules changes
Friday, April 15:	Final NCSL report will be presented

SCOMM

#35:4

Alaska State Legislature
Senate

May 23, 1983

OFFICIAL BUSINESS

CHAIRMAN
RULES COMMITTEE

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

MEMORANDUM

To: Loren Smith - Legislative Affairs

From: Senator Faiks
Representative Phillips R.E.P.

Subject: Final Payment

This will authorize the final payment to the National Conference of State Legislatures for their study on Legislative Reform. The study had been completed and copies sent to the Alaska State Legislature.

Introduced: 1/25/83
Referred: Rules

IN THE SENATE

BY THE RULES COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Establishing a Joint Special Committee on Legislative Reform.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the rules, customs, protocol, decorum and statutes governing the work of the Legislature are of great importance to the people of Alaska and the Legislature; and

WHEREAS broad public confidence in legislative practices can help assure respect for the rule of law itself; and

WHEREAS there has already occurred a significant and widespread public dialogue regarding legislative procedure, reflecting the desire of Alaskans to further encourage confidence in the legislative process and to streamline expenditures and time spent in the legislative process, consistent with the need for adequate consideration of public policy issues before the Legislature, with provision for public participation; and

WHEREAS, while the Legislature has from time to time modified its procedures, a comprehensive review of legislative procedures and practices with public involvement is needed; and

WHEREAS the work of the Legislature takes place in a constantly changing technological and demographic context, which further warrants a review of legislative procedures;

BE IT RESOLVED by the Alaska State Legislature that a Joint Special Committee on Legislative Reform is established consisting of three members of the Senate appointed by the President of the Senate and three members of the House of Representatives appointed by the Speaker of the House to study and review existing procedures, rules, customs, protocol, decorum,

court decisions, statutes, and practices, and to report its findings to the Legislature concerning their adequacy and fitness, and to recommend such changes or modifications, ~~if any there be,~~ which in the judgment of the committee will promote legislative responsiveness and accountability to the people and encourage efficiency in the legislative branch of government; and be it

FURTHER RESOLVED that the committee, when constituted, be directed to take appropriate steps consistent with existing rules to involve representative elements of the public in its deliberations; and be it

FURTHER RESOLVED that the committee is authorized to meet during the session of the Legislature and is terminated on adjournment of the First Session of the Thirteenth Legislature or upon the submission of its final report, whichever comes first.

to Feb. 1, 1984

February 2, 1983

To: All Members of Rules Committee

From: Senator Faiks, Rules Committee Chairman

Re: SCR2, Legislative Reform

The three areas proposed for study by the special committee on Legislative Reform are; Code of Ethics/Conflict of Interest legislation, evaluation of the budget process, and a general overview of the Uniform Rules. The committee will be a joint committee composed of three House members and three Senate members.

My office has been in touch with the National Conference of State Legislatures. They have indicated an interest in assisting us with this project, and have given us a proposed budget, which is attached. Note that they will be picking up a portion of the salaries and other expenses of the personnel involved.

The National Conference of State Legislatures is the official membership organization representing legislatures and staff. All 50 states belong and contribute. NCSL maintains the only comprehensive clearing house on legislative rules, procedures and management in the country. They have worked with many states in providing technical information on budgetary, fiscal and management affairs. NCSL has recently conducted technical assistance projects in South Carolina, Oklahoma and the Iowa legislature. Their fiscal affairs program has worked with more than 15 states in the past year providing testimony and background information, as well as on-site assistance.

Only one staffer from Alaska will be assigned to this committee. Clerical and other types of staff support will be provided by the existing staff of the committee members from both the House and the Senate.

An attempt to involve the public as well as present and former legislators will be made via personel interviews and teleconferences. My office sent letters to several organizations that have been interested in legislative reform in the past, informing them of the public hearing today. Copies of their written responses are attached; Common Sense for Alaska and the Anchorage Women's Club FREE Committee both responded by telephone. Their response was favorable, and each organization will furnish the legislative committee with a contact person as well as any assistance that might be desireable.

Provided NCSL can make a preliminary on-site visit the second week of February, they believe they can complete their research and have recommendations on the Code of Ethics/Conflict of Interest and Uniform

Rules by March 1. Budget recommendations would follow about April 1. If it is not possible for NCSL to begin at that time, there will be a delay in this timetable due to a previous committment of the NCSL staff who would be assigned to this project. (The attached letter, received just this morning, gives an update on the timetable).

Upon completion of the research by NCSL, the Legislative Reform Committee would then introduce legislation based on the committee's response to the recommendations of NCSL.

Public hearings will be held on the proposed legislation. Some additional expense will be incurred for travel and per diem of committee members in order to hold public hearings in Anchorage and Fairbanks. Other communities would be included in the hearings via teleconference.

It is the intention of the Legislative Reform Committee to make recommendations that will enchance the legislative process from the point of view of both the legislature and the public. Some existing policies perhaps need clarification. Other policies are followed in practice but not written down. It may be desireable to institute considerable change in the budget process; at the very least the process needs to be structured so as to be more easily understood by the public. And of course Conflict of Interst legislation must be addressed this session.

Legislative reform is a topic that has been discussed in varying degrees of intensity during the past ten years; rules changes have been instituted that have enhanced the legislative process; it is possible that others have not. Through the combined efforts of present and veteran legislators, professional expertise and the public, a comprehensive review of legislative practices can be made, and a product will emerge that is well thought out and answers the need of both the Legislature and the public.

ALASKA LEGISLATIVE PROCEDURES STUDY

NCSL Proposed Budget

	NCSL Contribution	Alaska Contribution
Personnel Costs		
Salaries (Approximately 6 months of staff time.)	$ 9,050	$ 3,100
Fringe Benefits	1,358	465
Subtotal	10,408	3,565
Staff Travel		9,300
(Based on four people on-site in Juneau for one week, one person on-site for one week in Fairbanks and Anchorage, one advance trip and one follow-up visit.)		
Other Direct Costs		
Word Processing (40 hrs. @ $8)		320
Telephone (Includes only long distance charges and three audio conferenced public hearings.)	210(a)	620
Photocopying		100
Postage		50
Supplies	66(a)	50
Rent (17% of salaries and fringe benefits.)	1,769(a)	606
Subtotal	2,045	1,746
Total Direct Costs	12,453	14,611
Indirect Costs (Calculated at 55% of all direct costs.)	6,849	8,036
TOTAL PROJECT COSTS	$19,302	$22,647

(a) Normal telephone usage, rent and office supplies will be absorbed by the NCSL. These amounts are estimated based on past expenditure patterns.

National Conference of State Legislatures

Headquarters Office
(303) 292-6600

1125 Seventeenth Street
Suite 1500
Denver, Colorado
80202

President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

January 28, 1983

Jan Bomhoff
c/o Senator Jan Faiks
Senate Rules Committee
Pouch V
Juneau, Alaska 99811

Dear Jan:

Since our initial telephone conversations, I have had the opportunity to develop a preliminary work plan for the proposed study of Alaska's legislative procedures, budget process and ethics legislation. I would like to relay to you a more specific timetable for the committee's consideration.

I have assumed that the project would go forward as quickly as possible, and that the study committee would like to complete the first two components--review of the uniform rules and legislative procedures and the review of legislative ethics issues --by early March. A longer time frame would be necessary for the budget study, and I have estimated a deadline of April 15 for that work.

In identifying the tasks in this project and assessing the availability of the necessary NCSL staff, I would say that it is possible, though difficult, to complete the first two components and submit a preliminary report to the study committee by March 15. That assumes the work would begin almost immediately and the first on-site staff work would take place during the week of February 7. If the beginning of this project is delayed by even a few days, it would not be possible for our staff to meet the mid-March deadline because many of our staff are involved in a major meeting at the end of March. As I indicated with you over the phone, the contract and budget details should be finalized, or at least agreed to in as much specificity as possible, before the first on-site visit.

If the project did not get underway until mid-February, the first preliminary report would not be submitted until early April. The problem is not so much in completing the on-site interviews and study, but rather the difficulty is that the key NCSL staff people who would be involved in the project have significant and longstanding obligations for the March meeting.

You asked for additional salary information. The budget is based on a staff team described below:

Program Director
(.25 months at approximately $34,000)
Senior Project Manager
(1.25 months at approximately $29,600)
Principle Staff Associate
(1 month at approximately $32,000)
Staff Associate
(1.5 months at approximately $22,000)
Staff Associate
(1 month at approximately $23,500)
Secretary II
(1 month at approximately $12,000)

The position of senior project manager would involve a staff person who is currently on a grant funded activity.

We are still extremely interested in assisting you with this project, however we would like to be realistic and honest about the availability of our staff during the next two months. Given the time frame and the scope of this project, there are practical limitations with which we have to deal. Over a longer time period, there is no question that NCSL can handle this project in a highly credible and professional manner.

I hope that this information is helpful to you and the committee in its deliberations. Please do not hesitate to call me if you have any questions.

Sincerely,

Lucinda S. Simon
Program Director
Legislative Management

The following organizations and individuals were contacted regarding the hearing on SCR 2 - Legislative Reform:

American Association of University Women

Alaska Public Interest Research Group

Denise Knapp - GFWC Anchorage Free Committee

Paula Ziegler - League of Women Voters

George Krusz - Alaska State Chamber of Commerce

Kent Edwards - Common Sense for Alaska, Inc.

Brenda Knapp-Higgins

Senator John Butrovich

Representative Joe Hayes

Representative Randy Phillips

League of Women Voters of Alaska

file

January 29, 1983

Senator Jan Faiks
Alaska State Senate
Juneau, Alaska 99811

Dear Jan:'

Thank you very much for informing the League of the upcoming hearing on your Senate Concurrent Resolution to establish a joint committee on legislative reform. Regretfully, we will be unable to have a representative in attendance at that particular date and time, but we will definitely be attentive to the progress of this resolution through the legislature.

You are indeed correct in identifying the League of Women Voters as an organization interested in improvement in the legislative process. The main thrust of the League's position in this regard is toward opening up that process to greater citizen participation and understanding and better legislative accountablility. Any committee and/or consultant work to that end, therefore, would be of considerable interest to the League, and we hope our involvement would be welcomed.

Anticipating further communication on this subject, thank you again for the hearing notification.

Sincerely,

Paula

Paula Ziegler
President
127 N. Franklin #909
586-9439
586-2660

P.S. I still hold the Legislative Process portfolio on the state League board, so I am the contact person for League in this area.

ASCC

ALASKA STATE CHAMBER OF COMMERCE

Juneau Headquarters:
310 Second Street
Juneau, Alaska 99801
(907) 586-2323

Regional Office:
101 W. Benson Blvd.
Anchorage, Alaska 99503
(907) 278-3741

February 1, 1983

Senator Jan Faiks
Chairman, Senate Rules
Pouch V
Juneau, Alaska 99811

Dear Jan:

Thank you for your letter concerning SCR 2. The state chamber has no official position concerning legislative reform except on the subject of limiting the length of legislative sessions.

However, we will be supportive of any measure to increase the efficiency of the legislature and will follow closely the progress of SCR 2. Please list my name as the ASCC contact person for the committee.

I will attend the February 2 hearing but ASCC probably will not testify.

We certainly wish you well and if we may be of assistance, please let me know.

Cordially,

George Krusz
President

→ OK, ill testify!

SCOMM

#35:5

M E M O R A N D U M

May 6, 1983

TO: House Judiciary Committee Members

FROM: Staff

SUBJECT: House Concurrent Resolution 34

Section 1

16A

Authorizes the presiding officer to compel the attendance of individual absent members whether there is a quorum or not.

Section 2

21C

Adds a requirement that any resolution establishing a special or joint committee shall specify what the expected budget will be and the source of funds.

Section 3

23

Amends "Rule 23", Committee Meetings. The substance of this section was similar to CSHCR 32 which has already failed in the House. Committee Members may want to delete this section or ask the "sponsor" for a substantive comparison between this section and CSHCR 32, at the time of his testimony.

Section 4

37

Amends "Rule 37" by adding a new subsection. Same recommendation as above [for Section 3].

Section 5

39B

Adds clarifying language.

Section 6

52

Removes language requiring the adoption of a concurrent resolution for adjournment or recess.

Section 7

54

Changes "point of order" relating to violation of uniform rules by either house. By this change questions of order may be raised in the other house for violation of uniform rules other than a rule concerning matters relating to the organization or operation of a house.

Alaska State Legislature

Lill

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4948

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 15

TO: SENATOR JAN FAIKS
SENATOR TIM KELLY
SENATOR JOE JOSEPHSON
REPRESENTATIVE BARBARA LACHER
REPRESENTATIVE MIKE MILLER

FROM: REPRESENTATIVE RANDY PHILLIPS pp/r

DATE: APRIL 20, 1983

RE: SPECIAL LEGISLATIVE REFORM COMMITTEE

Enclosed is a draft of the concurrent resolution containing the proposed amendments to the Uniform Rules.

The only change that I can see at this time is the resolution should be sponsored by the committee rather than myself. Please review the enclosure and advise Senator Faiks or myself regarding this resolution. Your prompt advice would be appreciated.

Enclosure

13-1249
Berrier
4-20-83

IN THE HOUSE BY PHILLIPS

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing certain amendments to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Rule 16(a) of the Uniform Rules of the Alaska State Legislature is amended to read:

(a) A call of the house is used to compel attendance of absent members who have not been previously excused from a call by a majority vote of the full membership of the house. The journal shall reflect the names of all members excused from attendance and such members shall be excused from all roll calls during such absence. A call of the house may be ordered by one member. The [WHEN NO QUORUM IS PRESENT, THE] presiding officer of the house may compel the attendance of individual absent members.

* Sec. 2. Rule 21(c) of the Uniform Rules of the Alaska State Legislature is amended to read:

(c) A resolution establishing a special or joint committee shall specify the budget and source of funds for the committee and the date or conditions of termination of the committee. A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts

between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only if the expenditure is authorized by a majority vote of the full membership of the Committee [IN ACCORDANCE WITH AN APPROPRIATION MADE FOR THE WORK OF THE COMMITTEE].

* Sec. 3. Rule 23 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday.

(b) The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing.

(c) The notice requirements of (a) and (b) of this section [HOWEVER, THIS REQUIREMENT] may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house.

(d) The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.

(e) [(b)] If the time or place of a committee meeting is changed from that shown in the weekly schedule of committee meetings, the [THE] person who chairs a standing, special, or joint committee shall provide the chief clerk or secretary written notice of the change [IN THE TIME, PLACE OR SUBJECT MATTER OF A MEETING]. Written [AT THE NEXT

DAILY LEGISLATIVE SESSION,] notice of the schedule change shall be given to [ANNOUNCED BY] the chief clerk or secretary and published as a notice in the journal of the house.

(f) [(c)] A scheduled meeting of a standing, special, or joint committee may be cancelled or consideration of the scheduled subject matter may be postponed or cancelled at any time. If possible, notice of the cancellation shall be given in the same manner as provided for notice of change in (b) of this rule.

(g) [(d)] The provisions of (a) - (e) [AND (b)] of this rule do not apply to a standing, special, or joint committee meeting scheduled after the date a conference committee has been chosen to consider amendments to or differences between versions of the general appropriation act. However, a person who chairs a standing, special, or joint committee shall post written notice of the time, place and subject matter of a meeting at least 24 hours before the meeting.

(h) [(e)] The provisions of (a) - (g) [(d)] of this rule do not apply to meetings of

(1) the Rules Committee when it meets for the purpose of preparing the daily calendar;

(2) the Committee on Committees referred to in Rule 1(e); or

(3) standing, special, or joint committees when the committee meets during the interim between sessions or during a special session.

(i) [(f)] Each standing, special, and joint committee

(1) shall record its meetings electronically and prepare a log of the recording adequate to locate specific testimony;

(2) shall prepare minutes of each meeting of the committee on a standard form prescribed jointly by the Rules Committees of the

house and the senate; the minutes shall include

(A) a list of the names of each member present during the meeting;

(B) a list of the name and affiliation of each witness testifying before the committee;

(C) a brief statement of the position of the witness on the subject testified upon; and

(D) each amendment formally considered by the committee, the name of the member moving adoption of the amendment, the action taken on the amendment, and the yeas and nays if a committee member has requested a roll call vote on adoption of an amendment;

(3) shall maintain a chronological file of minutes, copies of which shall be made available upon request to committee members and the public; committee minutes, tapes and other materials of research value shall be delivered by the committee at the end of each session or each legislature to the legislative reference library for appropriate disposition;

(4) shall [MAY] make available to the Legislative Affairs Agency a copy of all minutes of committee meetings during the session for entry of the minutes as a data base on the legislative computer system.

* Sec. 4. Rule 37 of the Uniform Rules of the Alaska State Legislature is amended by adding a new subsection to read:

(c) A member who has introduced a bill or resolution or, if the bill or resolution was sponsored by more than one member, the member whose name first appears in the list of sponsors, with the concurrence of each of the cosponsors, may introduce a sponsor substitute for the bill or resolution at any time before the bill or resolution is

reported from the first committee of reference. The effect of introduction of a sponsor substitute is to withdraw the original bill or resolution. The introduction does not require consent of the membership of the house. A sponsor substitute may not be introduced if the subject matter is different from that of the original bill.

* Sec. 5. Rule 39(b) of the Uniform Rules of the Alaska State Legislature is amended to read:

(b) First Reading. The first reading consists of a reading aloud by the clerk or secretary of the following information: the house of origin, the bill number, the sponsor, and the title of the bill, e.g., "In the House, House Bill No. ..., by ..... and ....., A bill for an Act entitled, 'An Act relating to a code of ethics for state employees.'" The bill is then referred by the presiding officer to one or more committees <u>of the house</u>. The house may by a majority vote of the full membership of the house refer the bill to any other standing or special committee <u>of the house</u>.

* Sec. 6. Rule 52 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 52. ADJOURNMENT. Neither house may adjourn or recess for longer than three days unless the other concurs. (Sec. 10, Art. II, State Constitution) [ADOPTION OF THE CONCURRENT RESOLUTION BY A MAJORITY VOTE OF THE FULL MEMBERSHIP OF EACH HOUSE CONSTITUTES CONCURRENCE.] A motion to adjourn or recess a session is in order when it is the intention of the legislature to recess or adjourn to a day certain. A motion to adjourn sine die is in order only at the end of a second regular session or a special session.

* Sec. 7. Rule 54 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 54. SUSPENSION OF RULES. Unless otherwise provided for in

the case of a particular rule, the Uniform Rules may be suspended by a concurrent resolution approved by a two-thirds vote of the full membership of each house. If either house violates a uniform rule <u>other than a rule concerning matters relating to the organization or operation of a house</u> a question of order may be raised in the other house. If it is decided by the other house that the Uniform Rules have been violated, the bill involved in that violation shall be returned to its house of origin without further action.

RECEIVED APR 0 6 1983

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 6, 1983

SUBJECT: Definition of minority in Rule 1(e)

TO: Senator Rick Halford

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested wording for a suggested definition of "minority" for the purposes of Rule 1(e) essentially as we discussed.

I would suggest:

> For the purposes of this rule a minority is a group of members who have declared themselves to be a caucus not later than the day following the election of the presiding officers and who are not members of the majority. If there is more than one group who would meet these requirements, the larger group is the minority.

I believe this meets the concept you desired.

BGB:ljb
13/030

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 March 21, 1983

SUBJECT: Comments on Rules

TO: Senator Jan Faiks
Co-Chairman
Joint Special Committee on Legislative Reform

Representative Randy Phillips
Co-Chairman
Joint Special Committee on Legislative Reform

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested I prepare informal comments on the Uniform Rules for use by the committee.

The enclosed comments are from the perspective of this office and are quite informal.

Any comments from a person who is not a legislator, and therefore involved in routine substantive use of the rules, are to an extent from an ivory tower perspective. Considering that limitation, I hope the comments are useful.

BGB:ljb

Enclosures
10/030

Rule 1. Organization of the First Session

(a) No problems.

(b) The rule states the presiding officer serves for the two year duration of the legislature. Regardless of this rule, the court has held the presiding officer serves at the pleasure of the body. The holding is based on the constitutional provision that each house may choose its officers and employees.

(c) No problems.

(d) No problems. (In practice the temporary rules frequently last for years. Recently, the 1977 Rules were in effect until 1982 and the Rules the 1977 Rules superseded were from 1973.)

(e) We have encountered two problems with this rule. The chair and members are stated to serve for the two year duration of the legislature which has the same problem as noted under paragraph (b). Secondly, in some instances, the term "minority" as used in this rule is not clear. If the division is along other than party lines or nearly party lines more than one interpretation is plausible and either interpretation has logical difficulties.

Rule 2. Organization of the Second Session.

No problems.

Rule 3. Legislative Session Staff.

While the appointment of the chief clerk and secretary for the two year duration of the legislature was not involved in the case holding the requirement unconstitutional as to the presiding officer, the logic of the case appears to apply.

Rule 4. Duties of the Presiding Officer.

No problems with the rule itself. Questions have arisen in several fact contexts concerning the presiding officer's power in that context. It would appear quite difficult to specify the powers in great detail and, in my opinion, would create more problems that it would solve.

Rule 5. Administrative Services.

No problems.

Rule 6. Expenditures.

No problems. The last sentence is amplified in Rule 21(c).

Rule 7. Communications.

No problems.

Rule 8. Privilege of the Floor.

There have been questions relating to the distinction between personal privilege and special privilege but the rule as it exists has been adequate to resolve the questions.

Rule 9. Journal.

No problems with the rule although form or content problems do arise in connection with the journal.

Rule 10. Drafting Manual.

No problems.

Rule 11. Admission to the Floor.

No problems.

Rule 12. Use of Chambers and Offices.

The only problem with this rule has arisen in context of jurisdiction for smoking designations.

Rule 13. Hour for Convening.

No problems. In practice neither house meets as a matter of routine on Saturday but the adjournment motion solves this. It would seem appropriate, however, to revise the rule to exclude Saturday also since this would then correspond to practice.

Rule 14. Quorum and Roll Call.

No problems.

Rule 15. Absence of Members.

The only problem has been in the relationship between this rule and Rule 16, Call of the House.

Rule 16: Call of the House.

Two problems have arisen here. One is the use of the call when a member deliberately absents himself from the house to delay action. The other concerns the effect of a call during a joint session. As to the first, I see no ready answer. As to the second the rule should explicitly state whether at

a joint session a call made by a member of one house is effective only as to that house or as to both houses.

In addition, the last sentence of (a) contains the modified "when no quorum is present" concerning the power of the presiding officer to compel attendance. The 1963 Rules used the concept in Mason's that a call of the house was to compel the attendance of a quorum. In 1965 when the rule was changed to essentially the present form, this language, which in the context of the changed rule is inappropriate, was carried forward. Although so far as I can determine this has never caused a problem it is archaic and poses a potential question.

Rule 17. Daily Order of Business.

Some general category of business would be useful since from time to time matters come up which do not fit well into any of the established criteria.

Rule 18. Daily Calendar.

Minor problems. There is no provision for the first day of the session which has apparently not caused serious problems.

Rule 19. Special Order of Business.

No problems.

Rule 20. Standing Committees.

There is a certain overlap of jurisdiction between the State Affairs Committee and the Transportation Committee. Some overlap appears inevitable, however, since there is not a bright line functional distinction between transportation facilities and other public facilities.

Rule 21. Special and Joint Committees.

The only serious problem encountered is the provision in (c) that "A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee." This cannot reasonably be met in most instances unless there is a special appropriation since the general appropriation bill does not go into that level of detail.

Rule 22. Open and Executive Sessions.

A good many problems inherent in the subject matter. This tracks AS 44.62.310 - 44.62.312 which also applies to the legislature.

Rule 23. Committee Meetings.

A real problem rule which needs to be clarified. See attached memorandum.

Rule 24. Committee Referral and Action.

The title change problem discussed in the attached memorandum applies here. Since a committee substitute is an amendment the germaneness problem also exists.

Rule 25. Committee of the Whole.

No problems.

Rule 26. Decorum in Debate.

No problems.

Rule 27. Motions.

There are always problems under any rule with priority of motions. There seems to be no technical problems that redrafting the rule would cure.

Rule 28. Form of Question.

No problems.

Rule 29. Indefinite Postponement.

No problems.

Rule 30. Reconsideration.

Reconsideration under any rule I have seen has a host of problems. This rule is clearer than others that I have seen.

Rule 31. Rescinding Action.

In the 1972 and earlier Uniform Rules reconsideration followed Mason's two motion procedure. In the 1972 Rules the relationship between reconsideration and rescinding was clearer. Those Rules in Rule 3?(a) provided:

> The motion is not in order when the question can be reached by a motion to reconsider or if the question has already been reconsidered.

In the 1977 revision which dispensed with the double motion the notice concept was necessarily put into the rule on rescinding.

An ambiguity arose because of the way this was written and should be corrected by a provision similar to that in the 1972 Rule.

Rule 32. Previous Question.

No problems.

Rule 33. Division of a Question.

There are fact problems as to what constitutes an independent question, but since that concept is necessary, we have had no problems with the rule itself.

Rule 34. Voting Procedure.

No problems.

Rule 35. Amendment.

The question of germaneness arises frequently. The limitation on changes in titles of bills also occurs in this rule. See attached memorandum.

Rule 36. Prefiling of Bills.

No problems with the rule, but since the legislature is not in session during the period this applies, there is a problem with obtaining the required sponsor approval. Any rule change to solve this that I can think of would cause more serious problems than it would solve.

Rule 37. Introduction of Bills.

The primary problem here has been introduction of bills not in proper form. The outstanding example is a bill introduced by the governor in 1978. The cover letter stated the bill had not gone through the normal analysis and drafting procedure. The lack was very obvious. A lesser example is a bill that a member planned to introduce this year which did not conform to the bill format. It would have been impossible to print the bill or get it into the computer without changes which would have led to two versions of the bill being used.

Rule 38. History of Bills.

No problems.

Rule 39. Action on Bills.

There have been questions concerning referrals, advancement, status when advanced and the effect of failure to approve of

a change in court rules or an effective date. The only problem that appears amenable to solution by change in the rule would be an explicit requirement that a committee to which a bill is referred must be a committee of the house but a presiding officer may refer a question concerning a bill to a joint committee. In my opinion this is the current requirement but an explicit statement could clarify.

Rule 40. Course of Bills.

There is a problem with possession of a bill after action is completed but before the bill has been transmitted to the other house. There does not appear to be a ready solution to this without introducing unworkable complexity.

Rule 41. Amendments in the Other House.

See memorandum on title changes, attached.

Rule 42. Conference and Free Conference Committees.

There have been problems with the limited free conference committee which is a relatively new concept. In discussion on this point with Paul Mason, he stated his opinion that the better procedure is to allow a bill to go directly to free conference committee. The limitation on inclusion of items by a free conference committee that were not in either version of an appropriation bill is new. There are potential problems of time constraints in closing out the budget.

Rule 43. Enrollment.

No problems except fact problems about the extent of change the enrolling secretary can make. These have not been serious.

Rule 44. Time Limit on Introduction.

The rule creates major problems to the drafting staff since a large volume of requests, sometimes requiring complex drafting, usually come in at the last minute. During one session the leadership of both houses established submission deadlines for requests which was very helpful.

Rule 45. Vetoed Bills.

The rule is clear. There have been computation of time problems and vote requirement problems, but both are of constitutional origin.

Rule 46. Confirmation of Appointments.

No problems.

Rule 47. Bills and Resolutions Carryover.

No problems. The resolution carryover problem was solved in the last amendment.

Rule 48. Discharge of Bills from Committee.

No problems.

Rule 49. Resolutions.

Much substantive material is contained in the form of definitions. It has apparently worked, however.

Rule 50. Legislative Citations.

There is a problem on how sponsors may appear which was addressed by the Joint Rules Committee and apparently satisfactorily solved.

Rule 51. Joint Sessions.

No problems with the rule itself.

Rule 52. Adjournment.

The requirement of a concurrent resolution to adjourn for more than three days is not followed in practice.

Rule 53. Adoption and Amendment of Rules.

It should be noted that a revision of the Uniform Rules does not occur each session. More often than not the legislature is operating under what are technically temporary rules under Rule 1(d) but this has not created a problem.

Rule 54. Suspension of Rules.

There have been questions concerning questions of order raised in the other house concerning a violation of the Uniform Rules. It seems clear this applies only when the violation concerns matters relating to both houses since each house has final authority in matters that relate only to that house. Perhaps clarification would be useful.

Rule 55. Interpretation and Implementation of Rules.

No problems with the rule itself.

10/028

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907/465-3[illegible]

MEMORANDUM March 8, 1983

SUBJECT: Notice requirements of Rule 23 of the Uniform Rules

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested an analysis of the notice requirements under Rule 23 of the Uniform Rules of the Alaska State Legislature.

The relevant part of the Rule, paragraphs (a) through (e) provides:

> "RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing. However, this requirement may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.
>
> "(b) The person who chairs a standing, special, or joint committee shall provide the chief clerk or secretary written notice of the change in the time, place or subject matter of a meeting. At the next daily

legislative session, notice of the schedule change shall be announced by the chief clerk or secretary and published as a notice in the journal of the house.

"(c) A scheduled meeting of a standing, special, or joint committee may be cancelled at any time. If possible, notice of the cancellation shall be given in the same manner as provided for notice of change in (b) of this rule.

"(d) The provisions of (a) and (b) of this rule do not apply to a standing, special, or joint committee meeting scheduled after the date a conference committee has been chosen to consider amendments to or differences between versions of the general appropriation act. However, a person who chairs a standing, special, or joint committee shall post written notice of the time, place and subject matter of a meeting at least 24 hours before the meeting.

"(e) The provisions of (a) - (d) of this rule do not apply to meetings of

(1) the Rules Committee when it meets for the purpose of preparing the daily calendar;

(2) the Committee on Committees referred to in Rule 1(e); or

(3) standing, special, or joint committees when the committee meets during the interim between sessions."

Paragraph (a) has two distinct notice requirements.

The first requirement is the written notice provided to the clerk or secretary by the Thursday preceding the meeting of the time, place and subject matter of all committee meetings during the succeeding week. This applies to all committee meetings and there is no provision for waiver of the requirement.

There is an additional requirement when the committee is the committee of first referral of a bill or resolution. In addition to the preceding Thursday notice, the person who chairs the committee must provide the clerk or secretary with a written notice of the first public hearing at least five days in advance. This rule would normally apply only

in the house of origin of the bill or resolution since normally the bill or resolution will go through the committee process before going to the second house. In my opinion the rule would apply to the next committee of referral if the committee of first reference waives referral since this waiver negates the reference in effect. The focus of the rule is the committee that holds the first public hearing, otherwise the rule would be meaningless. The five-day notice requirement may be waived by a majority vote of the full membership of a house.

Paragraph (b) requires the person chairing a committee to provide the clerk or secretary written notice of a change in the time, place or subject matter of a meeting. The change must be announced at the next legislative session and be published in the journal of the house. This paragraph would not allow the introduction of new subject matter since that would supersede the notice requirement of (a).

Paragraph (e) allows cancellation of a committee meeting at any time and provides, that where possible, the notice provisions in (b) relating to a change be followed.

Once a conference committee on a version of the general appropriation act has been chosen the notice requirements of (a) and (b) no longer apply. At that time the notice requirement in (d) comes into effect. This requires posting of written notice of the time, place and subject matter of a committee meeting 24 hours in advance of the meeting.

Paragraph (e) provides the notice requirements of the Rule do not apply to the Rules Committee when it meets for the purpose of preparing the daily calendar, to the Committee on Committees or to any committee meeting during the interim. The exception as to the Rules Committee would not apply where that committee was acting as a substantive committee of reference or otherwise acting on matters other than the calendar.

In summary Rule 23 has three distinct notice requirements. These are:

(1) The written previous Thursday notice given to the clerk or secretary;

(2) The five-day notice which applies only to the first public hearing in the committee of first reference; and

(3) The 24-hour posting requirement which comes into effect only when the conference committee on the budget is chosen and which then supersedes the other requirements.

Each has specific application and distinct requirements as discussed above.

BGB:ljb
1/008

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 10, 1983

SUBJECT: Amendment of bill titles

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

The Uniform Rules of the Alaska State Legislature as amended last year made a significant change in the scope of amendment which may be made to a bill title in the other house.

The general statement of the change is contained in Rule 35 concerning amendments. The relevant part of that Rule provides:

> A motion or proposition on a subject that requires a change in the title of the bill as enacted in the house of origin, other than a clerical or technical change, is not in order in the second house.

Specific application of the change is covered in other rules.

Rule 24 relating to committee referral and action provides in subsection (c):

> A committee of the second house may not report a committee substitute for a bill or an amendment to a bill that requires a change in the title of the bill, other than a clerical or technical change, as the title was enacted in the house of origin.

Rule 41 relating to amendments in the other house provides in subsection (b):

> (b) An amendment to a bill introduced in the other house is not in order if the amendment requires a

change of the bill title other than a clerical or technical change.

Rule 42 relating to conference and free conference committees provides in subsection (e):

> (e) (EFFECTIVE JUNE 30, 1982) A Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not adopt a report that requires a change in the title of a bill other than a clerical or technical change.

You have requested an analysis of these provisions.

All these are identical in substance. As a technical point the term "enacted" is incorrect. A bill is "enacted" when it becomes law so that action by both houses and the governor are required for enactment. It is clear however that adoption by a single house is intended.

The rule only applies to a bill which has been adopted by the other house. No change is made concerning amendments to Senate bills in the Senate or House bills in the House.

The prohibition is absolute except for the exception made in the rules. There is no provisions for waiving this requirement. Since these rules concern procedure in enacting law and are therefore of concern to both houses they can only be suspended by a concurrent resolution adopted by both houses under Rule 54.

The only exception in the second house is for clerical or technical change.

Clerical change is fairly clear. In my opinion, this refers to the type of changes that the enroller is authorized to make under Rule 43 or that the revisor of statutes is authorized to make under AS 01.05.031. Under Rule 43(a)

> The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions.

Under AS 01.05.031, the revisor is authorized to edit and revise the laws "without changing the meaning of any law".

The term "technical change" is more difficult to apply. In my opinion this is intended only to allow changes in the title of a bill which are necessary for technical reasons to conform the title to the subject matter in the bill as adopted in the first house without change in the scope of the bill.

The amendments do not prohibit amendments, including amendments which introduce new matter, if the amendments are within the scope of the title, although, of course, other limitations such as the requirements of germaneness and compliance with the single subject rule continue to apply.

BGB:ljb

1/030

see pages 7+8 for 23a)

Phillips: Okay, Rule 23. Mr. Bradley

Kelly: Mr. Chairman?

Phillips: Mr. Kelly?

Kelly: Doesn't this do away with our five day notice.

Phillips: Yes.

Kelly: Why do we want to do that? That's the one thing that forces you to call attention to when you are bringing a bill up. This works. (undiscernable) The thing that you're keeping in this thing that doesn't work that should be reversed, we ought to keep the five-day notice and get rid of the 4:00 p.m. preceding Thursday.

Phillips: Okay, okay. I want to just let you know, the members of the committee -- I am not the author of this. These are just some of the things that some of the people at least some of the House and Senate members brought up to my attention and we are just -- Senator Faiks?

Faiks: Thank you, Mr. Chairman. Now, according to NCSL, the average number of times out there that a committee chair has to publish his agenda is 48 hours. And so their recommendation was that the written notice of time, place, subject matter of meetings of standing, special, blah, blah, be published 48 hours in advance of that time of that meeting. Now they liked the five-day notice on the first public hearing but they said that was a little excessive too that the average out there was from two to three days was the average. Now Pennsylvania has a 30-day notice required on all legislation dealing with a particular locale or county. A local legislation it's called in Pennsylvania. But that's the most excessive anywhere in the United States. They thought that the reason this rule was cumbersome -- the first part of this rule was cumbersome because the 4:00 on the preceding Thursday could never be waived. Legally, we do it but it's not legal to do that. The five-day notice could be waived but the 4:00 Thursday thing couldn't. So I would say in just for discussion purposes, we need at least 48 hours for the public to know what our agendas are, which is all we meant to do here. This is another FREE Committee rule and that on a public notice the public hearing process there just be some advance notice when a committee is going to hear, have a public hearing on a bill for the first time out.

Phillips: Barbara?

Lacher: The problem with that is that our newspapers are at least a day late from where most of our people live and that is also true of the messages that leave this community.

Faiks: Okay.

Lacher: And we are so locked in when it comes to weather. It would be my concern that you would not be getting the message to the people.

Faiks: Okay. I don't have any trouble with shifting the numbers around. My problem was with the 4:00 really gives the members of this legislature a hard time. Now I think they are getting it. All it was was a matter of organization. They just had to get used to it. But it could never be waived. Under the present rule it could not be waived and I think for political reasons we would be doing ourselves a favor if we reworded the 4:00 of the preceding Thursday. That terminology really gets to them and just as long as we can -- I'm not set on the numbers at all or the time frame, I just wanted you to know what NCSL commented on.

Phillips: (undiscernable) conceptual motion?

Faiks: Well ask them. I gave my conceptual

Kelly: What was the

Phillips: Restate

Faiks: My conceptual notice was that the chairman of the committee announce, have a written notice of the time, place and subject matter of all meetings of standing, special, and joint committees etc. at least 48 hours in advance was my conceptual notice and that could be waived with the majority membership of the body and that the first public hearing on a bill have an extended period of advance notice. Five days is what we've got and I think that's a reasonable amount of time.

Kelly: First hearing in each house or

Phillips: First committee of referral.

Faiks: First committee of referral

Kelly: In each body?

Faiks: Um hum

Miller: Well that's a departure from present rules

Faiks: Yeah, right now it's just the first one, the first one in either body

Miller: I mean, I don't care (undiscernable)

Phillips: For Mr. Bradley

Faiks: Well we are operating that way in the Senate.

Phillips: Okay, we've got to give direction to Mr. Bradley. We're talking in concepts now

Josephson: Well what happens in the special session?

Various: Rules apply.

Josephson: Does that mean we have to have ten days. Five days notice in the first body, five days notice

Millers: (a) through (c) do not apply

Phillips: Yeah, I'm wrong, special session it does not apply

Josephson: Well, except that's

Phillips: If you look on page 3, line 4, "The provisions (a) through (c) of this rule do apply to meetings of" if you look at number (3) "or during a special session". That's what we are adding. We're adding new language in that.

Josephson: Well, Mr. Chairman, I really question the five-day requirement in the second house because we are going to be in a situation right now where we get a lot of bills transferred from one body to the next and we're

Kelly: (undiscernable) the first house

Faiks: The first house.

Kelly: Okay, I would move Jan's amendments.

Phillips: Jan, for purposes of Mr. Bradley because I don't think he got it, state

Faiks: Before I move it could we talk about the amount of time? Is 48 hours enough time to publish an agenda for a chairman? Is that unruly? Is that a diffculty?

Phillips: Barbara?

Lacher: I have no problem with this (undiscernable)

Phillips: Mike? From your experiences? Tim?

Kelly: Then the first hearings is five days .

Faiks: Right, five days public notice on the first hearing of a bill

Kelly: And you can waive either or both of them?

Faiks: That's the unruly part. You must be able to waive -- the majority must be able to waive either one on the floor.

Kelly: Yeah.

Faiks: Majority vote.

Kelly: The important thing is that somebody stands up and says hey

Phillips: Okay, now what about the 4:00 preceding

Kelly: Get rid of it.

Faiks: Scratch it.

Phillips: Madame Chairman -- Senator Faiks, why don't you explain

Faiks: My conceptual motion for Rule 23 on page 2 is as follows: strike out section (a), replace section (a) with a two part rule. I don't think these, and I'm going to get off my motion, but I don't think that these two standards should be in the same paragraph. I think they need to be separated. Section (a) would be that written notice of the time, place and subject matter of all meetings of standing, special and joint committees during the week and that's an optional phrase shall be provided by the person who chairs the committee to the Chief Clerk or Secretary at least 48 hours in advance of that meeting.

? So what you've taken out is by 4:00 and

Faiks: Right of the preceding Thursday

Bradley: And replaced it with 48 hours notice.

Faiks: Right. However this requirement may be waived by motion of the person who chairs the committee if concurred in by the majority vote of the full membership of the house. And then subsection (b) -- and you can keep in there that the Chief Clerk and Secretary shall publish and distribute copies of the weekly schedule of committee meetings and all that. Okay. Then the second part of that chapter should be the

Phillips: Written notice

Faiks: Written notice of the first public hearing of a bill shall be provided to the Chief Clerk or Secretary and published at least five days in advance of that public hearing.

Bradley: Do you have this anywhere (undiscernable)

Faiks: It's page two, basically.

Bradley: Oh, I didn't realize you were reading. I'm sorry.

Faiks: Well, I'm not but the concept is there.

Bradley: Well, that's what I'm concerned about now.

Faiks: Okay, you got the first part? 48 hours?

Bradley: 48 hours, right.

Faiks: The next is the first public hearing on a bill, you need at least five days' notice on that and the key part here is only in the first house of referral.

Bradley: All right.

Faiks: And the first committee of referral. That's understood.

Bradley: That second part is understood. It doesn't need to be stated?

Faiks: I would assume so. I'd have to see it written out, but I would think that it would be all right. You might say the first committee of referral of a bill in the

Kelly: (undiscernable)

Faiks: Why?

Kelly: Because I'm getting tired.

Phillips: Once we get beyond this, I think it will be easy.

Faiks: And then that also can be waived if the chairman of the committee stands up and asks for a majority vote on the floor.

Phillips: Representative Lacher?

Lacher: I think maybe Mr. Bradley can relax a little bit if he realizes that we are on tape, Mr. Bradley.

Bradley: All right. Yes, I may need that.

Phillips: Dick, you got everything

Bradley: No.

Phillips: You didn't get everything

Bradley: (undiscernable)

Faiks: Yes.

Phillips: Okay.

Miller: Mr. Chairman?

Phillips: Mr. Miller?

Miller: Are you sure you want to say that the requirements of this rule may be waived so that it is clear that you can waive both provisions?

Faiks: Yes.

Miller: (undiscernable) especially in the other body. (undiscernable) by motion of the person who chairs the committee concurred in by a majority vote of the (undiscernable)

? (undiscernable)

Faiks: No, I've covered (a) but (a) will have to have two sections in it. I have not covered section (b) on page 2.

Phillips: Any changes there?

Miller: Mr. Chairman?

Phillips: Mr. Miller?

Miller: One other question (undiscernable) in the process of doing what we just did, which I concur with, we have totally negated the rule that calls for there even to be a weekly schedule and

Phillips: you want to keep it?

Miller: I think chairman should, to the best of their ability, continue to turn in (undiscernable) and the clerk should probably try to publish a weekly schedule. (undiscernable) 99% of the time, you know, it's okay, but I'm not quite sure how to phrase -- you can't very well say the chairman really ought to.

Lacher: How about this rule in no way is meant to

Faiks: They'll throw that out as soon as they have the opportunity to because they'll hate it.

Faiks: I don't understand why it is so objectionable to have your agenda for your succeeding week schedule turned in to the chief clerk by Thursday at 4:00 and if you have an exception to that then you provide 48 hours notice and ask for a majority

Miller: Yeah, we could even say written notice

Phillips: For a tentative agenda?

Miller: For a tentative agenda, yeah, with the time, place and subject matter of all meetings shall be provided by 4:00 the preceding Thursday and again in 99 cases out of 100 the tentative agenda will be the agenda (undiscernable) will be just as useful as the other ones.

Josephson: Mr. Chairman, I don't know. I'm a committee chairman and I don't have any problem with (undiscernable) My aide comes to me and says "hey, it's that time of the week." We do it. It doesn't take that long. (undiscernable) No problem there.

Phillips: Mr. Miller?

Miller: Well, the only problem with it is if you have a public hearing on a bill that you've just got (undiscernable) just got introduced, maybe a supplemental bill to keep the legislature alive or something like that, here we've got this rule and you can't even waive it and so every once in a while (undiscernable)

Phillips: Senator Faiks

Faiks: I think I've got it. Why don't we just reword it a little so it's not so awkward and then put the thing in there that this can be waived.

Phillips: Five day rule?

Faiks: No, the five day already can be waived. It's the 4:00 p.m. Thursday that cannot be waived. Getting your agenda in. So maybe we should do it that way. That would solve the problem.

Miller: Oh, yeah. Leave the rule exactly as it is right now instead (undiscernable) the requirements of this rule may be waived

Faiks: Yes, that's right. The entire rule. Right.

Miller: (undiscernable)

Phillips: How about a motion?

Miller: I'll leave that up

Faiks: No, go ahead.

Miller: Well, I'll just so move that we keep the rule

Various (undiscernable)

Phillips: Dick, did you get that?

Bradley: Leave (a) the way it is

Faiks: Right. Yeah.

Miller: No deletions. Except we would add the phrase "however,

Bradley: the requirements of this

Miller: Yeah, of this rule may be waived.

Bradley: Do you mean 23(a) or do you mean 23?

Miller: What's the balance of 23? Well, I guess 23(a) we'd better say. Yeah, I guess we had better say.

Faiks: Right. It still shoud be separated, Mr. Bradley. There are two distinct rules in this one section and they should be separated out.

Bradley: Now you've lost me again.

Faiks: Mr. Bradley, look at me. Now there are two concepts -- we work with this every day (undiscernable) and there are two concepts in this rule. One is the 4 p.m. Thursday business.

Bradley: Right.

Faiks: And the other is five days for public hearing. They need to be split up so that's there only -- see these legislators are very simple people and we can only have one thought or idea per paragraph

Lacher: And even then we screw it up.

Faiks: Yeah. And this one has got two thoughts in one paragraph and we cannot handle it. Very confusing to us. Now the other problem, sir

Bradley: Yes?

Faiks: is that we can't waive the first part of the rule and we can waive by majority vote, the second part of the rule. We want to be able to waive both parts of the rule.

Bradley: And that's achieved by simply changing the material (undiscernable

Faiks: Yes,

Bradley: of this subsection.

Faiks: Right, but remember that we want to split the two ideas up.

? All rules are meant to be waived.

?? I know.

Phillips: Under certain circumstances.

Kelly: By concurrent resolution.

Faiks: Does that make sense to you?

Bradley: Yes, no (undiscernable -- truck noises)

Faiks: What happened to our crowd today?

Phillips: How about (c) on page three? We've got, on line 3, after the word "cancelled" "or consideration of the scheduled subject matter may be postponed or cancelled at any time."

Josephson: Move to approve

Phillips: Any objections? Okay. Now on page 3, line 7, it is suggested that we delete (d)?

Josephson: Why are we doing that?

Phillips: That's what I'm trying to figure out.

Kelly: It seems to me that because we run out of time, right?

Phillips: Provisions of (a) and (b) of this rule do not apply

Faiks: No, no, no. What this was supposed to be is that once the conference committee went into the budget then provisions (a) through (b) did not apply because you were in the two week crunch, supposedly. So why are we eliminating it?

Various? (undiscernable)

Josephson: The substance of it is carried down below, isn't it?

? Maybe it's rephrased.

Faiks: I don't think so.

Josephson: If (d) is taken out, would that mean that (e) would be relettered, Richard?

Bradley: I have a dense three page memorandum, I am not managing very well.

Josephson: The provisions, the exclusions that are listed under (e) anyway

Phillips: This is on page 3, this is what we are working from

Bradley: I know where you're working from. I've got the bill but I've got Berrier's memo too and that's whay I don't understand.

Miller: Mr. Chairman, I'm going to move that we delete

Phillips: Delete (d)?

Miller: Delete what (d) does. I'm not quite sure how we do it.

Phillips: Discussion? Objections?

Faiks: Why are we deleting it?

Miller: No, when I say "delete" I (undiscernable) delete dealing with it. In other words, leave it in the rules.

Faiks: Okay, good. Very good. I agree.

Phillips: Okay.

?: Rules Committee (undiscernable)

Phillips: Okay, on line 14, page 3, oh boy. Then we run into

Kelly: We all understand that, Randy. That picks up

Faiks: Yeah, the provisions of (a) through (d)

? I move to approve (e)

Faiks: No, object. Section 3 of (e) has a mistake in it. "standing, special, or joint committees -- this rule does apply to standing, special or joint committees when the commitee meets during a special session." I think the public should now or be given the opportunity to know when a standing, special or joint committee meet during the interim.

Miller: You can't do the Thursday rule.

Faiks: No.

Phillips: If you look at (e), it says, the provisions of (a) through (c) do not apply to meetings of

Faiks: Right.

Miller: But you see (a)'s got the previous Thursday rule in it and during the interim there isn't any previous Thursday

Faiks: Oh.

Phillips: (undiscernable)

Faiks: Okay.

Lacher: Can we put the five day rule in there then?

Kelly: No.

Phillips: No.

Bradley: Where would you publish the information?

Lacher: Public notice newspapers, just like you do now

Faiks: Legislative affairs

? (undiscernable)

Lacher: all municipal governments have

Josephson: Mr. Chairman?

Phillips: Mr. Josephson?

Josephson: Let me try to reassure my friend from South Anchorage. There is no motive during an interim to try to move something through quickly without the public attention. In fact the opposite occurs where the legislators are trying to get as much attention to themselves as possible.

Faiks: Okay.

Josephson: So I

Phillips: So the only thing we are adding here

Josephson: I hear that any way

Phillips: or during special session

? Never served on one of those

Phillips: Any objections? Motion passes.

Faiks: It was just my experience when I was running around following the budget and audit committee meeting that a certain representative from Juneau did his utmost best not to ever let us know exactly when the meeting was meeting very much in advance..

Lacher: Did he wear glasses?

Faiks: No, he didn't. Nor did he have a beard.

Phillips: On page 4, paragraph 4, the only word changed there is we're deleting the words "may" with shall

Kelly: Move the amendment, Mr. Chairman.

Phillips: Any objections? Motion passes. Rule 31?

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 6, 1983

SUBJECT: Definition of minority in Rule 1(e)

TO: Senator Rick Halford

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested wording for a suggested definition of "minority" for the purposes of Rule 1(e) essentially as we discussed.

I would suggest:

> For the purposes of this rule a minority is a group of members who have declared themselves to be a caucus not later than the day following the election of the presiding officers and who are not members of the majority. If there is more than one group who would meet these requirements, the larger group is the minority.

I believe this meets the concept you desired.

BGB:ljb
13/030

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 10, 1983

SUBJECT: Amendment of bill titles

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

The Uniform Rules of the Alaska State Legislature as amended last year made a significant change in the scope of amendment which may be made to a bill title in the other house.

The general statement of the change is contained in Rule 35 concerning amendments. The relevant part of that Rule provides:

> A motion or proposition on a subject that requires a change in the title of the bill as enacted in the house of origin, other than a clerical or technical change, is not in order in the second house.

Specific application of the change is covered in other rules.

Rule 24 relating to committee referral and action provides in subsection (c):

> A committee of the second house may not report a committee substitute for a bill or an amendment to a bill that requires a change in the title of the bill, other than a clerical or technical change, as the title was enacted in the house of origin.

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> (b) An amendment to a bill introduced in the other house is not in order if the amendment requires a

change of the bill title other than a clerical or technical change.

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The rule only applies to a bill which has been adopted by the other house. No change is made concerning amendments to Senate bills in the Senate or House bills in the House.

The prohibition is absolute except for the exception made in the rules. There is no provisions for waiving this requirement. Since these rules concern procedure in enacting law and are therefore of concern to both houses they can only be suspended by a concurrent resolution adopted by both houses under Rule 54.

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Clerical change is fairly clear. In my opinion, this refers to the type of changes that the enroller is authorized to make under Rule 43 or that the revisor of statutes is authorized to make under AS 01.05.031. Under Rule 43(a)

> The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions.

Under AS 01.05.031, the revisor is authorized to edit and revise the laws "without changing the meaning of any law".

The term "technical change" is more difficult to apply. In my opinion this is intended only to allow changes in the title of a bill which are necessary for technical reasons to conform the title to the subject matter in the bill as adopted in the first house without change in the scope of the bill.

The amendments do not prohibit amendments, including amendments which introduce new matter, if the amendments are within the scope of the title, although, of course, other limitations such as the requirements of germaneness and compliance with the single subject rule continue to apply.

BGB:ljb

1/030

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 8, 1983

SUBJECT: Notice requirements of Rule 23 of the Uniform Rules

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested an analysis of the notice requirements under Rule 23 of the Uniform Rules of the Alaska State Legislature.

The relevant part of the Rule, paragraphs (a) through (e) provides:

> "RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing. However, this requirement may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.
>
> "(b) The person who chairs a standing, special, or joint committee shall provide the chief clerk or secretary written notice of the change in the time, place or subject matter of a meeting. At the next daily

legislative session, notice of the schedule change shall be announced by the chief clerk or secretary and published as a notice in the journal of the house.

"(c) A scheduled meeting of a standing, special, or joint committee may be cancelled at any time. If possible, notice of the cancellation shall be given in the same manner as provided for notice of change in (b) of this rule.

"(d) The provisions of (a) and (b) of this rule do not apply to a standing, special, or joint committee meeting scheduled after the date a conference committee has been chosen to consider amendments to or differences between versions of the general appropriation act. However, a person who chairs a standing, special, or joint committee shall post written notice of the time, place and subject matter of a meeting at least 24 hours before the meeting.

"(e) The provisions of (a) - (d) of this rule do not apply to meetings of

(1) the Rules Committee when it meets for the purpose of preparing the daily calendar;

(2) the Committee on Committees referred to in Rule 1(e); or

(3) standing, special, or joint committees when the committee meets during the interim between sessions."

Paragraph (a) has two distinct notice requirements.

The first requirement is the written notice provided to the clerk or secretary by the Thursday preceding the meeting of the time, place and subject matter of all committee meetings during the succeeding week. This applies to all committee meetings and there is no provision for waiver of the requirement.

There is an additional requirement when the committee is the committee of first referral of a bill or resolution. In addition to the preceding Thursday notice, the person who chairs the committee must provide the clerk or secretary with a written notice of the first public hearing at least five days in advance. This rule would normally apply only

in the house of origin of the bill or resolution since normally the bill or resolution will go through the committee process before going to the second house. In my opinion the rule would apply to the next committee of referral if the committee of first reference waives referral since this waiver negates the reference in effect. The focus of the rule is the committee that holds the first public hearing, otherwise the rule would be meaningless. The five-day notice requirement may be waived by a majority vote of the full membership of a house.

Paragraph (b) requires the person chairing a committee to provide the clerk or secretary written notice of a change in the time, place or subject matter of a meeting. The change must be announced at the next legislative session and be published in the journal of the house. This paragraph would not allow the introduction of new subject matter since that would supersede the notice requirement of (a).

Paragraph (e) allows cancellation of a committee meeting at any time and provides, that where possible, the notice provisions in (b) relating to a change be followed.

Once a conference committee on a version of the general appropriation act has been chosen the notice requirements of (a) and (b) no longer apply. At that time the notice requirement in (d) comes into effect. This requires posting of written notice of the time, place and subject matter of a committee meeting 24 hours in advance of the meeting.

Paragraph (e) provides the notice requirements of the Rule do not apply to the Rules Committee when it meets for the purpose of preparing the daily calendar, to the Committee on Committees or to any committee meeting during the interim. The exception as to the Rules Committee would not apply where that committee was acting as a substantive committee of reference or otherwise acting on matters other than the calendar.

In summary Rule 23 has three distinct notice requirements. These are:

(1) The written previous Thursday notice given to the clerk or secretary;

(2) The five-day notice which applies only to the first public hearing in the committee of first reference; and

(3) The 24-hour posting requirement which comes into effect only when the conference committee on the budget is chosen and which then supersedes the other requirements.

Each has specific application and distinct requirements as discussed above.

BGB:ljb
1/008

FEB 7 1983

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 7, 1983

SUBJECT: Amendments to the Uniform Rules

TO: Representative John G. Fuller
Chairman, House Rules Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

I have made some comments about rules which seemed to cause problems last year which are enclosed.

A matter that is not covered by the rules that I think it useful to deal with is sponsor substitutes. I am enclosing a memorandum Ed Hein sent you last year which illustrates the problem.

I am certain we will have problems with the requirement that the title of a bill may not be amended in the second house but this was adopted last year apparently with knowledge of the scope of the problems involved.

BGB:ljb

Enclosures

RULES PROBLEMS

Rule 1(b)	The phrase "for the two year duration of the legislature" has been held not to be legally effective.
(e)	The term "minority" is not clear in a coalition context.
Rule 3	The phrase "for the two year duration of the legislature" is questionable.
Rule 16	There is an apparent conflict between the phrase "when no quorum is present" modifying the power of the presiding officer to compel attendance in (a) and the broad provisions in (e). The modifier is not considered a limit in practice and understand the practice and should be deleted.
Rule 17	It seems a general catch-all order such as "miscellaneous business" could be useful. This could be done under Rule 19 but apparently that provision is in practice seldom used.
Rule 23	(a) - (d) of this rule seems to create more questions than any other rule. It should be rewritten for clarity after being reviewed for policy. One problem is the first week of a session and I cannot conceive how this would work during a special session.
Rule 31(a)	There has been some problems with the second sentence of the rule which reads "The motion is not in order when the question can be reached by giving notice of intent to reconsider or if notice of reconsideration has already been given." Although it apparently was intended that a motion to rescind cannot follow reconsideration this is not explicit. It is clear that a rescinding motion may not be used when a question can be reached by reconsideration. The rule should clearly state that after reconsideration has been disposed of rescinding action may be taken or may not be taken.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 29, 1982

SUBJECT: Introduction of sponsor substitutes and addition of co-sponsors (Work Order No. 12-2333)

TO: Representative John G. Fuller
Chairman, House Rules Committee

FROM: Edward H. Hein
Legislative Counsel

You have asked four questions relating to legislative procedure. I will answer them in the order asked.

(1) Can a sponsor substitute be introduced at any time?

Neither the Uniform Rules nor Mason's Manual specifically address questions relating to sponsor substitues. Rule 10, however, provides:

> DRAFTING MANUAL. The legislative drafting manual prepared by the enrolling secretary of the legislature and the revisor of statutes and adopted by the Legislative Council is to be followed by all officers and employees of the legislature in the preparation, processing, and disposition of all legislative documents and records.

The 1982 Manual of Legislative Drafting, page 53 provides:

> When the sponsor submits a sponsor substitute, the original bill is replaced. The action has the effect of withdrawing the original bill.

Withdrawal of a bill is governed by Rule 27(b), which allows a bill or resolution to be withdrawn by the member introducing it, if consent is given by a majority vote of the full membership of the house.

Since a sponsor substitute is, in effect, a withdrawal of the original bill, a sponsor substitute arguably may be introduced at any time so long as the original bill is in the possession of the house of origin.

Introduction of a sponsor substitute is also an amendment to the original bill, similar to a committee substitute. Under Rule 35, an amendment cannot be made in the third reading. Thus, it is reasonable to conclude that a sponsor substitute can be introduced at any time until the bill is in third reading in the house of origin. Even then, the bill could be returned to second reading for introduction of a sponsor substitute.

A sponsor substitute is also a new bill, and when introduced, should be referred to committees by the presiding officer. The committee referrals may be different from the referrals made for the original bill, especially if the sponsor substitute represents a substantial change from the original bill.

Because introduction of a sponsor substitute is a withdrawal of the original bill, arguably a member may object to the introduction, in which case consent to the introduction by a majority of the full membership of the house would be required.

Notwithstanding the provisions of Rule 44, a sponsor substitute may be introduced after the 35th day of the second session, so long as the original bill was introduced within the time limit.

(2) <u>If the bill is already in a committee of reference, may the committee report out a sponsor substitute or must it be a committee substitute</u>?

Under Rule 24(c), a committee of referral may report out a committee substitute but not a sponsor substitute. A sponsor substitute is "introduced", not "reported out".

(3) <u>May a co-sponsor be added at any time</u>; and (4) <u>What is the procedure for adding a co-sponsor</u>?

A change of sponsor may be made at any time before enrollment of the bill. Consent of a majority of those present is required if the change is to be made in third

reading or after passage. Rule 35. A sponsor of the original bill may have his or her name removed from a committee substitute by objecting. Rule 24(c). A request for change of sponsor may be made by a member from the floor or informally with the chief clerk.

EHH:ljb

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM February 3, 1983

SUBJECT: Expenditure of funds by committee

TO: Senator Rick Halford

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked whether a special or joint committee may expend money unless there is an appropriation made for the work of the committee.

Rule 21(c) provides:

> (c) A resolution establishing a special or joint committee shall specify the date or conditions of termination of the committee. A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee. (Emphasis added)

The underlined language clearly requires an appropriation made for the work of the committee as a condition for expending money by the committee.

While there may be questions in particular instances of the degree of specificity required, this condition, in my opinion, would preclude the committee from expending money

made available to it from a generalized appropriation which makes no reference to the work the committee is to perform.

FGB:ljb

Introduced: 4/25/83
Referred: Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE SPECIAL
COMMITTEE ON LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 34

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing certain amendments to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Rule 16(a) of the Uniform Rules of the Alaska State Legislature is amended to read:

(a) A call of the house is used to compel attendance of absent members who have not been previously excused from a call by a majority vote of the full membership of the house. The journal shall reflect the names of all members excused from attendance and such members shall be excused from all roll calls during such absence. A call of the house may be ordered by one member. The [WHEN NO QUORUM IS PRESENT, THE] presiding officer of the house may compel the attendance of individual absent members.

* Sec. 2. Rule 21(c) of the Uniform Rules of the Alaska State Legislature is amended to read:

(c) A resolution establishing a special or joint committee shall specify the budget and source of funds for the committee and the date or conditions of termination of the committee. A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts

between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only if the expenditure is authorized by a majority vote of the full membership of the Committee [IN ACCORDANCE WITH AN APPROPRIATION MADE FOR THE WORK OF THE COMMITTEE].

* Sec. 3. Rule 23 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday.

(b) The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first public hearing on the bill or resolution at least five days before the hearing.

(c) The notice requirements of (a) and (b) of this section [HOWEVER, THIS REQUIREMENT] may be waived by motion of the person who chairs the committee to which a bill or resolution is first referred if concurred in by majority vote of the full membership of the house.

(d) The chief clerk or secretary shall publish and distribute copies of the weekly schedule of committee meetings and of the five-day notice of hearing.

(e) [(b)] If the time or place of a committee meeting is changed from that shown in the weekly schedule of committee meetings, the [THE] person who chairs a standing, special, or joint committee shall provide the chief clerk or secretary written notice of the change [IN THE TIME, PLACE OR SUBJECT MATTER OF A MEETING]. Written [AT THE NEXT

DAILY LEGISLATIVE SESSION,] notice of the schedule change shall be given to [ANNOUNCED BY] the chief clerk or secretary and published as a notice in the journal of the house.

(f) [(c)] A scheduled meeting of a standing, special, or joint committee may be cancelled or consideration of the scheduled subject matter may be postponed or cancelled at any time. If possible, notice of the cancellation shall be given in the same manner as provided for notice of change in (b) of this rule.

(g) [(d)] The provisions of (a) - (e) [AND (b)] of this rule do not apply to a standing, special, or joint committee meeting scheduled after the date a conference committee has been chosen to consider amendments to or differences between versions of the general appropriation act. However, a person who chairs a standing, special, or joint committee shall post written notice of the time, place and subject matter of a meeting at least 24 hours before the meeting.

(h) [(e)] The provisions of (a) - (g) [(d)] of this rule do not apply to meetings of

(1) the Rules Committee when it meets for the purpose of preparing the daily calendar;

(2) the Committee on Committees referred to in Rule 1(e); or

(3) standing, special, or joint committees when the committee meets during the interim between sessions or during a special session.

(i) [(f)] Each standing, special, and joint committee

(1) shall record its meetings electronically and prepare a log of the recording adequate to locate specific testimony;

(2) shall prepare minutes of each meeting of the committee on a standard form prescribed jointly by the Rules Committees of the

house and the senate; the minutes shall include

(A) a list of the names of each member present during the meeting;

(B) a list of the name and affiliation of each witness testifying before the committee;

(C) a brief statement of the position of the witness on the subject testified upon; and

(D) each amendment formally considered by the committee, the name of the member moving adoption of the amendment, the action taken on the amendment, and the yeas and nays if a committee member has requested a roll call vote on adoption of an amendment;

(3) shall maintain a chronological file of minutes, copies of which shall be made available upon request to committee members and the public; committee minutes, tapes and other materials of research value shall be delivered by the committee at the end of each session or each legislature to the legislative reference library for appropriate disposition;

(4) shall [MAY] make available to the Legislative Affairs Agency a copy of all minutes of committee meetings during the session for entry of the minutes as a data base on the legislative computer system.

* Sec. 4. Rule 37 of the Uniform Rules of the Alaska State Legislature is amended by adding a new subsection to read:

(c) A member who has introduced a bill or resolution or, if the bill or resolution was sponsored by more than one member, the member whose name first appears in the list of sponsors, [with the concurrence] after 24 hrs. notice of each of the cosponsors, may introduce a sponsor substitute for the bill or resolution at any time before the bill or resolution is

reported from the first committee of reference. The effect of introduction of a sponsor substitute is to withdraw the original bill or resolution. The introduction does not require consent of the membership of the house. A sponsor substitute may not be introduced if the subject matter is different from that of the original bill.

* Sec. 5. Rule 39(b) of the Uniform Rules of the Alaska State Legislature is amended to read:

(b) First Reading. The first reading consists of a reading aloud by the clerk or secretary of the following information: the house of origin, the bill number, the sponsor, and the title of the bill, e.g., "In the House, House Bill No. ..., by ..... and ....., A bill for an Act entitled, 'An Act relating to a code of ethics for state employees.'" The bill is then referred by the presiding officer to one or more committees <u>of the house</u>. The house may by a majority vote of the full membership of the house refer the bill to any other standing or special committee <u>of the house</u>.

* Sec. 6. Rule 52 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 52. ADJOURNMENT. Neither house may adjourn or recess for longer than three days unless the other concurs. (Sec. 10, Art. II, State Constitution) [ADOPTION OF THE CONCURRENT RESOLUTION BY A MAJORITY VOTE OF THE FULL MEMBERSHIP OF EACH HOUSE CONSTITUTES CONCURRENCE.] A motion to adjourn or recess a session is in order when it is the intention of the legislature to recess or adjourn to a day certain. A motion to adjourn sine die is in order only at the end of a second regular session or a special session.

* Sec. 7. Rule 54 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 54. SUSPENSION OF RULES. Unless otherwise provided for in

the case of a particular rule, the Uniform Rules may be suspended by a concurrent resolution approved by a two-thirds vote of the full membership of each house. If either house violates a uniform rule <u>other than a rule concerning matters relating to the organization or operation of a house</u> a question of order may be raised in the other house. If it is decided by the other house that the Uniform Rules have been violated, the bill involved in that violation shall be returned to its house of origin without further action.

SCOMM

#35:6

Alaska State Legislature
Senate

OFFICIAL BUSINESS

March 11, 1983

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Phillips

MEMORANDUM

To: Legislative Reform Committee

From: Jan Faiks, Senator

Subject: Information

Attached is information on ethics that was received in our office, for your information.

ETHICS

State of Maine

Senate Chamber

Augusta, Maine 04333

January 18, 1980

The Honorable Richard H. Pierce, Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Chairman Pierce:

We enclose the final report of the Joint Select Committee on Government Ethics of the 109th Legislature on its study of the conflict of interest statutes.

Very truly yours,

Samuel W. Collins, Jr.
Samuel Collins
Senate Chairman

Judy C. Kany
Judy C. Kany
House Chairman

A STUDY OF THE CONFLICT OF INTEREST STATUTES

FINAL REPORT

OF THE

JOINT SELECT COMMITTEE

ON

GOVERNMENT ETHICS

January 18, 1980

REPORT OF THE SELECT COMMITTEE ON GOVERNMENT ETHICS

INTRODUCTION

Study Order H.P. 1437 of the First Regular Session of the 109th Legislature ordered the formation of a Joint Select Committee to study the statutes governing conflicts of interest for state employees. The Committee members were appointed in July, 1979 as follows:

JOINT SELECT COMMITTEE ON GOVERNMENT ETHICS

Senator Samuel Collins
Senate Chairman

Senator David Ault

Representative Judy Kany
House Chairman

Representative Stephen Hughes
Representative James Silsby
Representative Sylvia Lund

The Committee was ordered to study the present statues and a bill, L.D. 1223, "AN ACT to Clarify Executive Conflict of Interest." The Committee met several times during the Fall of 1979 to carry out the study. While considering the scope and problems of the statutes governing employee conflicts, it also considered proposals by members and representatives of citizen groups to amend the statutes. The Committee decided to offer legislation to amend the statutes which is attached to this report.

REPORT

Maine common law and statutes have several provisions that govern the actions of public employees in relation to possible conflicts-of-interest. Chapter 25 of Title 17-A, the Maine Criminal Code, prohibits a broad range of corrupt practices including: bribery in official and political matters; improper influence; imporper compensation for past action; improper gifts to public servants; improper compensation for services; purchase of public office; official oppression and misuse of information. (See 17-A MRSA §§601-609). In addition, Title 17 prohibits certain state employees from holding an interest in contracts for supplies, etc. to the State. (17 MRSA §3104). These criminal statutes provide a strong foundation for regulating the conduct of public employees.

Maine also has several court decisions that have accepted broad common-law principles that govern employee conduct. These cases recognize that a public employee is in a position of trust and responsibility, and thus owes a special duty of fidelity to the public. This duty not only requires that the employee avoid unethical private gain or advantage from his official position; but also, that he avoid the appearance of having that gain or advantage. (See Lesieur v. Inhabitants of Rumford 113 Me. 317 (1917) and Tuscan v. Smith 130 Me. 36 (1936).) These common law doctrines have been recently reaffirmed in an Opinion of the Justices. (330 A.2d 912 (1957)).

For many years, these common law principles and basic criminal statutes were sufficient safeguards for the public trust. However, in 1975, specific statutory provisions were enacted to more specifically govern the activities of state employees and persons in some way related to them. (See 5 MRSA §15). In the last several years, this statute has been the subject of some controversy and confusion, (See Attorney General Opinions of December 5, 1975 and December 20, 1978 and Opinion of the Justices, 394 A2d 1168 (Me. 1979). After reviewing the statute the Committee agreed that it needed a thorough revision to properly reflect the problems confronting present employees and to preserve the public's trust in the high reputation of the state's employees.

The Committee's review of the present statute revealed that although the statute places restrictions on former state employees in their post-employment activities, and on the "former partners" of present employees; it places no restrictions on the activities of present employees. Though the Criminal Code provisions limit present employees' activities by generally

prohibiting private pecuniary gain from public service; there are no statutory prohibitions on appearing to have a special private advantage from public service.

The Committee agreed to propose legislation to require employees to avoid the appearance of conflict of interest. The basic principle of the appearance of conflict is that an employee should not take official action in a situation where he or his relatives may have personal economic interests. A simple prohibition is sufficient to prevent the most serious situations from arising, and does not unduly intrude on the personal activities of state employees. To complement this prohibition, the Committee also recommends legislation to require financial disclosure by the state's major policy-making employees. This will provide the public with the information it requires to judge the performance of these employees. In balancing the interest of the public and the privacy rights of employees, the Committee looked to the requirements for financial disclosure by Legislators. The information provided by Legislators seemed adequate to inform the public without being unduly intrusive into the private affairs of employees. The Committee also decided that while the conflicts statute applied to all full-time compensated state employees, the financial disclosure requirement should only apply to employees who had a major policy-making role. As both an affirmative reporting requirement and an intrusion into private matters, it was only warranted to insure the higher fidelity demanded of those who make the basic policy decisions of state government.

Finally, the Committee decided that the statute provisions relating to former partners of state employees were unwarranted and should be repealed. The suggested additions to the conflicts statute seemed adequate to protect the public's interest without continuing the vicarious responsibility of former partners. The restrictions of the present statute allow an employee to restrict the actions of a third party without a concommittant gain to the public. In certain instances these restrictions could have a seriously detrimental effect on the livelihood of innocent people. If there was any justification for this provision in attempting to prevent the appearance of conflicts, that justification disappears with the enactment of restrictions on the actions of present employees. The restrictions the Committee has recommended on present employees place the burden on those responsible and more than adequately protect the public's interest in an honest and responsible civil service.

In addition to these basic changes in the conflict of interest statute; the Committee has also made numerous changes in the statutory language to avoid the confusion and misunderstanding that has surrounded the present statute. The definitions are clearer and more specific, and the prohibitions are reorganized for clarity. The provisions on financial disclosure parallel the provisions on Legislative disclosure, which have been used and understood for several years. The draft legislation has specifically resolved questions and issues that have arisen over the last several years and has sought to express a simple straight-forward statement of the Committee's principles.

The Committee also considered the issues of judicial and legislative disclosure. Presently there is no requirement for financial disclosure by justices and judges, though there is an informal tradition of requesting basic information on possible financial conflicts during confirmation hearings before the Judiciary Committee. It seemed appropriate to formalize this tradition by establishing a financial disclosure reporting system for justices and judges. The justices and judges of this state have as significant role as executive branch mayor policy-makers in establishing public policy. The same public interest that requires disclosure for the executive branch requires it for the judicial branch. However, the general financial position of justices and judges does appear to differ from that of executive branch employees. Except for Probate Court Judges, the justices and judges are appointed for a term of years and usually have little or no other sources of income. Thus, the Committee believes that it is unnecessary to have annual reporting. It will be sufficient for justices and judges to file an initial report, and then file only when there is a substantial change in their finances. Otherwise, the proposed judicial financial disclosure bill follows the proposed bill for executive branch employees.

In addition, the Committee also reviewed the present disclosure requirements for Legislators. That statute, 1 MRSA §1016, only requires disclosure of "sources of income." The Committee believes that this is inadequate and should be expanded to include property and future interests. When the Committee considered the scope of financial disclosure for executive branch employees, it reviewed the Legislator's disclosure provisions. It felt that only disclosing "sources of income" was insufficient to accomplish the goal of allowing public scrutiny to avoid appearances of conflicts and to insure the high fidelity of public service. As possible appearances of conflicts can also result from property owned by the employee or from rights to income or property in the future, the Committee added these to the disclosure requirements. The same reasoning argues for adding them to the Legislative disclosure requirements. Thus the Committee recommends that the Legislative disclosure statute also be amended to include reporting of property and future rights.

The Committee believes that the enactment of its proposed legislation on conflict of interest will resolve much of the confusion and controversy on this subject over the last several years. It believes that the recommended legislation balances the public's legitimate concern over the fidelity of its employees with its employees' interests in privacy and freedom to act. Public scrutiny combined with strong but narrow prohibitions seem appropriate to guide a public work force that has generally been beyond reproach. Extensive and detailed restrictions can only hurt the high quality of public service in the state. Isolated incidences have shown the need for certain

narrow restrictions, but the general welfare would only be hurt by detailed and extensive restrictions on the actions of state employees. The Committee believes that its proposed statute fairly balances these factors to ensure the continued integrity of state service.

AN ACT to Clarify the Provisions Relating to Executive Conflict of Interest and to Establish Financial Disclosure Requirements for Policy-making Executive Employees.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA §15 is repealed.

Sec. 2. 5 MRSA §18 is enacted.

§18. Disqualification of executive employees from participation in certain matters

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings:

A. "Executive employee" means the Attorney General, Secretary of State, Treasurer of State, State Auditor and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

(1) the Governor;

(2) employees of and members serving with the National Guard;

(3) employees of the University of Maine; the Maine Maritime Academy, and State Vocational-Technical Institutes; and

(4) employees who are employees solely by their appointment to an advisory body.

B. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.

C. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction.

2. Executive employee. An executive employee commits a civil violation if he personally and substantially participates in his official capacity, in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. himself, his spouse or his dependent children;

B. his partners;

C. a person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment; or

D. an organization in which he has a direct and substantial financial interest.

3. Former executive employee. A former executive employee commits a civil violation if he, within one year after his employment has ceased, either knowingly acts as an agent or attorney for, or appears personally before a state or quasi-state agency for anyone other than the state in connection with a proceeding in which:

A. the State is a party or has a direct and substantial interest; and

B. the particular matter at issue was pending before his agency and was directly within his official responsibilities as an executive employee at any time within one year prior to the termination of his employment.

4. Construction of section. This section shall not be construed to prohibit former state employees from doing personal business with the State.

5. Penalty. A violation of this section shall be a civil violation for which a forfeiture of not more than $1,000 may be adjudged.

Sec. 3. 5 MRSA §19 is enacted.

§19. Financial disclosure by executive employees

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings:

A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature.

B. "Elected executive employee" means the Attorney General, Secretary of State, Treasurer of State and State Auditor.

C. "Executive employee" means an appointed executive employee or an elected executive employee.

D. "Future interests" means a legally enforceable right to income or property in the future, including: contracts or agreements for future employment or income; vested pension or retirement benefits; or distributive shares of a former partnership or business association.

E. "Income" means economic gain from any source, including: compensation for services, including fees, commissions and payments in kind; income derived from

business; gains derived from property transactions, rents or royalties; income from investments, including interest, capital gains and dividends; alimony or separate maintenance payments; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and prizes, awards, grants or gifts.

F. "Property" means both real estate and personal property.

2. Statement of finances. Each executive employee shall annually file with the Secretary of State, a sworn and notarized statement of finances for the preceeding calendar year and an estimate for the next year. The statement shall indicate the category or type of:

A. the entity or economic activity that is the source of income to him, his spouse or dependent children that exceeds $300 during the year;

B. property owned by him, his spouse or dependent children that exceeds $5,000 in fair market value during the year;

C. future rights that he, his spouse or dependent children will be entitled to and that will exceed $300 in income or $5,000 in fair market value in any future year; and

D. If he is an attorney, the major areas of practice, and if associated with a law firm, the major areas of the firm's practice.

3. Time for filing.

A. An elected executive employee shall file an initial report within 30 days of his election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature.

B. Each executive employee shall file the annual report prior to the close of the 2nd week in April, unless he has filed an initial or updating report during the preceding 30 days.

C. Each executive employee whose income or property substantially change shall file a report of that change within 30 days of it.

4. Penalties. Failing to file the statement within 15 days of having been notified by the Secretary of State of failing to meet the requirements of subsection 2 shall be a civil violation for which a forfeiture of not more than $100 may be adjudged.

5. Rules. The Secretary of State may adopt or amend rules to specify the reportable categories or types, the methods of valuation, the procedures and forms for reporting and to administer this section.

6. Public record. Statements filed under this section shall be public records.

Sec. 4. 5 MRSA §307 is amended to read:

§307. Interest in contracts prohibited

In addition to the limitations of section 18, no No employee of the Department of Finance and Administration or member of the commission shall be interested directly or indirectly in any contract or contracts calling for the construction or improvements of facilities, buildings and grounds in the Capitol Area in the City of Augusta as described in Title 1, section 814.

Sec. 5. 5 MRSA §1061, sub-§5 is amended to read:

5. Trustees and employees not to have interest in investments. Except as otherwise provided, in addition to the limitations of section 18, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board; nor shall any trustee or employee of the board, directly or indirectly, for himself or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an indorser or surety; or in any manner an obligor, for moneys loaned or borrowed from the board.

Sec. 6. 5 MRSA §5009 is amended to read:

§5009. Restrictions on employee interests

In addition to the limitations of section 18, no No member, officer or employee of the Office of Energy Resources shall acquire any interest, direct or indirect, in any contract or proposed contract negotiated or proposed by the Office of Energy Resources, nor shall any member, officer or employee participate in any decision or any contract entered into by the authority

if he or she has an interest, direct or indirect, in any firm, partnership, corporation or association which will be a party to such contract or financially involved in any transaction with the authority.

Sec. 7. 7 MRSA §2952, 1st ¶, 2nd sentence is amended to read:

In addition to the limitations of Title 5, section 18, none None of the remaining 4 members of the commission shall at the time of appointment or while serving as a member of the commission, and no employee of the commission shall have any official business, other than retail purchases of milk, or professional connection or relation with, or hold any interest or stock or securities in, any producer, dealer, store or other person whose activities are subject to the jurisdiction of this commission; nor shall any member or employee of the commission render any professional or other service against any such producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission or be a member of a firm which shall render any such service.

Sec. 8. 9-B MRSA §213, sub-§3 is enacted to read:

3. Additional limitations. The provisions of this section shall be in addition to the limitations of Title 5, section 18.

Sec. 9. 10 MRSA §865 is amended to read:

§865. Conflicts of interest

In addition to the limitations of Title 5, section 18, no No member of the authority shall participate in any decision on any contract entered into by the authority under this chapter if he has any interest, direct or indirect, in any firm, partner-

ship, corporation or association which may be a party to such contract, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which is a user of any projects to be financed pursuant to or in connection with such contract.

Sec. 10. 22 MRSA §314 is amended to read:

§314. Conflict of Interest

In addition to the limitations of Title 5, section 18, a Any member or employee of the Department of Human Services or / Health Systems Agency who has a substantial economic or fiduciary interest which would be affected by a recommendation or decision to issue or deny a certificate of need, or who has a close relative or economic associate whose interest would be so affected shall be ineligible to participate in the review, recommendation or decision making process with respect to any application for which the conflict of interest exists.

Sec. 11. 28 MRSA §60, 2nd sentence is amended to read:

In addition to the limitations of Title 5, section 18, neither Neither the commission, nor any employee, shall accept directly or indirectly any samples, gratuities, favors or anything of value from a manufacturer, seller, brewer or licensee or any representative of the same under circumstances which might reasonably be construed as influencing or improperly relating to past, present or future performance of his official duties.

Sec. 12. 29 MRSA §1517, new sentence between the 1st and 2nd sentences to read:

These rules shall be in addition to the limitations as they apply to state employees under Title 5, section 18.

Sec. 13. 30 MRSA §4603, last sentence is amended to read:

Any violation of this section ~~shall constitute a misdemeanor~~ is a Class E Crime. The provisions of this section are in addition to the limitations of Title 5, section 18.

Sec. 14. 30 MRSA §5330, new ¶ between 1st and 2nd ¶¶ to read:

The provisions of this section shall be in addition to the limitations of Title 5, section 18.

Sec. 15. 35 MRSA §2, 1st sentence is amended to read:

In addition to the limitations of Title 5, section 18, no ~~No~~ member or employee of said commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility, as defined in section 15, operating within this State, nor shall he render any professional service against any such public utility nor shall he be a member of a firm which shall render any such services.

STATEMENT OF FACT

This bill is a result of a study by the Joint Select Committee on Government Ethics as ordered by H.P. 1437. The purpose of this bill is to revise the ethics statutes relating to state employees. This bill strengthens and clarifies the provisions on avoiding the appearance of conflicts of interest by present state employees, removes the limitations on former partners of employees and added provisions on financial disclosure for certain employees.

LEGISLATIVE FINANCIAL DISCLOSURE

Sec. 1. 1 MRSA §1013, sub-§1, ¶C is amended:

C. To administer the disclosure of ~~sources-of-income~~ finances by Legislators as required by this subchapter.

Sec. 2. 1 MRSA §1013, sub-§2, ¶J is amended:

J. The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of ~~sources-of-income~~, finances evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.

Sec. 3. 1 MRSA §1012, sub§§4 & 5 are enacted:

4. Future interests. "Future interests" means a legally enforceable right to income or property in the future, including: contracts or agreements for future employment or income; vested pension or retirement benefits; or distributive shares of a former partnership or business association.

5. Property. "Property" means both real estate and personal property.

Sec. 4. 1 MRSA §1016 is amended:

§1016. ~~Statement-of-sources-of-income~~ Statement of Finances.

Each member of the Senate and House of Representatives shall file a statement of ~~sources-of-income~~ finances for the preceding calendar year with the commission prior to the close of the 2nd week in February of each year. The statement shall include sources of income, property and future interests. Sources of income, property, or future interests need not be indicated

by name, but shall be indicated by category or type of business entity or economic activity in such manner as shall be determined by the commission.

Sec. 5. 1 MRSA §1017, 1st ¶ is amended:

§1017. Form; contents

The statement of ~~sources-of-income~~ finances filed under this subchapter shall be on a form prescribed by the commission and prepared by the Secretary of State and shall be a matter of public record. The Legislator filing the statement shall reveal each source of income to him or any member of his immediate family exceeding a value of $300 in the aggregate during the preceding year. Campaign contributions, duty recorded as required by law, shall not be considered income for the purposes of the statement. Income received in kind, including but not limited to the transfer of property, options to buy or lease and stock certificates, shall be reported by identifying both the sources and the particular nature of the income. The legislator shall also reveal the property owned by him or any member of his immediate family exceeding $5,000 in fair market value during the preceding year, and future rights that he or any member of his immediate family will be entitled to and that will exceed $300 in income or $5,000 in fair market value in any future year.

STATEMENT OF FACT

This bill is a result of a study by the Joint Select Committee as ordered by H.P. 1437. The purpose of this bill is to change the Legislative financial disclosure requirements to conform to those recommended state employees in a companion bill. This bill would require disclosure by category of assets and future interests of legislators and their family.

JUDICIAL FINANCIAL DISCLOSURE

Sec. 4 MRSA c. 27 is enacted

CHAPTER 27

FINANCIAL DISCLOSURE

§1201. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings:

1. Appointed justice or judge. "Appointed justice or judge" means the Chief Justice, an Associate Justice and Active Retired Justice of the Supreme Judicial Court, a justice and Active Retired Justice of the Superior Court, a judge and Active Retired Judge of the District Court, and the Administrative Court Judge and Associate Administrative Court Judge.

2. Elected judge. "Elected judge" means a judge of the Probate Court.

3. Future interests. "Future interests" means a legally enforceable right to income or property in the future, including: contracts or agreements for future employment or income; vested pension or retirement benefits; or distributive shares of a former partnership or business association.

4. Income. "Income" means economic gain from any source, including: compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from property transactions, rents or royalties; income from investments, including interest, capital gains and dividends; alimony or separate maintenance payments; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; in-

[illegible] from an interest in an estate or trust; and prizes, awards, grants or gifts.

5. Justice or judge. "Justice or judge" means an appointed or elected justice or judge.

6. Property. "Property" means both real estate and personal property.

§1202. Statement of finances.

Each justice or judge shall file with the State Court Administrator, a statement of finances for the preceding calender year and an estimate for the next year. The statement shall either be sworn or contain notice that false statements are punishable under the criminal code. The statement shall indicate the category or type of:

1. Source of income. The entity or economic activity that is the source of income to him, his spouse or dependent children that exceeds $300 during the year;

2. Property. Property owned by him, his spouse or dependent children that exceeds $5,000 in fair market value during the year;

3. Future interests. Future rights that he, his spouse or dependent children will be entitled to and that will exceed $300 in income or $5,000 in fair market value in any future year; and

4. Practicing attorney. If he is a practicing attorney, the major areas of practice, and if associated with a law firm, the major areas of the firm's practice.

§1203. Time for filing.

1. Initial filing. An elected judge shall file an initial report within 30 days of his election. An appointed justice or judge shall file an initial report prior to confirmation by

the Legislature.

2. Report of substantial change. Each justice or judge whose income or property substantially changes shall file a report of that change within 30 days of it.

§1204. Rules.

The Supreme Judicial Court may adopt or amend rules to specify the reportable categories or types, the methods of valuation, the procedures and forms for reporting and to administer this chapter.

§1206. Public record.

Statements filed under this chapter shall be public records.

STATEMENT OF FACT

This bill is a result of a study by the Joint Select Committee as ordered by H.P. 1437. The purpose of this bill is to require financial disclosure by justices and judges to conform to the standards applied to Legislators and state employees as recommended in companion bills. This bill would require justices and judges of all courts to disclose their sources of income, assets and future disclosure would be required on their appointment or election and subsequently when there was any major change.

CONFLICT OF INTEREST

DISCLOSURE

FINANCIAL

A MODEL STATE LAW

National Municipal League

Model State Conflict of Interest and Financial Disclosure Law

NATIONAL MUNICIPAL LEAGUE
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FOREWORD

That "public office is a public trust" has always been a basic principle underlying the National Municipal League's programs to make state and local government more responsive and responsible, efficient and effective. Its special interest in ethics was initiated by William W. Scranton in 1970 while he was League president. In its preliminary stages ethics was considered as an adjunct to the Election Systems Project (1971-1973) because financial disclosure requirements for candidates and regulations governing campaign finance are integral parts of comprehensive election legislation.

The public disillusionment with government generally caused by a number of scandals involving officials at all levels of government prompted the enactment in the early 1970s of an unprecedented number of new statutes, broadly described as ethics legislation. The administration of these statutes was uncharted territory to a substantial extent. Since 1976, the League has been able through its Ethics Project not only to assist in an exchange of information among those with official responsibilities in this field but also to serve as a forum for the evaluation of existing statutes, the case law developed as the statutes have been adjudicated, and proposals for further legislation. In a very real sense the League has been the instrumentality for "reforming reform," and thus guiding an effort to make refinements to assure that today's reform will not be tomorrow's problem, as is sometimes the case when measures are not reappraised after they are in operation. The *Model State Conflict of Interest and Financial Disclosure Law* is presented to provide such guidance.

The League is indebted to The George Gund Foundation of Cleveland for

a series of grants which provided the basic financial support for the project, which included preparation of this model statute.

The League is also indebted to Mark S. Matthews of Greenwich, Connecticut, a former member of the Council, for financing the preliminary stages of the project which led to the publication of the *Preliminary Bibliography on Conflict of Interest and Personal Ethics in Government* and *Ethics in Government: Selected Statutes and Reports.*

Barbara Rawson, who chaired the League's Ethics Project Committee, provided constant assistance to the project staff. She brought to the undertaking not only a longtime concern that state and local government be worthy of citizen trust because of its competence and integrity, but also the special experience gained as an early chairman of the Ohio Ethics Commission as that body launched a statewide program to administer newly enacted legislation.

The members of the League committee made invaluable contributions to the development of the model. The committee deliberations held in connection with the annual National Conference on Government, as well as comments received from members, shaped the basic policy thrust of the *Model.* Although some members expressed reservations with regard to detail, the committee as a whole gave approval.

Members of the special Advisory Committee composed of persons with official responsibilities for the administration of conflict of interest, financial disclosure and campaign finance laws gave the model the benefit of their experience in dealing with the delicate issues involved in enforcing rules and regulations designed to maintain high ethical standards. (The rosters of the committees appear at the end of this volume.)

Frank P. Grad, professor of law and director of the Legislative Drafting Research Fund, Columbia University, not only prepared the draft of the *Model* but also was of enormous assistance in the deliberations of the League committee and in the preparation of the commentary which accompanies the legal text.

In addition to her participation as a member of the Advisory Committee, Barbara Snethen, former executive director of the Iowa Campaign Finance Disclosure Commission, provided special assistance in analyzing financial disclosure requirements.

Page Elizabeth Bigelow, League staff associate, directed the research effort for the project, prepared the detailed specifications for the model for review by the committee, and revised them for the guidance of the draftsman. She also prepared the analytical commentary.

Acknowledgement is also made of the assistance provided by League staff members: William J. D. Boyd, former assistant director, Debra J. Collins,

research librarian, and Thomas J. Drury and Shelley M. Greenwald, legal research assistants.

As the *Model* was in preparation, many inquiries were received from citizens and officials concerned with conflict of interest issues. Their questions were important to the model-building process and helped to focus staff research. It is hoped that those using the *Model* will address inquiries to the League and thus help enhance its capability for making further refinements in the law governing ethical standards in government.

WILLIAM N. CASSELLA, JR.
Executive Director

INTRODUCTION

In December 1974, the executive directors of several newly established ethics and campaign finance commissions formed an ad hoc group which sponsored a conference in Washington, D.C., primarily for representatives of commissions and agencies involved in the administration of state legislation on conflicts of interest, financial disclosure, campaign finance, elections and lobbying. A major purpose of the meeting was to facilitate the exchange of information among governmental bodies charged with responsibility in these evolving areas. A number of participants urged the National Municipal League to expand its limited program in this field into a national center with a clearinghouse capability to serve public officials and citizens.

In October 1975, The George Gund Foundation of Cleveland, which had provided financial support for the 1974 conference, made a grant to the National Municipal League for the operation of a service center to assist states and major local governments as they administer and refine newly established programs for enforcing ethical practices in government. The service center project has operated an information clearinghouse, sponsored annual conferences on "The Public Official and The Public Trust," published periodic newsletters, indexes and directories, and prepared the *Model State Conflict of Interest and Financial Disclosure Law* and the *Model State Campaign Finance Law.*

An Advisory Committee of executive directors and commissioners from various states has assisted the League in planning program objectives and the annual conferences. This committee also was extremely helpful in commenting on technical aspects of the model laws, particularly those with administrative implications. The participation of the committee was advisory only, and does not imply endorsement of the contents by the committee members or their respective commissions.

The League's Ethics Project Committee was responsible for basic policy decisions with respect to the model laws which were subsequently approved by the League's Executive Committee.

Early in the process of designing the *Model State Conflict of Interest and Financial Disclosure Law* it was decided to incorporate the strictest provisions that the League committee found acceptable which would also be constitutionally permissible in most states. Recognizing that the strictest provisions would not be necessary everywhere, and that their use might be counterproductive where they were stronger than needed, it was decided that the commentary would provide guidance for varying them in such a way as to maintain basic effectiveness. Most of these variations are in the financial disclosure provisions (Section 9) and the definition of "State Official" (Section 3(g)).

The committee began its work with one basic premise, which was that the only conflicts of interest which could be regulated under this law were those which concerned finances. 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. Conflict of interest laws are concerned with financial conflicts which set apart an individual officeholder from most of the general public. For example, being a taxpayer and a legislator voting on new taxes is not a conflict one worries about; while being a contractor/legislator voting on a bill specifying one's own company as the contractor is a matter of concern.

Conflict of interest provisions are designed 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. At the same time, the provisions can take some outside pressure off by making certain practices illegal instead of merely unethical. This is particularly true when the provisions are combined with those for financial disclosure and when the existence of conflicts or potential conflicts becomes a matter of public record.

Financial disclosure provisions are an essential part of the enforcement capability of the conflict of interest provisions. There would be no point to financial disclosure laws if there were no conflict of interest provisions. 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. Another role of financial disclosure statements is to remind public officials to examine their actions in light of their holdings and to be aware of possible conflicts of interests or the appearance of conflicts of interests. 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.

Local officials are not included in this law. There are statutes which include

local officials in the conflict of interest and financial disclosure provisions; some have operated fairly smoothly while others have encountered resistance. There is no reason why any local government could not adapt this model for its needs. The needs of local government may be very different depending on the population and budget, whether or not any of its officials are paid, and if so, how much. There is a big difference between what may be needed in Loving County, Texas (population 164), and what is appropriate for Cook County, Illinois (population 5,492,369). It appears wiser to adapt the model provisions for local use than to try to make provisions appropriate for such disparate situations.

The *Model State Conflict of Interest and Financial Disclosure Law* is designed to allow sufficient flexibility for adaptation to particular conditions and political traditions. The commentaries on the sections dealing with commission structure and financial disclosure explain what kind of variations could be made and still fulfill the stated purposes of the law. There should be no mistake, however, about the standards of conduct expected from public officials; there is virtually no provision in the commentary for changes in the conflict of interest and penalty provisions. The use of public position for private financial benefit or gain is clearly and unequivocally unacceptable, and no variations in the structure of the enforcemnt body or the financial disclosure requirements change that standard.

PAGE ELIZABETH BIGELOW
Research Director
National Municipal League Ethics Project

Model Conflict of Interest and Financial Disclosure Law

An Act to prohibit conflicts of interest among State officials and employees, creating a State Ethics Commission and prescribing its powers and duties, establishing a state code of ethics and procedures for its enforcement, and penalties for its breach.

Section 1. Short Title.

This Act shall be known and may be cited as Conflict of Interest and Financial Disclosure Act.

Section 2. Legislative Findings and Statement of Policy.

The legislature finds that public confidence in the impartiality and independence of state officials and employees is essential for the sound functioning of a democratic government. To maintain such confidence, the business and offices of the state must be conducted in a manner free from improper influence, and particularly from influences arising, or which may arise, from opportunities for personal gain or from divided loyalties resulting from involvement in business ventures that may benefit from particular government decisions or courses of action.

The purpose of the Conflict of Interest and Financial Disclosure Act, therefore, is to establish ethical standards for state officials and employees for the avoidance of such conflicts of interest as the use of offices or employment for private gain, the granting and exchange of favored treatment to persons, businesses or organizations, and the conduct of activities by such officials and employees that may engender opportunities for personal gain or advantage to influence government decisions. It is the purpose of the code of ethics to delineate clearly the ethical standards for state officials and employees in order to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety even when no actual impropriety has occurred. It is the intention of the legislature that the Act be liberally construed so as to accomplish its purposes of protecting the public against government decisions that result or are affected by undue influences or conflicts of interest.

Commentary

Section 2. The *Model State Conflict of Interest and Financial Disclosure Law* emphasizes the avoidance of conflicts between the private financial interests of public officials and employees and their responsibilities to the public and to the government that employs them. The Act is intended to curb such conflicts, and to protect the public's right to honest government and to government decisions unaffected by competing private interests of officials. When the private interest of officials and employees conflicts with the interests and rights of the public, such private interests must yield.

Implicit in this statement is the intent to use such constitutionally permissible and effective methods for the enforcement of the conflict of interest provisions as have been provided for. For this reason, the financial disclosure provisions as set forth in Sections 9 and 10 are essential for the enforcement of the law.

Section 3. Definitions. As used in the Act.

(a) "Business" means any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or a service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as nonprofit organizations.

Commentary

Section 3(a). The definition of *business* is intentionally broad in order to include as many forms of economic activity as possible. Many economic involvements which may appear to be slight or of little consequence may nevertheless have sufficient economic importance to affect an official's or employee's judgment in situations that may give rise to conflicts with official obligations.

(b) "Business with which a person is associated" means any business in which the person is a director, officer, owner, member, partner, employee, or is a holder of securities which have a fair market value of $5,000 or more or whose market value is one-fifth of his net worth, regardless of its value. It does not include any insurance companies which have issued the person a policy of insurance if that is his sole association with such companies.

Commentary

Section 3(b). The definition of *business with which a person is associated* is intended to delineate business relationships that involve some measurable element of close and continuing association and economic interest which might lead to a conflict of interest. The definition seeks to exclude relationships of a mere formal nature, as

between insurance companies and their insureds, and relationships where the int is of such a minor nature that it is unlikely to have any impact on the decisions o business or on the decisions of government that may affect such business, as in case of a government official who owns a few shares of the stock of a large, pub held corporation.

(c) "Commission" means the State Ethics Commission.

(d) "Interest in Real Property" includes any leasehold, beneficial inter ownership interest or an option to acquire any such interest in real prope

Commentary

Section 3(d). *Real property* is defined in a broad manner to include a br spectrum of property interests not limited to ownership of legal title. The defini recognizes that other interests may lead to conflicts of interest to the same degre outright ownership. For further discussion of conflicts of interest involving property, see commentary on Section 10 (d), which requires that such interests in property be listed in financial disclosure statements.

(e) "Member of Household" means

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

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

Commentary

Section 3 (e) *Member of Household* is defined to include those family members wards sharing the same legal residence with another person and those family memb or wards over whose financial affairs such person has legal or actual control. T defined term is used in provisions relating to public officials' financial disclos statements and potential conflicts of interest. Members of household, as defined, individuals whose financial affairs are likely to be best known to the official and w because of ties of blood or affection the official is most likely to want to ben financially. In some cases, there may be a more direct self interest, i.e., where public official is a possible beneficiary of the estate of a member of the household. T inclusion of members of household in financial disclosure requirements will allow only the public but also the public official to become aware of potential conflic apparent or real, before they occur so that such conflict of interest may be avoid

It should be noted that in cases where such financial disclosure involving memb of household would prove difficult or cause serious family problems, the Commissi

is empowered to modify or waive the financial disclosure requirement to the extent necessary to relieve such hardship. Such waiver authorization does not extend to references to member of household in conflict of interest provisions relating to such matters as government contracts, as for instance in Section 13, which are designed to prevent the abuse of official position.

(f) "State Employee" means a person who obtains or is entitled to compensation for any services to any department or agency of state government other than a state official. The term includes full-time and part-time service and service on a long-term or short-term basis, whether or not included in civil service or a merit system, whether undertaken pursuant to a written agreement or otherwise, and whether the relationship is considered an employment relationship or an independent contractor relationship for any purposes other than this Act, unless the Commission exempts such independent contractor relationship by regulation.

Commentary

Section 3 (f). 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 a formal employment relationship, but also persons who may be regarded as independent contractors. For instance, a lawyer, accountant or consultant should not be able to do work for the state, whether as an employee or an independent contractor, and then represent or assist private clients against the state in the same, or in a related matter. In instances where there is no risk of an abuse of the independent contractor relationship, as in independent contractual relationships with plumbers, electricians, and other such service- and repair-related matters, the Commission may by regulation exempt such contractors, unless there is good reason that they continue to be covered by this definition.

(g) "State Official" means 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. The term includes a member of a commission, except that 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 other than expenditures necessarily incurred for research in connection with its advisory functions shall not be required to meet the requirements of financial disclosure of Sections 9 and 10.

Commentary

Section 3(g). The definition of State Official includes all elective office holders in the legislative and executive branches and all appointed office holders who owe their appointment to an elected official. Thus, it includes all officials who are charged with authority to make choices and decisions, and whose conflicts of interest and official corruption are likely to be most injurious to public confidence in government. The betrayal of the public trust by such an official, whether appointed or elected, who is expected to serve the public interest and who, generally, has taken an oath pledging to do so, undermines the public confidence in the official's agency and in the government as a whole, unless it is dealt with promptly and effectively. The definition thus covers officials whose fidelity is essential to well-ordered government.

There are some states which include the judiciary in conflict of interest and financial disclosure provisions. In many others this would pose substantial constitutional problems. It is for this reason that judicial offices are not included in this Model. The Model thus recognizes that the laws relating to ethical standards for judicial offices may need to be varied by each state. To include the judiciary within this law one need merely delete "except a member of the judiciary" from the first sentence of the definition.

Members of commissions which are purely advisory in nature and have no authority to make binding decisions, to enter into contracts or to make expenditures other than those necessarily incurred for research in connection with its advisory function are covered by the conflict of interest provisions of the law, but they are exempted from financial disclosure requirements. Members of such commissions are usually not compensated and frequently are very difficult to recruit. Their exemption from the financial disclosure requirements is intended to avoid further discouragement from such service. Moreover, because of the limitations regarding spending and decision-making authority, the opportunities to use these positions for personal financial gain or benefit are greatly diminished.

Section 4. State Ethics Commission; Establishment, Membership, Executive Director; Offices.

(a) There is hereby established the State Ethics Commission to administer and implement this Act. The Commission shall consist of seven members appointed by the governor with the concurrence of the Senate. Not more than four members shall be identified with the same political party. No member shall hold any elected or appointed office under the government of the United States, the state or any of its political subdivisions or be a candidate for any such office. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in any political campaign or in a campaign relating to a referendum or other ballot issue, and no member shall be a lobbyist or an employee of the state or any of its political subdivisions. Members of the Commission may be removed by the

governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this law, after written notice and opportunity for reply.

Commentary

Section 4 (a). The provision establishing the Ethics Commission requires appointment by the Governor with concurrence by the Senate, which parallels the federal constitutional requirement as laid down in *Buckley* v. *Valeo*, 424 U.S. 1, 46 L.Ed. 2d 659, 96 S. Ct. 612 (1976) which sets the *federal* separation of powers standard for commission appointments where the commission has regulatory and enforcement powers. The federal requirement is that all such appointments be made by the chief executive rather than by other executive or legislative officers. In most states, by express constitutional requirement or by judicial interpretation under the doctrine of separation of powers, the result reached in *Buckley* v. *Valeo* would be followed. In some states it is permissible, however, to have various executive and legislative officers appoint members of regulatory commissions. If this is done, it is advisable not to authorize the attorney general to appoint members as he may do in some states, because there might be a conflict in his official obligations due to his role in Commission litigation.

The Commission is designed to be bipartisan. Because of its sensitive position, its members must avoid even the appearance of a conflict of interest, and they are barred from participation in political campaigns, running for or holding any federal, state or local office or employment, or engaging in lobbying. They may, however, contribute to a political campaign.

While many states do not have any provisions for the removal of members of ethics commissions, it is advisable to allow removal for cause. The Model follows this course, but requires the concurrence of the Senate in order to prevent abuse of this power by the Governor. The Model thus seeks to balance Commission independence against prevention of abuse. This Commission ought to be as independent as possible so long as its members perform their duties faithfully and in compliance with the law.

It has been suggested that there ought to be two separate state ethics commissions—one for the executive branch and one for the legislature—administering the same law. Several states, among them Nevada, Ohio and South Carolina, have this arrangement because of constitutional separation of power provisions which do not allow legislators to be overseen or regulated by a gubernatorially appointed body; they can only be governed by their own members. States that encounter this problem may have to adapt the Model to meet their special constitutional requirements. For other states a single commission is considered preferable.

(b) A member of the Commission shall be appointed for a term of office of seven years and until his successor has been appointed and has qualified, except that the members first appointed shall be appointed for terms of office of one, two, three, four, five, six and seven years, respectively, and until their successors have been appointed and have qualified. No member shall serve for more than one full seven-year term. When a vacancy occurs in the

membership of the Commission, it shall be filled by appointment for unexpired portion of the term in the same manner as original appointme

Commentary

Section 4 (b). The provision for limited and rotating terms is intended to ach continuity on the Commission while avoiding long-term domination of the Com sion and its decisions by any single member.

(c) The Commission shall elect a chairman from among its members Four members of the Commission shall constitute a quorum and, if a quo is present, a vacancy on the Commission shall not impair the right of remaining members to exercise all the powers of the Commission. A majo of the total membership shall be necessary to act at all times.

Commentary

Section 4 (c). A majority of the total membership of the Commission is neces for Commission action. This discourages the practice of leaving one or more vacan in order to gain more favorable decisions from a "rump" commission. The requ ment for an absolute majority for binding action—rather than merely a majority quorum—is not unusual. An absolute majority is necessary for many governm actions including, in most states, those of state legislatures.

(d) Each member of the Commission shall be compensated at the rate $_____ for each day devoted to the performance of his official duti Each member of the Commission shall be reimbursed for reasonable a necessary expenses incurred in the performance of official duties.

Commentary

Section 4 (d). The level of per diem compensation ought to be high enough s not to discourage professionals and others of high standing in the community f service, where such service would otherwise constitute an undue economic sacrifi On the other hand, the rate of compensation should not be so high as to make serv on the commission a plum to be sought for its economic benefits.

(e) The Commission shall appoint and set the compensation of executive director to assist the Commission in carrying out its functions, accordance with Commission policies and regulations and with applicat law. The executive director shall appoint and discharge counsel and emplo ees, consistent with applicable civil service laws, and shall fix the compens

tion of employees and prescribe their duties. The counsel to the Commission shall advise the Commission on all legal matters and on the instructions of the Commission may commence civil or criminal actions as may be appropriate.

Commentary

Section 4 (e). The executive director is directly responsible to the Commission which does the hiring and sets the salary. In turn, counsel and employees are responsible to the executive director, who is responsible to the Commission for their work. However, the counsel is directly responsible to the Commission in the sense that he or she may commence legal proceedings only on its instruction. In all other matters counsel is responsible to the executive director, thus avoiding the problem of competition for staff leadership position and power.

(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission, except that the Commission shall not delegate the power to hold hearings and determine violations.

Commentary

Section 4 (f). It is a common pattern that Commission staff may be delegated to act for the Commission on routine matters between commission meetings. Some states also allow commission staff or others to act as hearing officers and present their findings to the Commission for its decision. Such a delegation may be necessary when the Commission would otherwise be overburdened by the size of its docket. States wishing to adopt such a system should change the section to read:

> "(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission. The Commission may delegate the power to hold hearings but not to determine violations."

The delegation of the power to hold hearings to hearing officers generally meets the requirements of due process if the Commission itself makes the appropriate determination or decision on the basis of a fully adequate record so that it may review the hearing officers' recommendations.

(g) The principal office of the Commission shall be in _____ but it may establish offices, meet, and exercise its power at any other place in the state. Meetings of the Commission other than hearings shall be public or private as provided for in Section 6(b), except that the Commission may, exclude the public from attendance at discussions of Commission personnel, planned or ongoing litigation and planned or ongoing investigations.

Commentary

Section 4 (g). The subsection provides for accessible commission offices an open meetings, making exception in certain limited situations. As provided fo Section 6 (b), hearings may be open or private, depending on the wishes of the pe charged (see commentary, subsection 6(b)). Meetings may also be closed when Commission discusses its own personnel, and certain litigation and investigations. provision is intended to balance the need for the protection of confidential discuss to enable the Commission to perform its functions effectively against the public's to open movement.

Section 5. State Ethics Commission; Powers and Duties.

(a) The Commission may adopt, amend and rescind rules and regulati to carry out the provisions of this Act, and to govern the procedures of Commission, in accordance with the administrative procedure act of the sta Such rules and regulations shall be consistent with this law and ot applicable law.

(b) The Commission may subpoena witnesses, compel their attendan and testimony, administer oaths and affirmations, take evidence and requ by subpoena the production of books, papers, records or other eviden needed for the performance of the Commission's duties or exercise of powers, including its duties and powers of investigation.

(c) The Commission shall, in addition to its other duties:

- (i) Prescribe forms for reports, statements, notices, and other doc ments required by law;
- (ii) Prepare and publish manuals and guides explaining the duties individuals covered by this law; and giving instructions and pub information materials to facilitate compliance with, and enforc ment of, this law; and
- (iii) Provide assistance to agencies, officials and employees in admin tering the provisions of this law.

(d) The Commission may:

- (i) Prepare reports and studies to advance the purposes of the la
- (ii) Contract for any services which cannot satisfactorily be perform by its employees;
- (iii) Request the Attorney General to provide legal advice and rep sentation without charge to the Commission, and the Attorn General shall comply with the request. The Commission may al employ additional legal counsel; and

(iv) Request appropriate agencies of state government to provide such professional assistance as it may require in the discharge of its duties.

Commentary

Section 5. This section authorizes the Commission to carry out its routine housekeeping functions. It also grants the Commission full authority to make rules consistent with the law, and it provides the Commission with the necessary powers to carry on investigations and to hold hearings and determine cases. The intent is to give the commission sufficient authority to run effective, efficient and timely investigations with the full cooperation of other state agencies, and to carry out its other enforcement responsibilities. It may use its powers of subpoena both for investigational purposes and in mind of the production of evidence at hearings. It may undertake studies and enter into contracts. In addition, the Commission also has the duty to provide assistance and information to persons and agencies covered by the law, and it may also prepare instructional and other public information materials it may deem advisable to advance compliance with the law.

Section 6. State Ethics Commission; Complaints; Hearings; Dispositions; Judicial Review.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate alleged violations of this law.

Not later than fifteen days after the Commission receives a sworn complaint, or after it decides to investigate on its own initiative, it shall acknowledge the receipt of the complaint to the complainant, where appropriate, and it shall give notice of the investigation to the person complained against. Not later than thirty days after receipt of a complaint under this section, or after the Commission decides to act on its own initiative, the Commission shall notify in writing the person who made the complaint and the person complained against of what action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Commission does not decide within thirty days of receipt of the complaint what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.

Commentary

Section 6 (a). Section 6 requires the Commission to investigate on the *sworn* complaint of any individual and sets up procedures under which the Commission is required to keep the complainant and the person complained against apprised of Commission actions and decisions with regard to the complaint until such time as final decisions are made. This provision is designed not only to ensure prompt action by the

Commission, but also to make sure that the cases will not be buried or delayed fo political reasons, or in order to avoid hard political choices. The time limits an procedures are particularly important in light of the three-year statute of limitations o criminal prosecutions (Section 21c)) and civil actions (Section 24 (b)), and in light o provisions which allow for citizen action to sue for relief should the Commission fail t take action. The section also allows the Commission to initiate complaints on its own

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(b) When the Commission concludes that there is probable cause fo believing that the law has been violated, it may hold a hearing to determine i such violation has occurred. The person complained against may choose whether the hearing shall be open or closed. At the hearing, the person complained against shall have all of the protections of due process consistent with the state administrative procedure act, including but not limited to the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. When the Commission determines that the preponderance of the evidence shows a violation has occurred, it shall issue an order to the violator to comply with any one or more of the following requirements:

(i) To cease and desist violation of this law;

(ii) To file any reports or other documents or information required by this law; or

(iii) To pay a penalty not to exceed $100 a day until the proper financial disclosure statements are filed.

Commentary

Section 6 (b). The Commission may not proceed to the hearing stage unless it concludes that there is "probable cause for believing that the law has been violated." Thus, it may not proceed on mere suspicion. Once it has found such probable cause it may hold a hearing to determine whether such a violation has indeed occurred.

The provisions for hearings allow the person complained against to choose whether the hearing shall be open to the public or not. Many states require that such hearings be open while others require that they be closed. The decision to allow a choice reflects a desire to keep a balance between the rights of persons who are drawn into situations without wrongdoing—such as individuals who may not be directly involved in the situation in question—and the rights of the public. Since the final determination made by the Commission will be a matter of public record, the public's right to know will ultimately be served in every case.

There are good and valid reasons why a person might choose to have a hearing closed to the public. There are cases in which the inquiry might involve delicate or confidential information about government plans, where disclosure might be detrimental to the best interests of the government. Other such cases might involve

disclosure of the assets of a minor or disclosure of a serious mental or physical illness of someone other than the involved official and which might interfere with that person's right to lead as normal a life as possible. If a determination is made to go to court, such information would become public, but in many situations cases will not progress that far and could be handled without damage to privacy or the public right to know by allowing the option of closed hearings.

For others, an open hearing may offer prompt public vindication and may be the more desirable alternative. While in some situations the protection of privacy is a desirable goal, it seems equally important to guarantee the personal right of an individual to a public hearing, particularly in situations in which a great deal of public speculation and inneundo already exists, when only full and prompt disclosure of facts may lead to public vindication.

This section also provides for the usual guarantees of due process at hearings, including the right to counsel, to call and examine witnesses, to subpoena evidence, and the right of cross-examination.

The Commission has the authority to impose a number of sanctions and restrictions administratively, without going to court, if it finds by a preponderance of the evidence that violation has occurred. It may issue cease and desist orders against a further violation of law, and it may order the violator to file reports or other documents as required by law. It may also order the violator to pay a penalty of not more than $100 a day until proper financial disclosure statements are filed. The issuance of any administrative order does not, however, preclude the Commission from referring a case to the Attorney General for criminal prosecution (cf. Section 6(c)), or from suing for injunctive relief or for civil penalties (cf. Section 22 (a)).

(c) The Commission shall refer to the Attorney General violations of the law which in its opinion merit prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the Commission all evidence collected in its investigation.

Commentary

Section 6 (c). Where the Commission finds by a preponderance of the evidence that a violation has occurred which, in its opinion, merits prosecution, the Commission may refer the case to the Attorney General for criminal prosecution. Under section 21 it must be shown for conviction that the violation was knowing or willful. Thus, the Commission is likely to find that a case merits prosecution when there is evidence of knowing or willful violation. Referral for prosecution does not preclude the Commission from issuing the order authorized in Section 6 (b) or from filing a civil suit pursuant to Section 22 (a).

In states where the Attorney General is not the chief prosecutor for the state, this provision should be adapted to mandate referral to the appropriate prosecutorial authority.

(d) Any person directly involved or affected by a final action of the Commission within the meaning of the state administrative procedure act may seek judicial review of the action of the Commission other than of a determination to refer a violation to the Attorney General for prosecution.

Commentary

Section 6 (d). Subsection (d) gives any person "directly involved or affected by a final action of the Commission" the right to seek judicial relief of a final action of the Commission other than the determination to refer a violation to the Attorney General.

Thus, a right to seek judicial review is available only to final actions of the Commission, carrying out the usual requirement of administrative law that there must be an exhaustion of administrative remedies before a judicial review may be had.

It should be noted, too, that not only the person charged with a violation may seek judicial review, but other persons involved or affected by such final action may ask for review, too. For instance, if a person is ordered to file certain information and the filing of such information would have adverse consequences to a third person, such person adversely affected would also have a right to judicial review. This may become a matter of some significance in light of the broad financial disclosures required under the law.

(e) If judicial review is sought of any action of the Commission relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

Commentary

Section 6 (e). Subsection (e) provides for docket preferences, and allows the court to speed the resolution of matters relating to a pending election. A prompt resolution of such matters is desirable so that the matter will not unfairly become an election issue or otherwise taint the election.

Section 7. State Ethics Commission; Advisory Opinions.

The Commission may on its own motion issue opinions and interpretations of the law. Any person may request the Commission to issue an opinion with respect to his duties under this law in a given factual situation. The Commission shall, within thirty days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith relying on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, if the statement of facts and other data submitted as part of his request for an opinion and on

which the opinion is based are complete and true. The Commission's opinions with such limited modifications as may be necessary to protect the privacy of individuals, other than public officials or candidates for public office, shall be public records and shall from time to time be published.

Commentary

Section 7. The power of the Commission to issue advisory opinions is intended to provide protection to persons who seek advance determination as to whether particular activities will violate the law. If such a person submits a true and complete statement of facts to the Commission, and if the person follows the Commission's opinion in good faith, then such a person will be protected against civil and criminal penalties which would arise from a different resolution of the issues.

By giving opinions on certain issues prospectively, the Commission may also ease its caseload and the number of cases which must go through time-consuming hearings. With this power the Commission can, with authority, clarify the application of the law in a variety of circumstances. The certainty of the application of the law is also sought to be advanced by the requirement that advisory opinions be published from time to time. When made public or published, names of individuals other than public officials and candidates for public office may be deleted or withheld to protect the privacy of persons who are not involved as officials or candidates.

In *Stein* v. *Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409, *app. dismissed* 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973), a provision of the Illinois Ethics Act was held unconstitutional because it authorized the Secretary of State to hire legal counsel and to render advisory legal opinions interpreting a legislative enactment, because that function properly belonged to the attorney general, the chief law officer of the state. Thus, states which follow the Illinois approach should delegate the advisory opinion function under this section to the attorney general. In *Dunphy* v. *Sheehan*, 549 P.2d 332 (Nev. 1976) the invalidation of the financial disclosure provision of the Nevada Ethics in Government Law was based in part on the ground that advisory opinions from the State Ethics Commission provided no insulation from criminal prosecution.

Section 8. State Ethics Commission; Modification of Reporting Requirements.

Upon application made in the form prescribed by the Commission, it may suspend or modify any of the requirements of Sections 9 and 10 of this law in a particular case, if it finds (a) that strict application of this Act works a manifestly unreasonable hardship, and (b) that such suspension or modification will not frustrate the purposes of the law. Any such suspension or modification shall limit the application of a requirement only to the extent necessary to relieve the hardship.

Commentary

Section 8. This provision gives the Commission flexible powers to suspend or modify financial disclosure requirements where warranted. This may obviate the criticism that financial disclosure requirements will discourage substantial and d cated people from seeking public office or employment when required disclos produce manifest hardship. Under the provision, it would be possible for Commission to tailor difficult financial disclosure provisions to the particular requ ments of the position held or sought, while providing sufficient information so as no frustrate the purposes of the law relating to public disclosure.

Section 9. Financial Disclosure; Filing Requirements.

(a) On or before January 31 of each calendar year, each state official sh file with the Commission a financial disclosure statement. The statement sh cover the previous calendar year. The state official shall file the statement the office of the Commission, or shall mail it by certified mail to t Commission prior to the time specified.

Commentary

Section 9 (a). Section 9 requires that all "state officials" as defined in Section 3 file by January 31 of each year a financial disclosure statement covering the previo calendar year. It is the responsibility of each official to make sure that the Commissi has received the statement by January 31 or that it has been mailed by certified m by January 31. Certified mail is required to ensure timely mailing and to preve violation of the time limit by using a back-dated postal meter. It is necessary that state officials file financial disclosure forms because only in this manner can t legislative purposes of the law be carried out (see Section 2).

While the financial disclosure provisions as stated are limited to "state officials" a do not include "state employees," this does not indicate any disapproval of su inclusion. Financial disclosure provisions might well include employees in polic making positions, particularly those who can authorize and make expenditure Differences between states' employment provisions make it inadvisable to write sta employees into a model provision. States are urged to consider including some sta employees in disclosure requirements. It is advisable, however, to limit inclusion employees who are actually in a position to benefit their own interests. Ove inclusiveness may become burdensome to the Commission in that the mass of filin may obscure violations rather than reveal them.

(b) A person who becomes a state official less than ten days before th filing date or who becomes a state official after the filing date shall file financial disclosure statement for the previous twelve months no later than te days after the date on which he assumes the duties of his office, unless he ha filed a financial disclosure statement with the Commission during th preceding twelve months.

Commentary

Section 9 (b). Since many appointments do not take effect until after the appointing authority takes office, or until another official's term of office is completed in mid-year, this section provides for a filing procedure for them. It also provides that officials who have filed during the previous 12 months need not file again, so as to avoid the burden of over-repetitive filings. It should be noted that this provides for filing the financial disclosure statement after taking office. This would not, however, prevent a confirming authority (usually the Senate) from requiring earlier filing as part of the confirmation proceedings and perhaps even as a pre-condition for confirmation consideration. The fact that many state-appointed offices may not require confirmation militates against the practicality of a general requirement of pre-appointment filing.

(c) A candidate for state office shall file a financial disclosure statement with the Commission for the previous twelve months no later than ten days after he becomes a candidate, unless he has filed a financial disclosure statement with the Commission during the previous twelve months. A candidate shall continue to file annual financial disclosure statements with the Commission until he ceases to be a candidate by reason of election, withdrawal or defeat. As used in this section, a candidate is a person who officially files as a candidate for office, or who publicly announces that he is running for office, or who authorizes the collection or disbursement of money for the promotion of his candidacy or election. The State Election Commission [or Secretary of State] shall promptly inform the State Ethics Commission when a person files as a candidate for office.

Commentary

Section 9 (c). This section requires candidates to file if they have not already done so in a given year and to continue filing so long as they are candidates. This section is intended to address the problem of public knowledge of the reportable finances and actual and potential conflicts of interest of the incumbent state official, and the lack of comparable knowledge of the reportable finances and potential conflicts of other candidates. The public has a right to know as much about the candidates as it knows about incumbents in order to make an informed choice.

The definition of *candidate* in this section is designed to correlate this section with Section 3 (c) of the *Model State Campaign Finance Law* (National Municipal League, 1979). The definition of the term "candidate" in both laws is similar but not identical. A person must have taken some positive action to become a candidate in order to be required to file financial disclosure statements. For purposes of the Campaign Finance Law, the fact that money is being collected with or without his permission or authorization for the promotion of his nomination or candidacy suffices to make him a candidate, though the positive assertion of his candidacy will also reach that result.

(d) The Commission shall retain financial disclosure statements in its fi for not less than ten years from the date of filing.

Commentary

Section 9 (d). This subsection puts a limit on the required retention of record while providing that they be kept for ten years—long enough to facilitate efficie investigation should that be necessary.

Section 10. Financial Disclosure Statement; Contents.

The financial disclosure statement shall disclose the economic interest the state official or candidate, and of all members of his household. The valu of interests shall be indicated by category only. The categories are Category less than $5,000; Category II, $5,000-$24,999; Category III, $25,00 $99,999; and Category IV, $100,000 or more.

Commentary

Section 10. A key provision of the law is the requirement that public officials an candidates regularly disclose their holdings and earnings. The Model provides fo disclosure by officials or candidates by categories rather than by actual specif amounts. Disclosure by categories represents an acceptable compromise betwee specific disclosure by amount and disclosure by source or type of property only Disclosure by categories as in the Model produces significantly more information b which the public may judge the behavior of its public officials, as well as informatio for the Commission should investigation be called for. Among other things, it reflect any significant augmentation of reportable holdings and income. The lesser alternativ is to list by sources and nature of holdings. This model would work withou categorization by amount, but not as effectively.

However, if reporting by source is relied on, once a source reaches a reportab level, the income can become much greater or the value of a holding can b augmented substantially without triggering public or Commission awareness, except i the case of the acquisition of a controlling interest in a business, in which case its re estate holdings would have to be disclosed under Section 10 (d). Disclosure b categories, as in the Model, will facilitate the use of the information to call attention t major or potential conflicts of interest, or to indicate possible use of confidenti information or use of public position for private financial gain, thus aiding th preventive purpose of the Act.

States which do not seek financial disclosure by category may use the Mod without such categories by eliminating all references to them in Section 10, Section 1 (d), Section 10 (e), Section 10 (f), Section 10 (g) and Section 10 (h).

In addition, broader or narrower ranges may be used. The Model may be adapte to such changes so long as the threshold amounts referred to in the body of the law ar keyed to the arrangement of the categories. The amounts shown in the Model were designed to be far enough apart to prevent accurate pinpointing of net worth o

officials and candidates, but to provide an opportunity for the observation of substantial changes in holdings which may give rise to inquiry.

The statement shall include:

(a) The name, address, and public position held or sought by the state official or candidate, the names of all members of his household, and all names under which any of them do business.

Commentary

Section 10 (a). There is a substantial issue as to whether financial disclosure requirements should be limited to public officials, or whether members of the official's household should also be included. The Model resolves this issue in favor of the broader disclosure requirement, in view of the ease of concealment of questionable income or holdings by such methods as giving it or having it paid to the spouse, particularly in community property states, putting it in a revocable trust, or using some other device through which actual control is retained.

This provision covers only persons included in the definition of "member of household" (Section 3(e)). Thus, persons who share the official's legal residence, or relatives over whose financial affairs the public official has legal or actual control whether or not they share the same legal residence are included. In most cases, adult children or wards will probably not fall within the requirement. In cases where such disclosure would cause unusual problems, the Commission can make necessary modifications in the disclosure requirements under Section 8 without allowing circumvention of the disclosure law. For example, in a situation in which a member of the official's household is one of several beneficiaries of a trust where the official has neither control nor even knowledge of its holdings, and in which disclosure would necessarily make known the holdings of persons not covered by the act, the Commission could waive disclosure.

For discussion of the implications of the "member of household" definition, see Commentary on Section 3 (e).

Financial disclosure provisions have been upheld against a variety of constitutional challenges, including the alleged invalid delegation of legislative power; vagueness and overbreadth, thus violative of due process; denial of the equal protection of the law; unconstitutional conditions on right to public employment; invasion of privacy; invasion of employees' right to freedom of association and other first amendment rights; infringement of employees' rights to petition government for redress of grievances; e.g., *Alabama State Employees' Assoc. v. Dr. Wright, et. al.*, Circuit Court of Montgomery Co. (Ala.), Civil Action No. 39026, 1974; *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345 (1974); *Baty v. Bales*, Marin County Superior Court, No. 83978 (July 15, 1977); *Metropolitan Water District of Southern California v. FPPC*, 73 Cal. App. 3d 650 (1977); *Goldtrap v. Askew*, 334 So.2 20 (Fla. 1976); *Plante v. Gonzalez, Thomas v. Gonzalez*, 575 Fed. 2d 1119 (5th Cl. 1978), *cert. den.* — U.S. — 1979; *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409, *app. dismissed*, 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973); *Illinois State Employees' Association (I.S.E.A.) v. Walker*, 57 Ill. 2d 512, 315 N.W. 2d 9, *cert. denied* (with memorandum, Douglas, J.) sub. nom. *Troopers Lodge No. 41 v. Walker*, 419 U.S. 1058, 95 S. Ct. 642, 42 L.Ed. 2d 656 (1974); *Klaus v. Minnesota State Ethics Commission*, 309 Minn. 430, 244 N.W.2d 672 (1976); *Kenny v. Byrne*, 14[illegible] N.J. Super. 243, 365 A.2d 711 (App. Div. 1976); *Evans v. Carey*, 53 A.D. 2d 109[illegible] 385 N.Y.S.2d 965 (1976), *aff'd*, 40 N.Y.2d 393, 359 N.E. 2d 983 (1976); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), *app. dismissed* 417 U.S. 902, 94 S. Ct. 2596, 41 L.Ed. 2d 20[illegible] (1974); *In Re Koding*, Wis. 2d 508, 235 N.W. 2d 40[illegible] (1975) (disclosure requirements under Judicial Code of Ethics). Decisions apparently to the contrary involved special and non-recurring situations, e.g., *Comer v. City of Mobile*, 337 So. 2d 742 (Ala. 1976) (law amending earlier state ethics legislation invalidated in part on such grounds as violation of prohibition of a special legislation in its effect on certain local governments; major provisions on disclosure upheld); *Alabama League of Municipalities v. Dr. Wright* (unconstitutional delegation of legislation in that state ethics commission was granted overly broad, and not legislatively defined, role asking power on ethical conduct and financial disclosure; also, violation of subject/title rule); *Dunphy v. Sheehan*, 549 P.2d 332 (Nev. 1976) (required disclosures limited to economic interests that would "materially affect" the official in the performance of his duties; held unconstitutionally vague, in that they failed to inform officials as to what conduct was proscribed); *Rapp v. Carey*, 44 N.Y. 2d 157 (1978) (Governor's executive order for financial disclosure inconsistent with earlier state law).

The inclusion of the economic interest of the spouse, children or other dependents was challenged and upheld in a number of cases, e.g., *County of Nevada v. MacMillen, supra; Baty v. Bales, supra; Illinois State Employees' Association (I.S.E.A.) v. Walker, supra; Havrilsky v. Byrne*, N.J. (1978); *In Re Koding, supra;*

(b) The occupations and principal places of business of the state official or candidate, and of all members of his household, indicating in each instance which person is associated with any particular business.

(c) The name of each business with which the state official or candidate or any member of his household was associated at any time during the filing year, indicating to which person it applies, and a brief description of the business or activity of each business entity, and the nature of the association of the state official or candidate or member of his household with each such business.

Commentary

Section 10 (b) and (c). These requirements primarily serve the purpose of identification, helping to connect individuals covered by the financial statement and their business interests.

(d) A listing of all interests of the state official or candidate and of all members of his household, in real property, excluding his principal

residence, held by him at any time during the previous year and which had a fair market value exceeding $5,000. If he acquired or divested any such interest during the year, he shall disclose the transaction and the date it occurred. This listing shall include the street address or legal description of the property, and its value by category. An interest in real property for purposes of this section shall include property owned by any business in which the official or any member of his household owns a controlling interest.

Commentary

Section 10 (d). Inclusion in financial disclosure statement of direct and indirect interests in real property is particularly important because such interests provide many opportunities for conflict of interest violations. For instance, an official can use confidential information to buy real estate while the price is low, expecting its value to rise sharply when public announcement of state building plans is made. This has given rise to problems in areas surrounding highway development, specifically in the acquisition of land at premium prices for planned entrance and exit ramps. Another example involves the participation in decisions on the location of government buildings or other projects on or adjacent to land owned by the decision maker. A further example is the corrupt development of design specifications for a project to fit *only* the real estate the official owns, such as in the development of water resources and other similar uses for undeveloped land.

(e) A listing of all securities the state official or candidate or members of his household held at any time during the previous year and which at any time during the year had a fair market value of $5,000 or more, and their value by category for each such security. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (e). Persons required to file financial disclosure statements must list all securities having a fair market value of $5,000 or more which they or members of their household held at any time during the previous calendar year. In addition, acquisitions and divestments of such securities must also be shown, together with an indication of when they were acquired or disposed of. The $5,000 value of securities was chosen as a threshold because it would be considered by most a fairly substantial holding and because, particularly in closely held corporations, a person holding a $5,000 security interest may well be in the position to affect company decisions. Holdings of a lesser value than $5,000 are not considered to give their owner an interest which is likely to affect the business decisions. It is difficult to determine a value which is likely to give the owner of shares a sufficient interest to affect business decisions in all situations. Clearly, in a major, publicly held company a $5,000 share interest is not likely to be of

sufficient dimension to affect company policy so as to involve the holder or company in significant conflicts of interest.

The requirement that dates of acquisition and dates of divestiture be indica serves the additional purpose of flagging what may be significant transactions hav conflict of interest implications. The acquisition of shares in a company at a time wh the official has regulatory responsibilities relating to the field of operations of particular business would of course be a matter which would give rise to inquiry. additional purpose of the requirements of detail in furnishing information relating security holdings is a preventive one, in that a public official who knows that acquisition and divestiture of securities is subject to scrutiny is less likely to acqu shares and other securities in companies and at times when these may point to conf of interest situations.

(f) A listing of all bonds issued by the state or by any municipality, cour or other political subdivision of the state regardless of value, held by t state official or candidate, or any member of his household at any tir during the filing year, and their value by category. If he or any memb of his household acquired or divested any such securities during su year, the transaction and date shall be shown.

Commentary

Section 10 (f). The section requires that all persons who must file financ disclosure statements must list holdings of all bonds issued by any state or lo government regardless of value. As in the case of other securities, their value, time acquisition and time of divestiture must also be shown. The requirement that state a municipal bonds be listed regardless of the value of the holding indicates t importance of the concern for potential conflicts of interest which officials m encounter who have an interest in state and municipal bonds. The value of state a municipal bonds is peculiarly affected by decisions made on the state level. This is t case especially in the instance of revenue bonds issued to support particular capi projects of the state or municipality.

(g) The name and address of each creditor to whom the state official candidate or a member of his household owed a debt in excess $1,000 at any time during the filing year, other than for a credit card retail installment contract, and the rate of interest, listing each oblig tion to each creditor and the amount of each debt by category. If he any member of his household incurred or discharged any such de during such year, the transaction and date shall be shown.

Commentary

Section 10 (g). Persons required to file financial disclosure statements must list a debt in excess of $1,000 owed at any time during the filing year. This does not inclu

credit card or retail installments which may be regarded as fully routine. Other debts, rate of interest and listing of each obligation to individual creditors and the amount of the debt must be listed, and the incurring or discharge of the debt during the year and the date of such transaction must also be shown. Note that all personal debts of the person who files, and of his household, must be included if they exceed the $1,000 threshold. The purpose of the provision is to forestall or at the very least to raise questions regarding debts which have been granted on a preferential basis, or where the interest rate shows that the borrower has been given an unusual preference or advantage, or that he has been given unusually favorable terms in situations which may well raise questions of conflicts of interest. The nature of the obligation may also provide useful information. In political life it is not at all unusual to make gifts by way of extending credit in instances where there is no intention that the loan be repaid, even though it will ostensibly have all of the characteristics and all of the formalities and legal instruments that normally show that a loan rather than gift was intended.

The $1,000 threshold is intended to cover loans of some significance. The figure may need adjustment from time to time to insure that the requirement includes only significant obligations.

(h) The name and address of any person or business that made payments or provided gross income exceeding $1,000, other than income received from securities reported in subsection 10(e), including the amount by category, to the state official or candidate or any member of his household, indicating the nature of the business or services for which such payment or income was received. A report shall be made under this subsection when the payment is to a business which pays, or which is under an obligation to pay, a prorated share to the state official or candidate exceeding $1,000. If such payments or income are for the rendition of medical or mental health services, the income shall be listed but the identity of individual patients need not be disclosed.

Commentary

Section 10 (h). The provision requires persons who file financial disclosure statements to include information on all payments made exceeding $1,000 during the reporting year to the person filing or to any member of his household, indicating the nature of the business or services for which the payment was made. The section expressly excludes payments of dividends earned on securities which are already covered in another provision. The disclosure requirement is of all payments regardless of whether these payments were made by an individual or by a business or corporate entity. The source of the payment must be disclosed unless such payment is for medical or mental health services. Included in the report are to be payments to a business which in turn is under an obligation to pay the state official a prorated share exceeding $1,000. The purpose of the provision is the disclosure of sources of income to the state official or candidate other than the public sources which pay his compensation as a state official. The requirement that the nature of the business or

services for which payment was made must be disclosed is intended to prevent gratuitous and potentially corrupt payment of moneys under the guise of payment goods or services rendered. Under the provisions government officials who involved in law practice for instance would have to indicate payments received f particular clients, but they would not have to disclose the exact nature of serv rendered. It has been held that it is not a violation of the code of professional ethic reveal the name of clients so long as the exact nature of the professional services is disclosed. Legal requirements of a similar nature in other laws have not had untoward effects on the practice of the professions and have not caused lawyers outside interests to leave public employment.

A requirement that attorneys disclose the names of clients who paid a fee of $1,0 or more in the report year was upheld in *Hays v. Wood*, 79 Cal. App. 3d 3 modified 79 Cal. App. 3d 447, with the court indicating that the requirement disclosing the client's name did not invade any recognized rights of privacy or leg recognized privilege. The California Political Reform Act of 1974 required attorn and others, such as brokers, to disclose the names of clients who had paid $1,000 more during the year. This the court found discriminatory, and held that lawyers a brokers would be bound only by the $10,000 disclosure rule applicable to oth professionals under the law.

(i) The name and address of business or governmental clients or custom ers of any business in which the state official or candidate or a memb of his household is an officer, director or partner or has an ownersh interest of more than _____ percent, if the client or customer h paid an aggregate of $25,000 or more to the business during the filin year, but the full amounts of such fees need not be disclosed.

Commentary

Section 10 (i). The section covers the rather unusual situation of a state offici candidate or member of his household who is an officer or has a major ownershi interest in a business to which a customer or client has paid an aggregate of $25,000 more during the filing year. The disclosure required by this section affects only sta officials with major business interests in situations where a major client or custom may affect the overall financial condition of the firm. The underlying assumption is th where a government official also has a major interest in a business he is likely to valu important customers and clients, and that this may in turn influence his judgment carrying out his official duties. There is a particular risk of this in instances where number of important clients or customers may have similar interests in certai government decisions. So, for instance, a law firm which represents a number of bank or insurance companies or which represents a number of mining operations may we have a particular point of view with respect to the law which applies to these regulate interests. The disclosure of the relationship of the public official to certain regulate industries puts the matter on the public record and may thus be useful in preventin undue influence.

An effort has been made to make this provision no more burdensome tha

necessary. The only disclosure that is required is the name of the client or customer who has paid an aggregate of $25,000 or more during the filing year. The exact amount paid need not be disclosed, and there is no requirement that the amount paid be disclosed by category. It should be noted that professional or trade directories frequently list the important clients of law firms or the most important trade connections of the firm. Except in the case of very large firms or businesses, it is unlikely that an officer, director, partner, or part owner will be unaware of the existence of such important clients or customers. It may well be that the $25,000 threshold is too low to be of significance in the case of large companies. In that event, this may be an appropriate situation for a petition to the Commission for a modification of the requirement under Section 8 of the law.

(j) A list of all gifts received which exceed _____ dollars in value from persons other than relatives or a person to whom the state official or candidate is engaged or intends to marry. As used in this section, the term "gifts" does not include campaign contributions, but shall have the same meaning as in Section 18.

Commentary

Section 10 (j). The section requires financial disclosure of valuable gifts, exempting only defined categories of gifts among family members or among persons who expect to marry. The section makes the assumption that large gifts received by a public official or candidate from persons other than family members may at least be subject to some explanation. The section expressly exempts campaign contributions which have been properly defined in Section 3(e) of the *Model State Campaign Finance Law*. The matter of the acceptance of gifts by state officials or employees is dealt with in considerable detail in Section 18 of this law. Thus, the present section may be viewed as a regulatory mechanism to see that Section 18 is properly complied with.

Section 11. Conflicts of Interest; Prohibitions.

(a) No state official or state employee shall use his public office for private advancement or gain.

Commentary

Section 11 (a). Section 11 contains a number of specific prohibitions that deal with recurring problems involving conflicts of interest. Section 11 (a) is a general prohibition on the use of public office for private advancement or gain. The subsection is intentionally broad because it is intended to cover the variety of situations which may not be expressly covered by more specific prohibitions. One such example of the use of public office for private gain is the situation of a state official who uses his official position to place state funds in a bank in order to obtain favorable action from the bank on a personal loan application.

(b) A state official or state employee shall not represent or otherwise as any person or business before any state agency or before any agency of a political subdivision of the state for contingent compensation in any transa tion involving the state or any political subdivision.

Commentary

Section 11 (b). The section prohibits state officials or employees from represent or assisting any person or business before any agency of the state or any of its politi subdivisions for a contingent compensation. The agreement to pay compensati contingent on the success of the assistance of representation adds a special induc ment to the use of undue influence to get a desired result. Note that this section do not address the question of state officials or employees who represent others bef agencies for compensation other than contingent compensation, such as on a regu fee basis. Such representation is permitted except as restricted by other provisions this Act, and especially subsections (c), (d) and (e) of this section.

(c) A state official or state employee shall not represent or otherwise as any person or business for a fee or other compensation to secure passage o bill or to obtain a contract, or payment of a claim, or in any other transacti or proposal if he has participated, will participate, or is likely to participate an official or employee in the disposition of the matter.

(d) A state official or state employee shall not represent or otherwise ass any person or business before a state agency on any bill, contract, claim other transaction or proposal involving official action by the agency if he h official authority over that state agency or is an official or employee of th agency.

(e) This section shall not apply to elected members of the state legislatu who shall be governed by Section 12 of this Act.

Commentary

Section 11 (c) and (d). These subsections prohibit state officials or employ from representing others for a fee or other consideration in matters in which they ha been involved in their work for the state. Subsection (c) deals with the situation state official or state employee who represents another in a situation where s official or state employee participates in or is likely to participate in the disposition the matter. Such matters as passage of a bill, obtaining a contract, or the payment claim are covered transactions. Subsection (d) deals more generally with a state offi or state employee who represents or assists another before a state agency on any contract, claim or other transaction if such state official or employee has offi authority over that state agency or is an official or employee of that agency. situations covered involve some classic and recurring conflict of interest problems,

are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise of benefit. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

(c) Any violation of this Act by a member of the state legislature shall b subject to the sanctions of this Act to the fullest extent permissible under th provisions of the state constitution. Any violation not subject to the sanction of this Act by reason of the state constitution shall be subject to such sanction as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act b members of the state legislature are to be subject to the sanctions of the Act insofar a such sanctions may be applied consistent with the provisions of the state constitution In a number of states the constitutional protection granted legislators for actions on th floor of the respective houses of the legislature extends beyond matters of voting an free speech and may be inconsistent with the enforcement of certain conflict of interes provisions under this law. To the extent that some of the conflict of interest provision under this law may not be applicable to state legislators under the constitution, the Ac relegates those violations to sanctions imposed by the legislature itself. Thus, fo example, if the Commission may not penalize a legislator for failing to disclose conflict of interest prior to voting as required by Section 17, the legislature is obligate to proceed against its members when the commission cannot by reason of constitu tional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shal not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

(i) The contract is let by competitive bidding or involves not more than $150 (One Hundred and Fifty Dollars);

(ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.

(b) In the absence of bribery or a purpose to defraud, a state official or

state employee, or a member of his household, shall not be considered as having an interest in a public contract or the investment of public funds when such a person has a limited interest as a shareholder or creditor of the business which is the contractor on the public contract involved or which is the issuer of the security in which public funds are invested. A limited interest for purposes of this section is an interest not exceeding 5 percent of the outstanding shares of a corporation or an interest as a creditor not exceeding 5 percent of the total indebtedness of a corporation or other organization, unless it is a corporation whose shares are traded on a public exchange, in which case the Commission may set lower limits. A person claiming such a limited interest shall file with the State Ethics Commission and the governmental agency an affidavit describing his status in and connection with the corporation or other business, before such public contract is entered into.

Commentary

Section 13. Section 13 places management restrictions on business dealings between state officials or employees and the state. It prohibits outright self-dealing but it relieves the state of the burden of limiting its business transactions to companies in which no state official or employee has even a minute or indirect interest. In instances where a state official or employee has such a minor interest in a business that deals with the state the section provides that the state official or employee may take no part in the deliberations and decisions relating to such dealings, and that the persons and businesses involved in such situations be aware of the relationship and take appropriate steps to disclose the same to the commission. The purpose of the section is not only to prohibit outright self-dealing but also to prevent even the appearance of conflict to the fullest extent possible.

The purpose of preventing self-dealing might best be served by an outright and complete ban, but such a ban is not likely to serve the public interest because it is unfeasible and unmanageable.

The prohibition against self-dealing allows for certain exceptions. The exception in subsection (a) is for contracts let by competitive bidding, or where the amount involved is $150 or less where the contract is let for necessary materials at the best available price, as part of a continuing course of dealing established prior to the time the state official or employee became associated with a governmental agency. Further conditions require the arrangement to be at arm's length and that the state official or employee disclose his interest to the agency. Both the small amount involved and the conditions imposed assure that no significant instances of self-dealing will be permitted under this subsection.

Subsection (b) allows public contract or the investment of public funds with businesses in which a state official or state employee has a demonstrably limited interest. Such a limited interest may be a shareholder's interest or a creditor's interest where the shareholder's interest does not exceed 5 percent of the outstanding shares of the business and where the interest of the creditor does not exceed 5 percent of the total indebtedness of the business. In the instance of publicly held companies whose shares are traded on a public exchange, a 5 percent share interest or a 5 percent

interest in the corporate indebtedness would be considered a substantial or m interest, and in that situation the State Ethics Commission may set lower limits. Ag the section relies on the principle of public disclosure in that a state official or emplo is required to file with the State Ethics Commission and the governmental age involved an affidavit which describes the nature of his interest.

Section 14. Conflicts of Interest; Employment.

(a) No state official and no state employee shall seek employment with, allow himself to be employed by, any business which is or may be regulat by a department or agency which he serves. The term employment within meaning of this section includes professional services and other servi rendered by the state official or state employee whether rendered as employee or as an independent contractor.

(b) No business shall employ a state official or state employee if employment violates subsection (a) of this section.

Commentary

Section 14. This section prohibits a state official or employee from seeking accepting employment from a business regulated by his agency. For purposes of prohibition the term employment is broadly defined to include professional servi and other services that may be rendered either as an employee or as an independ contractor. Subsection (b) poses a correlative prohibition on businesses. They prohibited from employing state officials or state employees if such state officials employees are prohibited from accepting such employment under this section, t the business and the employee would become equally guilty of violating the law.

Section 15. Conflicts of Interest; Avoidance.

No state official or state employee shall acquire any financial inter including, but not limited to, interest in a business, real property, or in contractual relationship, when he believes or has reason to believe that it be directly and immediately affected by his official action or the action of government department or agency which he serves.

Commentary

Section 15. The section prohibits the acquisition by any state official or emplo of any financial interest which he believes or has reason to believe will put him conflict of interest situation. It is clearly contemplated by the section that any emplo who finds that he has acquired such a financial interest divest himself of the same promptly as possible.

Section 16. Conflicts of Interest; Reporting.

(a) A state official or state employee, other than a legislator, who is required to take any action or make any decision in the discharge of his official duties that may cause financial benefit or detriment to him, to a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the Commission and to his immediate superior, if any, who shall assign the matter to another, or, if he has no immediate superior, he shall take such steps as the Commission shall prescribe or advise to remove himself from influence over actions and decisions on the matter. This restriction shall not prevent such person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made, but in such event the person shall report the occurrence to the Commission.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the state official or state employee is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 16. When a state official or employee finds himself faced by a conflict of interest as defined in the section he must prepare a written statement describing the situation and he must deliver a copy of the statement to the State Ethics Commission and to his immediate superior in the agency. The state official or employee must then also disengage himself from participation in the matter so far as legally permissible. His superior is under an obligation to assign the matter to another person for determination or decision, and if the official or employee has no direct superior, he must follow the advice of the Ethics Commission in removing himself from a decision-making role. In some instances the law may require that certain decisions be made by designated officials. In such an event, where the determination cannot be delegated to another, the needs of government shall be met in that the particular official or employee shall make the legally required decision, but he must report the matter to the ethics commission. The section provides that a state official or employee cannot close his eyes to the existence of a conflict of interest situation. The obligation to report and to disqualify himself arises as soon as he is aware of the conflict, or as soon as he should reasonably be aware of such conflict.

The section protects not only public agency decisions from the effect of conflicts of interest but also the state official or employee involved. A state official who promptly reports the matter to the State Ethics Commission as required by law and who thereafter follows the direction of the Commission would be protected from any subsequently asserted liability.

Section 17. Conflicts of Interest; Member of State Legislature; Reporting.

(a) A member of the Legislature who is required to take an action in the discharge of his official duties that may cause financial benefit or detriment to him, a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public shall:

(i) Prepare a written statement describing the matter requiring action and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the clerk of the house of the legislature for inclusion in the official legislative record and to the Speaker of the House or [Assembly] or the President Pro Tempore of the Senate as appropriate [and to the Commission.]. He may request permission to abstain from voting on the issue and such legislative officers may grant the request. Nothing in this section shall be construed to prohibit any legislator from voting on any matter that comes before his house of the legislature.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the member of the legislature is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 17. Section 17 imposes disclosure requirements on legislators who find themselves in a situation of conflict of interest. Section 16, which deals with conflicts of interest of state officials and state employees other than legislators, requires them to disqualify themselves from official action in conflict situations, except insofar as they may be required to act by reason of the legal responsibilities of their position. Unlike other state officials, legislators are not required to disqualify themselves, but they are required under section 17 to disclose their conflict and to put it on the legislative record. Disqualification of state legislators is not required because to require them to disqualify themselves would deprive their constituents of representation. To require a legislator to disqualify himself, and in effect to prohibit him from voting when he finds himself in a conflict of interest, or to penalize him for voting in such a situation, would probably be an unconstitutional interference with the legislative process. The right of the legislature to be the sole judge of the conduct of its members on the floor is virtually absolute. However, a legislator who finds himself in a conflict of interest is encouraged to request permission to abstain from voting on the particular issue and

the presiding officer of the particular house may grant the request. It is clear that the effectiveness of Section 17 in dealing with legislative conflicts of interest will depend largely on the seriousness of the legislature in its enforcement. In this area it is likely that efforts by the State Ethics Commission to seek enforcement of the law will meet with constitutional objections based on the principle of the separation of powers.

Section 18. State Officials or Employees; Making and Acceptance of Gifts.

(a) No state official or state employee shall solicit, accept or agree to accept any gift, including economic opportunity, loan (other than from a regular lending institution on terms generally available for such loans), gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from any person, except from members of his family or from a person whom he plans to marry. This section shall not, however, operate to prevent the acceptance by a state official or state employee of reimbursement for expenses which are expressly provided for or permitted by law.

(b) No person or business shall offer or make any gift which a state official or employee is prohibited from accepting pursuant to subsection (a) of this section.

Commentary

Section 18. Section 18 prohibits any state official or employee from accepting any gift in excess of $100 from persons other than his family or a person whom such official or employee plans to marry. Earlier formulation of state ethics laws prohibited officials from accepting gifts from persons one might "reasonably" expect to have an interest in some matter over which such official's agency had authority. In this earlier formulation there was the recurring risk that the law would be declared unconstitutional, as void for vagueness. The firm dollar limit eliminates the problem of what is a reasonable gift, and it also eliminates the problem of determining when a gift is made because it is reasonably expected to have some impact on the official's actions. The section assumes that gifts other than from relatives or future spouses in excess of the limit are questionable in purpose and resolves the issue by prohibiting such gifts altogether. The dollar limit on gift giving may have to be adjusted from time to time to reflect inflationary changes. Subsection (b) of Section 18 makes the giver or offerer of an illegal gift equally liable with the official who accepts it.

Section 19. State Officials or Employees; Disclosure of Information.

No state official or state employee shall disclose or use confidential information or information not available to members of the general public for

his personal gain or benefit or for the personal gain or benefit of any other person or business if he has obtained such information through his official position. The restriction on the use of information shall continue for two years after he ends his term of office or leaves government service or employment, and shall supersede any other less restrictive requirements of confidentiality that may be applicable.

Commentary

Section 19. Section 19 prohibits the use of confidential information for financial gain. The use of confidential information has long been a common and serious abuse of public trust and one which, because of its nature, was particularly difficult to prove. Financial disclosure requirements make certain gross abuses easier to trace. However, when confidential information is not used by the official himself but is given to friends or business associates, tracing it may still be difficult. The abuse of confidential information gained through official position both during and after public service has been the frequent subject of public investigations, particularly as "government in the sunshine" laws diminish the amount of truly confidential information and makes it easier to trace its leakage. Note that Section 19 restricts the use of information gained in consequence of official position for two years after the term of office is concluded or government service or employment is ended. This two-year limitation supersedes other less restrictive requirements which are commonly scattered throughout the law with a variety of requirements applicable to different agencies.

Section 20. State Officials or Employees: Limitation on Representation.

(a) No former state official or former state employee shall for a period of two years following the end of his term of office or the termination of his state service or employment assist another person or business whether or not for compensation, in any transaction, or in any appearance in connection with any transaction involving the state or any of its agencies or subdivisions in which such former state official or former state employee participated during his term of office or employment.

(b) No business in which a former state official or former state employee is a partner or member, or, in the case of a professional corporation, a shareholder, and no employee of such business, shall, for a period of two years following the termination of his term of office or employment, assist another person in any appearance or transaction involving the state or any of its agencies or subdivisions in which the former state official or former state employee participated during his term of office or state employment. For purposes of this section, the termination of employment of the former state official or former state employee with the agency which he served when he so

participated shall be deemed to be the termination of his state employment.

(c) Nothing contained in this Act shall prohibit a former state official or former state employee from being retained or employed by the department or state public agency which he served.

Commentary

Section 20. Section 20 deals with the recurring problem of state officials and employees who leave public employment to work in the private sector, who are then able to use confidential information and the previous close contacts gained in public employment for the advantage of their private employer's customers or clients. The problem of the "revolving door" in public service is a recurring and serious one. While abuses in the use of special contacts and special information gained during public employment must be curbed, it is constitutionally unacceptable to place undue job restrictions on public officials and public employees after they leave public service. Moreover, it would be a disservice to the public interest to limit employment opportunities of former government officials and employees unduly because it would discourage highly qualified and expert persons from entering government service for fear of unduly limiting their future employment opportunities.

Section 20 seeks to resolve these competing considerations by drawing a balance which results in reasonable limits. Under subsection (a) a former state official or employee is barred for a period of two years following the end of his official service from assisting or appearing on behalf of any other person or business in connection with any transaction in which such official participated during his term of office or employment. Subsection (b) applies a similar limitation to any business or person associated with such business in which such a former state official or state employee is a partner or member, or in a professional corporation, a shareholder. It should be noted that only those matters with which the former state official or employee had any direct connection are out of bounds. It may be of particular significance to law firms and similar professional undertakings that all appearances, including those before the agency of the former official or employee, on matters that were not his responsibility are permitted. The narrow range of prohibitions is intended to limit the adverse impact which such limitations would have on highly qualified professionals who might otherwise avoid entering government service. At the same time the section also protects businesses from a form of undue pressure or blackmail by state officials or employees who may condition favorable government action on advantageous private job offers.

Section 21. Criminal Prosecution; Penalties.

(a) A person who knowingly or willfully violates any provision of this Act other than a requirement of financial disclosure pursuant to Sections 9 and 10 of this Act is guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine not to exceed $10,000.

Commentary

Section 21(a). Section 21 separately provides for convictions which involve violation of the conflict of interest provision of the law and violation of the financial disclosure requirements. Knowing and willful violation of the conflict of interest provisions is a misdemeanor and the penalty is a fine of not more than $10,000, imprisonment for not more than one year, or both. Many jurisdictions treat the violation of conflict of interest provisions as a felony. However, it has been a common experience that white collar crimes, which generally do not involve any violence or threat of violence, are treated lightly by juries and that juries are less likely to convict when the violation is treated as felony subject to many years of imprisonment. Thus, designating knowing and willful violation as misdemeanors is more likely to result in convictions. It should be noted, moreover, that in many instances it is likely that more than one offense of conflict of interest will be charged. Thus, in egregious cases, consecutive one-year terms for different counts or violations are not unlikely.

(b) A person who knowingly or willfully violates any financial disclosure requirements of Section 9 or 10 of this Act is guilty of a misdemeanor, punishable by a fine of not more than $10,000 or three times the amount or value of the interest or interests the person failed to report, whichever is greater.

Commentary

Section 21(b). The violation of financial disclosure requirements under the law is treated as a misdemeanor. Unlike violations of conflict of interest provisions this misdemeanor is not punishable by a jail term but only by a fine. In effect, the violation of a financial disclosure requirement is regarded as a primarily economic offense; consequently, the penalty provided is primarily economic in nature. For the conviction of failure to make required financial disclosures the penalty is three times the amount or value of items not reported. Thus, when there has been a gross failure to meet financial disclosure requirements, penalties may be greatly in excess of $10,000.

(c) The Attorney General shall commence prosecution for violation of this Act no later than three years after the date of violation.

Commentary

Section 21(c). A three-year statute of limitations for violations of the *Model State Conflict of Interest and Financial Disclosure Law* is intended to provide sufficient time for the discovery and careful investigation and case preparation of violations which in many instances may involve complex financial dealings. While some states allow for longer statutes of limitations in laws of this nature, the three-year statute of limitations is intended to require diligent prosecution efforts when violations have been discovered. A three-year statute of limitations is also subject to less abuse for political purposes and for purposes of influencing the outcome of elections.

(d) A person convicted of a misdemeanor under this Act shall not be a candidate for any elective office or be eligible for any appointive office or act as a paid lobbyist for a period of four years following the date of the conviction, unless the court at the time of sentencing reduces the period or determines that this provision shall not be applicable. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Act.

Commentary

Section 21 (d). As an additional sanction, Subsection (d) provides that a convicted official or employee may not become a candidate for public office, or become eligible for appointive office, or be a paid lobbyist for four years unless the court relieves him from the effects of this provision at the time of sentencing. Removal from office as a sanction for conviction of violation of law is a justifiable penalty, and it is recommended that Section 21 (d) also provide for removal from office in states where such a provision is constitutionally permissible. It is not constitutionally permissible in all states for all public officials, because the constitution may limit removal from office to certain offenses or may require certain constitutionally prescribed procedures.

Section 22. Civil Action; Injunctive Relief; Civil Penalties.

(a) The Commission may sue in the _____ Court for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, and for the collection of civil penalties.

Commentary

Section 22. Section 22 authorizes the Commission to bring civil actions for two purposes. First, to secure injunctions against violation of the Act, or to compel compliance with its provisions and, second, to sue for the collection of civil penalties under the Act.

The injunctive process is a useful and necessary procedure to deal with situations that involve conflicts of interest before they have done irreversible damage. Such damage may involve not only public confidence in government, but also the expenditure of substantial public funds in reliance on administrative decisions or other government action based on a process that was tainted by the private interest of the decision maker. The injunctive process has the advantage of a prospective, preventive procedure that can deal with imminent risks in a timely fashion, unlike criminal prosecution for violation of the Act which generally deals with violation after the harm is done, and which takes a lengthy course of preparation, and evidence to convict beyond a reasonable doubt. The effectiveness of the injunctive procedure is enhanced by the availability of the power of the court to hold the violator in contempt if he fails to obey the court's injunctive order. Such contempt powers are exercised by the court subject to the applicable provisions of state law.

It is likely that the power to enjoin violations of the law will usually be exercised after

the violator has failed to obey the State Ethics Commission's own administrative orde to cease his violation.

The Commission's right to sue for civil penalties is discussed in connection wi Subsection 22 (d).

(b) Upon a preliminary showing in an action brought by the Commissio that a violation of the law has occurred that involves a conflict of interest or disqualification for official action, the court may restrain the execution of an official action in relation to which such violation occurred, pending fina adjudication. If it is ultimately determined that a violation has occurred an that in the absence of such conflict of interest the official action might not hav been taken or approved, the court may set the official action aside as void The term official action as used in this subsection includes, but is not limite to, executive and administrative action, such as orders, permits, resolution and contracts, but does not include the enactment of state legislation. I considering the granting of preliminary or permanent relief under thi subsection, the court shall accord due weight to any injury to members of th public who rely on the official action in good faith.

Commentary

Section 22 (b). In addition to the power of the State Ethics Commission to seek a injunction against a violation of the ethics law under Subsection 22(a), this subsectio allows the court, in an injunctive proceeding brought by the Commission, to restrai the official action alleged to be tainted. The Commission may obtain a temporar restraining order against such government action after a preliminary showing that violation of the law has occurred. Such a preliminary restraining order will hold a further government action in relation to which the violation has occurred until the issu of the existence of the alleged violation has been determined. When it is determine that there has been a violation, the court may void the tainted government decision o action. The court, however, is not required to grant such temporary or permanen relief, but must give due weight to the detrimental effect such an order may have o members of the public who rely on the official action, in good faith. A number o instances of such good faith reliance may be suggested—such as employees whos jobs may be lost when their company's contract is voided, or the residents of particular area who may lose the benefit of some public works project, be it a housin project, a public transportation project, or a flood control project, as a result of th voidance of the particular government action.

(c) Any person who violates any of the reporting requirements of this Act is liable to the state for a civil penalty in an amount not exceeding the value of the interest not properly reported.

Commentary

Section 22(c). This subsection allows a civil action for the collection of a civil penalty for the violation of the reporting requirements of the Act, in an amount not exceeding the value of the interest not properly reported in the financial disclosure statement. Note that this civil penalty is limited to violations of reporting requirements, and that, unlike the criminal fine for the same violation, the penalty may be collected regardless of whether the violation was knowing and willful. The civil penalty, as in other civil suits, may be imposed on the basis of the fair preponderance of the evidence of violation. For additional discussion of the imposition of civil penalties see Commentary in Section 24.

(d) Any state official or state employee who realizes an economic benefit as a result of violation of the conflict of interest provisions of Sections 11 to 20, is liable to the state for a civil penalty in an amount not exceeding three times the amount or value of the benefit.

Commentary

Section 22 (d). This subsection allows a civil action for the collection of a penalty for the violation of the conflict of interest provisions of Sections 11 to 20 in an amount not exceeding three times the amount of the benefit derived from the violation (such as the use of official information for private benefit, or the benefit from government contracts improperly obtained). The provision does not require proof beyond a reasonable doubt or proof of knowing and willful violation. The section treats the violation as a civil, economic or administrative offense, for which an economic penalty is imposed that stands in direct relationship to the economic benefit gained from the violation.

(e) If two or more persons are responsible for any violation, each of them is liable to the state for the full amount of the civil penalty, and a separate civil penalty for the full amount may be imposed on, and collected from, each of them individually.

Commentary

Section 22 (e). This subsection provides for separate civil causes of action against each person civilly liable under the provision of the Act. Civil penalties, therefore, are not to be divided among the persons responsible in cases where more than one person bears responsibility, but each person is liable independently for the full amount of the penalty.

Section 23. Citizen Action.

Any resident of the state may file a written request with the Commission

that the Commission commence action for injunctive relief to enjoin violation or to compel compliance with the provisions of the Act, or for th collection of civil penalties. The request shall state the grounds for belief that cause of action exists. The Commission shall respond no later than forty day after the receipt of the request, indicating whether it intends to file a civ action. If the response is affirmative, and suit is commenced within fifty day thereafter, no other action may be brought unless the action brought by th Commission is dismissed without prejudice as provided for in subsection 2 (c). If the Commission fails to reply or to take any action, the resident ma proceed with the action in the same manner and to the same extent as provided for civil actions by the Commission pursuant to Section 22 of thi Act.

Commentary

Section 23. This section follows the trend, which began in the sixties, to giv standing to private citizens to engage in litigation to vindicate the public interest. I areas of the law where there is a great concern that powerful groups within and outsid the government may prevent others from carrying out the law to the fullest, privat citizens may bring lawsuits not to protect narrow personal interests but rather broa public ones. Citizens acting in this manner have sometimes been referred to a "private attorneys general," and the public interest litigation they have engaged in i such areas as civil rights, consumer protection, environmental protection, has adde greatly to compliance with the law.

As in other areas of citizen action, the purpose is not to oust the government from jurisdiction, but rather to encourage government assumption of its duties. Moreover, i should be noted that citizen action is limited to civil action and plays no direct part i criminal prosecution. Great care is taken in Section 23 to assume that citizen action wi not interfere with, but will rather enhance public enforcement activities. Thus, citize action can only be brought if the Ethics Commission has failed to respond to a reques to take action, or having responded to the request, has failed to proceed promptly. Once the Commission has begun its own civil suit, no citizen action may be brought unless the Commission's action is dismissed without prejudice. The kind of action th citizen may bring is like the Commission's authorized actions—either for injunctive o for civil penalties. The purpose of the section is to give private citizens the opportunity of closely reviewing government action or inaction, without objectionable interference in the government's primary sphere. In the case of this model state ethics law, it i expected that in most instances the law would work to stimulate the Commission t take enforcement steps on its own.

Section 24. Civil Action; Generally.

(a) In any civil action brought under Section 22 or 23 of this Act:

(1) The court may award court costs and reasonable attorney's fees to the prevailing party;

(ii) The court in determining the amount of civil liability under subsections (c) and (d) of Section 22 may take into account the seriousness of the violation and the degree of culpability of the defendant;

(iii) The court, on motion of any party, may require the defendant or a private plaintiff at any stage of the proceedings to post a bond in a reasonable amount sufficient to assure payment of costs and attorney's fees.

(b) No action shall be filed under Sections 22 and 23 more than three years after the occurrence of the violation complained of.

Commentary

Section 24(a) and (b). The provisions of this section are applicable to all civil actions brought under this law, whether by the Commission under Section 22, or as a citizen action under Section 23. In all such civil actions, the court may award court costs and attorneys fees to the winning party, and it may also require the posting of bond by defendants and by citizen plaintiff, to secure the payment of costs and attorneys fees. This is a device to discourage frivolous lawsuits. In addition, the section sets forth the considerations the court may take into account in setting the amount of the civil penalty.

A three-year statute of limitations on civil actions, which parallels the statute for criminal prosecution is Section 21(c), is provided for.

(c) The court may dismiss an action under Section 22 or 23 without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the Commission or any other plaintiff who intends to bring an action based on the same violation.

Commentary

Section 24(c). The subsection authorizes the court to dismiss a civil action, whether brought by the Commission or by a private citizen, for failure to proceed diligently and in good faith. The subsection meets several needs. It prevents an action from being dragged out unnecessarily. Such protracted delay, which reflects a failure to pursue the matter diligently, gives evidence of lack of good faith. Delays in litigation have the result of damaging the defendant's reputation, and, where a particular business contract or activity has been suspended, it may damage other, tangible, interests as well. Delay intended to defeat the full pursuit of the matter may be dealt with by dismissing the action "without prejudice," which has the result of allowing some other party—most probably a private citizen plaintiff—to start a new lawsuit and carry the matter to a completion, so long as the three-year statute of limitations has not run out at the time the new action is commenced.

(d) Any civil penalties imposed under Section 22 or 23 shall be paid into the general fund of the state.

Commentary

Section 24 (d). Civil penalties, whether collected in a civil action brought by the Commission or by a private citizen, must be paid into the general fund of the state. This also demonstrates the public interest nature of citizen actions, because the plaintiff does not derive any personal benefit from the successful outcome of the suit.

(e) The commencement or conclusion of a criminal prosecution for violations shall not bar a civil action under Section 22 or 23, nor shall a civil action be a bar to criminal prosecution for violation of this Act.

Commentary

Section 24 (e). The subsection expressly provides that civil and criminal proceedings and sanctions are not mutually exclusive. The purpose of a criminal prosecution is to prove a criminal violation beyond a reasonable doubt, and to impose a criminal penalty that will, because of its punitive nature, exert a deterrent effect. The civil sanction is based on a civil proceeding that does not impose the stigma of criminality on the violator. A civil violation may, therefore, be proved by a fair preponderance of the evidence. While the civil sanction may be economically onerous, it is nonetheless not intended to be punitive, but rather compensatory and restitutional in scope, in that it is designed to have the violator pay back to the public the economic cost of his violation. In view of the different modes of proof, the different procedural requirements and the different measures for, and purposes of, the sanctions imposed, the two procedures may stand separately, and no question of double jeopardy arises. The existence of two possible procedures to deal with violation allows the Commission a wide range of choices of civil and criminal sanctions, depending on the nature of the violation and the nature of the available evidence. The constitutionality of civil and criminal sanctions for violation growing out of the same set of circumstances has been upheld by the U.S. Supreme Court.

The distinction between criminal prosecution and civil penalty action was drawn authoritatively in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 2d 644 (1963). The distinction has been applied in numerous cases where both criminal and civil sanctions were available, e.g., *United States* v. *Ashland Oil & Transp. Co.*, 364 F.Supp. 349 (W.D. Ky. 1973); *United States* v. *General Motors Corp.*, 403 F.Supp. 1151 (D.Conn. 1975).

Section 25. Violations; Employment Discipline.

Any state employee who violates a provision of the law is subject to discipline, including dismissal, by his agency, consistent with any applicable civil service or other personnel laws, regulations and procedures.

Commentary

Section 25. This section adds another sanction to the array that may be imposed for violation of the law. A violation of this Act is clearly a breach of employment discipline in the case of state employees and may be treated accordingly.

Section 26. Severability.

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Effective Date.

This law shall become effective on _____

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Former President, National Municipal League
Louisville, Kentucky

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*Denotes present or former member of National Municipal League Council

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*Resigned on leaving the commission

ALASKA LEGISLATIVE PROCEDURES STUDY

FINAL REPORT

Submitted to:

The Joint Special Committee on Legislative Reform

Prepared by the

NATIONAL CONFERENCE OF STATE LEGISLATURES

1125 Seventeenth Street, Suite 1500

Denver, Colorado 80202

May 15, 1983

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INTRODUCTION

The National Conference of State Legislatures has as one its three major objectives, the provision of services which improve the quality and effectiveness of the 50 state legislatures. In meeting that objective, the conference provides technical assistance and consultative services on a wide variety of topics including internal legislative procedures an processes.

In January 1983, the National Conference of State Legislatures was approached by the Alaska Legislature to provide assistance on a study of legislative procedures, rules, budget processes and ethics legislation. In early March 1983, following the passage of a joint resolution by the legislature, the NCSL and the Alaska Legislature entered into a contractual arrangement for certain tasks to be performed by the NCSL staff.

In the joint resolution passed by the Alaska Legislature and in the contract between the NCSL and the legislature, three areas of concern were identified, including:

- a review of current Alaska statutes and proposed legislation dealing with conflict of interest and related ethics matters for public officials, including legislators and legislative employees;

- a study of the Alaska Uniform Rules and related aspects of legislative procedure, scheduling and management;

- a review of the legislative budget process including both the operating and capital budgets, legislative staffing, budget documents and information, and fiscal review procedures.

The charge to the NCSL was to examine current procedures and to identify areas where improvements or modifications could be made to strengthen Alaska legislative operations. The project was conducted under the supervision of the Joint Special Committee on Legislative Reform and, ultimately, for the Alaska legislative leadership and the House and Senate Rules Committees. The NCSL would like to acknowledge the assistance of and cooperation of the members of the Joint Special Committee on Legislative Reform including the co-chairs Senator Jan Faiks and Representative Randy Phillips who provided important guidance to the NCSL staff. All of the members of the committee gave generously of their time and insights to provide the NCSL staff with information and direction. In addition, the NCSL staff would like to thank the Alaska legislative leaders for their input and suggestions which helped to shape the project. The staff of the Senate Rules Committee, particularly

Jan Bomhoff and Jens Zehbe, were extraordinarily helpful to the NCSL in making on-site arrangements. Finally, the NCSL would like to acknowledge the essential contribution of the legislators, legislative staff, executive branch officials and private citizens who gave freely of their time and thoughts in the interviews conducted by the NCSL. This project could not have been completed without the willing cooperation and candid comments of everyone who participated in the study.

METHODOLOGY

The three components of the study conducted by the NCSL for the Joint Special Committee on Legislative Reform represented very different tasks and therefore required different approaches.

Because of the committee's commitment to passage of ethics legislation during the current session, the role of the NCSL was very different in that aspect of the project. In assisting the committee in its consideration of ethics legislation, the NCSL provided background information on current Alaska statutes, analyzed several legislative proposals, prepared memoranda on various legal issues and conducted selected interviews with legislators. In effect, the NCSL attempted to facilitate the committee's deliberations by providing information and guidance.

There are no right answers or perfect legislative proposals. Legislation is properly the product of debate, deliberation and compromise. Because the NCSL entered the process in the middle of ongoing legislative deliberations, specific recommendations have not been made on what provisions should be contained in legislation dealing with ethics and conflict of interest.

While the NCSL assumed the role of facilitator and information source on legislative ethics, a very different approach was taken to the study of legislative rules and budget processes. On that aspect of the project, the NCSL staff undertook an extensive review of relevant documents, manuals and background data and conducted more than 66 interviews with legislators, legislative staff, executive branch officials and private citizens. The purpose of the interviews and background research was to determine areas of concern and identify possible ways to strengthen current operating procedures. In addition, the NCSL staff examined operating procedures in other state legislatures to identify practices which might be transferrable to Alaska or might be modified to fit Alaska's situation.

What follows in this final report is a review of the work completed on legislative ethics, a discussion of the findings and recommendations on uniform rules and legislative procedure, and a discussion of the findings and recommendations on the Alaska legislative budget process. In addition, the report includes a brief summary of some of the unique facets of the Alaska Legislature which the NCSL took into consideration in preparing the final report.

In large part, the recommendations in this report are the product not only of NCSL's judgments, but also the consensus of suggestions drawn from the interviews with Alaska officials and citizens. The NCSL hopes that it is an accurate reporter and analyst of the many viewpoints. Further information and elaboration on the material in this report is available, and the NCSL is available for additional input and assistance if the Alaska legislative leaders desire.

ALASKA'S UNIQUE FEATURES

Each state legislature has its unique characteristics and history. Alaska, in many ways, is distinct from its sister states. The distinctive aspects of the state and its legislature mean that some practices or procedures used in other states are not readily applicable or must be adapted to Alaska's situation. It is useful to review some of the features which distinguish Alaska and its legislature from other states.

First, the state's vast geography and small population have implications for the legislature in terms of public participation and access to policymaking. In part, the development of the Alaska Legislative teleconferencing network is a recognition of this factor, however the legislature must continue to develop ways which maximize citizen participation and overcome geographic barriers.

Second, the state's distinct regions give rise to competing interests and demands. While every state has regional factions -- urban and rural, upstate and downstate, east and west -- Alaska's size translates into regional identities which are almost states unto themselves. These regional interests are particularly important in the legislative budget process and the determination of capital projects.

Third, the Alaska Legislature is one of the smallest legislative bodies in terms of membership, and the size of the membership complicates certain aspects of legislative operations -- for example, committee and interim work -- as well as the competing balance between quorum considerations and the propriety of members voting on matters constituting real or potential conflicts of interest.

Fourth, the financial resources of the state of Alaska place it in a position unparalleled in the other states. The state's role in the financial and commercial loan market is pervasive and unique. Moreover, the management of public resources requires a very different approach to decision making when public funds are relatively plentiful as opposed to when state funds are not sufficient for legitimate public needs.

Fifth, Alaska faces considerable infrastructure needs as a growing and rapidly developing state, but the state has no real local governance structure to guide decision making. In most of the 50 states, local governments

play a pivotal role in identifying, planning and constructing local improvement projects such as streets, sidewalks, schools, parks and playgrounds. In Alaska, there is no parallel local government network, and the state is the dominant actor in capital improvement projects. Consequently, the legislators are often required to serve as both state and local government officials, roles which are not always compatible or comfortable.

These five considerations are part of the background against which the NCSL conducted its review. While there are other features which clearly distinguish Alaska from other states, these characteristics demand particular consideration and recognition.

PART I

RULES AND PROCEDURES

The National Conference of State Legislatures' study of the Alaska Legislature's rules and procedures began with a detailed review of the uniform rules and the gathering of information on staff size, turnover, committee makeup, committee budgets, session deadlines, past session patterns, bill flow, and interim work. Four areas - - session length, the committee process, the interim period and staff - - were examined. The National Conference of State Legislatures' staff conducted numerous interviews with leaders, committee chairmen, other members and staff of the Alaska Legislature to determine areas of concern. Lobbyists, members of the press and public interest groups also were interviewed. The study is not a comprehensive review of the Alaska Legislatures' rules and procedures, but focuses on the specific problem areas identified through the interviews.

What follows is a series of recommendations for the Alaska Legislature to consider covering various aspects of session length, the committee process, the interim period and staff. The recommendations are accompanied by a discussion of the problems as raised by members of the Alaska Legislature and information on other state practices as possible solutions for Alaska.

A. Session Length

Background: Legislatures today face extremely complex issues and tremendous bill volumes. To maintain the part-time citizen legislature and still deliberate on and screen bills has become increasingly difficult. Scheduling session time effectively is critical. Scheduling helps to avoid some of the last minute chaos, and assures important bills are not lost in the process. Scheduling helps regulate session work and can help to expedite session time.

1. The Alaska Legislature should establish a series of deadlines for scheduling session work and controlling the length of the session. The legislature should consider, at a minimum, scheduling session work (whether by rules or leadership direction) to cover the following:

   - o Bill draft requests
   - o Introduction of bills in house of origin
   - o Committee action for house of origin bills
   - o Final floor action in house of origin
   - o Committee action for bills from opposite house
   - o Final floor action for bills from the opposite house
   - o Conference committee reports.

2. The Alaska Legislature should adopt a session scheduling system which emphasizes committee work early in the session and floor activity in the later weeks. The legislature should consider removing the limit of ten prefiled bills per member and encourage

members to prefile the majority of bills during the interim before the start of the session. Leadership should be able to assign bills to committees during the interim.

Discussion: There is concern among members of the Alaska legislature and the public that the legislature is spending too much time in session. They are concerned about preserving the part-time, citizen legislature. Yet, there is a lack of consensus, as evidenced by the interviews and votes on constitutional amendments, for limiting the number of session days or instituting a per diem cut off. Clearly, the number of session days has increased over the last four biennium. The first and second sessions of the Eighth Alaska Legislature were 95 and 96 days, respectively. The first session of the Twelfth Alaska Legislature, however, was 165 days and the second session was 144 days. The length of sessions has been affected by a variety of factors, the most significant being the dramatic growth in Alaskan oil revenues. With population growth doubling over the past fifteen years, the Alaska legislature has had to respond to a myriad of social problems. In addition, being a relatively young state, Alaska is still faced with developing a body of law of its own.

Another factor that points to the need for deadlines is the build-up of bills on the floor of the Alaska Legislature at the end of session. For example, out of the 201 bills passed by the Alaska Senate during the 21-week 1980 session, 53% passed out during the last four weeks of the session.

The flow of legislation through the process also affects session length. The majority of bills considered by the Alaska Legislature are introduced during the first several weeks of the session, but few are passed out of either chamber. For instance, in 1979 during the first five weeks of the session 76% of the total number of Senate bills had been introduced, but the Senate had only passed out 7.8% of the total number of Senate and House bills passed out that session. During the 1980 session, the same pattern is evident. Fifty-two percent of the total number of bills had been introduced by the fifth week, but only 5.5% of the total number of bills passed had been passed out. In addition, out of 792 bills introduced in 1979, only 102 were prefiled. In 1980, 833 bills were introduced and 51 were prefiled by members of the Alaska Legislature.

By instituting a series of deadlines, encouraging prefiling, and establishing committee time in the early part of the session when floor work is not particularly heavy, the Alaska Legislature can help reduce committee and floor jams near the end of the session and place some controls on the length of the session.

Deadlines for introduction and action on bills are the most common techniques adopted by legislatures for handling bill flow and scheduling work. Three-fourths of the 99 state legislative bodies employ deadlines for introduction of bills, and one-half also provide deadlines for committee action on bills. Colorado, Illinois, and South Dakota have the detailed schedule of deadlines outlined in the recommendation.

Deadlines can be set up either formally by rule or informally enforced by leadership. In order to be effective, deadlines need to be established systematically and adhered to. If followed, deadlines will enable the legislature to schedule and plan the session.

Most legislatures permit prefiling of legislation, and in several states leadership refers prefiled bills to committee before the session begins. This enables committees to begin work immediately when the session starts. Prefiling by itself is not always effective, but when coupled with a deadline system, such as in Florida, it can be a very effective device. The Florida House makes the first day of the session the deadline for all member bills, effectively requiring all bills to be prefiled. Incumbent members may prefile bills immediately following sine die adjournment of the previous session. If an incumbent is defeated for reelection, those prefiled bills are dead unless cosponsored by a reelected legislator. New members may begin prefiling immediately following the November organizational session. Prefiled bills are referred to committees by leadership and the committees, which are appointed and begin work in November, study, amend and act on bills up until the opening day of the session in April. Between the first and second session committees actively work on carry-over legislation.

Other states have encouraged prefiling by placing a limit on the number of bills a member can introduce during the session. For example, Montana lawmakers may introduce only five bills once the session has begun. However, the limit does not apply to prefiled bills prior to the session, interim committee bills, state agency bills or resolutions. In Colorado, the joint rules specify a six bill limitation for the number of measures a member can introduce during session. Detailed deadlines for various legislative actions also are set. To allow for emergencies, a Committee on Delayed Bills is established in each house. The committee, composed of the presiding officer and two party floor leaders, can approve late introductions. Appropriations bills are excluded from the limitation.

Increased committee time in the early part of the session can help expedite the process. This mechanism enables committees to work uninterrupted when floor activity is generally slow. Therefore, committees can act on more bills earlier. Increased committee time in the early part of the session can be scheduled in a variety of ways. For instance, from January to March in Connecticut, floor sessions are held only once a week and the rest of the time is devoted to committee work. Iowa utilizes the first four to eight weeks of session for all committee work. Only committee meetings are held in the Pennsylvania House in January and February, after which floor action alternates weekly with committee meetings. Nebraska and the Kentucky and Pennsylvania Senates utilize a recess period for increased committee meeting time.

B. Committee Process

Background: An effective and efficient legislature depends upon a strong committee system. Committees are the workhorses of the legislature, mini-legislatures, performing policy and program formulation and control. Committee chairmen play a key management function in directing the committee process. The success of a committee system depends significantly on how chairmen plan and manage committee time. Staff also play an important role in the committee process by providing information and analysis to committees -- the keys to informed decision making. Finally, committees serve as the

major access point for direct citizen involvement and input into the legislative process. The ability of citizens to become involved can have a profound and positive effect on the legislature's image

The Alaska Legislature's committee process is well structured. There is a manageable number of standing committees with nine in each house. In addition, the committees of each house are parallel. Both the Alaska Senate and House have established standing committee meeting schedules. Committees have been assigned specific days and times of the week on which to meet. House members generally sit on two committees, while Senators serve on three. The schedule has helped to prevent committee meeting conflicts for members. Written notice of the time, place and subject matter for standing committee meetings is provided. Notices are clearly visible outside the chambers on bulletin boards, are printed in the newspaper, and are available from the information offices around the state.

The Alaska Uniform Rules sets out the jurisdiction of each standing committee and the state agencies for which each committee has responsibility. The rules also require standing committees to electronically record meetings and to prepare fairly detailed committee minutes. Committee minutes contain the names of the members present, name and affiliation of witnesses who testify, brief statement of the position of the witness, and each amendment formally considered by the committee, the name of the member moving its adoption, the action taken on it, and the vote.

The Alaska Legislature does not have a tremendous number of amendments offered on the floor. This is an indication that the standing committees are effectively working on and screening legislation.

Throughout the interviews, individuals stressed the fact that Alaska has a strong committee system. Only two areas of major concern were raised: training for committee chairmen and staff, and the five-day posting requirement.

1. The Alaska Legislature should establish a training program for committee chairmen and staff to assist them in learning their jobs and to strengthen committee performance.

Discussion: Concern about the adequacy of orientation programs for new committee chairmen and staff, arose primarily because of the number of freshmen committee chairmen appointed for the 1983 session. A strong orientation program is critical for two reasons. First, many newly elected lawmakers are unfamiliar with the structure, organization and administration of the institution to which they are elected. Second, most new committee chairmen have little experience in managing and guiding committee decision making. Members of the Alaska legislature pointed out that several chairmen were having trouble getting their committees up to speed, primarily because of their unfamiliarity w h the process. Coupled with this was the fact that many of the new chairmen had new staff who also were unfamiliar with the process.

Many legislatures hold training programs for committee chairmen and staff. The Alaska Legislature can set up a program themselves or outside assistance can be obtained. For instance, the Utah Legislature prior to the start of

the 1983 session hired a consultant to conduct a workshop for committee chairmen on group decision making. In 1979, the Arizona Senate sponsored a school for committee chairmen. The program included mock meetings with scripts, sessions on how to run an effective meeting, and discussions of staff utilization.

Alaska is not alone in its weakness of staff training. Few states have developed extensive training programs for committee staff. The Oklahoma, Texas and Minnesota Senates have instituted programs to train committee clerical staff. The Minnesota Senate holds formal training sessions for new committee staff during the interim. New staff are placed in small groups for training purposes. The training covers the workings of the committee process, other staff services, legislative documents and a variety of other topics. Prior to the start of session, the Texas Senate holds a one-day training program for committee clerks which covers such topics as the preparation of amendments, the filing of committee reports and other committee logistics.

Florida, Michigan, Oregon and Wisconsin have all developed manuals on committee procedures as a tool to assist clerical staff. The manuals contain information on the handling of legislation referred to committee, meeting notices, committee reports, committee minutes, committee supply lists, and sample forms.

The National Conference of State Legislatures has had considerable experience in conducting in-state workshops for committee chairmen and staff. The committee chairmen workshops have focused on such issues as effective meetings, committee decision making, and utilization of members and staff. NCSL utilized the expertise of experienced committee chairmen to conduct the workshops. A variety of committee management materials also have been developed by NCSL including A Chairman's Guide to Effective Committee Management and Strengthening the Committee Process: Suggestions for Leaders, Chairmen and Staff.

Through a variety of special projects and workshops, the NCSL program staff has worked with legislative leaders to conduct staff training programs, evaluate alternative staffing patterns and to weigh personnel management policies. Some of the staff workshops have focused on legislative time and work management, effective management communications and the roles and responsibilities of committee staff. Experienced staff directors from other states have been used as discussion leaders for these programs.

2. The Alaska Legislature should maintain the five-day posting requirement for committee meetings and apply it to all meetings of committees. The provision that the notice be given to the chief clerk or secretary by 4:00 P.M. on the preceding Thursday should be eliminated.

The suggested language change for Rule 23(a) is: The person who chairs a standing, special or joint committee shall provide to the chief clerk or secretary written notice of the time, place and subject matter of all committee meetings at least five days before the meeting. However, this requirement may be waived by motion of the

person who chairs the committee if concurred in by a majority vote of the full membership of the house. The chief clerk or secretary shall publish and distribute copies of the five day meeting notice.

Many members of the Alaska Legislature feel that Rule 23 is cumbersome. Several indicated that the five day posting requirement is too stringent and should be shortened. Part of the problem with the rule is that it specifies two different notice requirements which for some committees are not possible to meet. The notice requirements also refer to different types of meetings. The Thursday 4:00 p.m. requirement applies to all meetings of standing, special and joint committees, while the five day posting requirement applies only to public hearings. Also, because of the way the rule is written only the Thursday 4:00 p.m. requirement can be waived.

Given the large geographic size of the state of Alaska, the five-day notice is imperative. In order to make maximum use of the legislative teleconference network the lead time is essential. Alaska's teleconferencing network, consisting of forty-two in-state sites, is unique and affords the public an excellent opportunity to participate in the process.

Over two-thirds of the state legislative bodies require committees to give advance public notice of all committee meetings. Generally, 24 to 48 hours is required, however, lengthier notification requirements are not uncommon. Washington, Arizona and Connecticut all require five days, while Tennessee requires six days, Rhode Island seven days, and Massachusetts ten days. Nevada has established different posting requirements for public hearings and meetings. A five-day posting requirement is required for public hearings, and three days is required for all other meetings of committees.

The National Conference of State Legislatures has reviewed the changes proposed for Rule 23 recommended by the Special Joint Committee on Legislative Reform. The changes adequately address the technical problems with the rule and help to clarify the language and strengthen the rule.

C. Interim Period

Background: Few legislatures formally meet year round in spite of the growing length of sessions, so utilization of the interim becomes extremely important for citizen legislatures if they are to effectively perform their duties and maintain a co-equal status with the executive branch. The interim allows legislatures to do homework on upcoming issues. It provides a time to study issues requiring more in-depth consideration, hold hearings, and in some instances process legislation. The interim also provides a time for reflection on and oversight of laws which have already been adopted and implemented. Continuous monitoring of executive operations is essential to the legislative responsibility.

Continuity should be the goal of an effective interim period. Disruptions in work flow and legislation lead to duplication of committee study and a waste of members' time. Utilization of the regular standing committees and their staff during the interim provides for continuity between sessions and prevents duplication of work during the session.

1. The Alaska Legislature should encourage standing committees to continue their work in the interim and discontinue the practice of creating interim committees. The standing committees should work on issues raised during the session, prefiled legislation, and topics identified by leadership. Leadership should consider establishing a "mini-session" schedule for committee meetings during the interim to minimize time for members and to maximize citizen participation.

2. The leadership of the Alaska Legislature should work with the standing committee chairmen to determine interim work assignments and establish specific reporting requirements.

3. The leadership of the Alaska Legislature should provide for the continuity of committee staff from the session to the interim.

Discussion: The interim period in Alaska has been plagued by many problems. In the past, a multitude of special committees were created and funded to operate during the interim. Members indicated that the funds were used primarily for travel purposes and to keep staff on board. Often times, the work done by these special committees was not productive.

The Alaska Legislature has begun moving away from this practice, but a lack of standardization still exists with interim procedures. Some of the standing committees do meet during the interim, but special committees also are still used. Members indicated that some studies are still being assigned merely to provide a member with staff during the interim. Selection procedures for interim study topics also vary. Some are set up by a single or joint resolution, while a standing committee chairman may decide on a particular topic by his or herself.

Although leadership in Alaska controls interim funds, a lack of criteria for determining interim work projects exists. Reporting requirements also vary. Committees are required to report on interim activities only if mandated by legislation. It is essential that leadership keep control of interim activities and require reporting.

Because of the geographic size of Alaska, scheduling a committee meeting time where all committee members can attend is a problem. Many members indicated that getting a quorum is difficult. When committee chairmen hold committee meetings in their districts, it is not always possible for the public from other parts of the state to participate. A mini-session at the capitol once a month would reduce quorum problems. This would facilitate public participation. The public could participate either in person or via the teleconferencing network.

If the Alaska Legislature is to remain a part-time citizen legislature it needs to have the standing committees performing more work during the interim to prepare for the session. In order to do that, some continuity of staff from the session to the interim is essential if interim work products are to be productive. During the interviews, it was indicated that some committees do not utilize committee staff during the interim. The continuity of staff, as well as utilization of the standing committees to work on issues during the interim, prevents duplication.

Approximately two-thirds of the 99 state legislative bodies utilize the regular standing committees or subcommittees of the standing committees during the interim. Committee names and jurisdictions are the same and legislators retain the same committee assignments. As a result, committee work and study does not have to be repeated by the appropriate committee during the session. Generally, the committees conduct public hearings and special studies and act on legislation.

Legislatures have set up selection and reporting processes to assure that interim work is in line with session activities. For instance, to determine priorities in Montana, all members vote for their three top choices from all of the interim study resolutions. The Legislative Council determines the number of studies based on available funding and the balloting. Committees are required to submit a final report to the Legislative Council. In Maine, committees select up to three topics and send a project summary to the Legislative Council for approval. Committees must submit final reports to the legislature. In Iowa, the Legislative Council selects topics from member resolutions and assigns them to the appropriate standing committee. The Council authorizes the number of meetings for each committee and sets a completion date. Committees are required to make a progress report to the Council and submit a final report to both the Legislative Council and the legislature.

To help keep legislators informed about interim committee activity, a few states use interim newsletters. The format, style and content varies, but generally, the newsletters contain information about the time, place and date of meetings, brief committee agendas, and some description of committee activities. Illinois, Kentucky, Montana, Nebraska, North Dakota and West Virginia publish interim newsletters. The newsletters come out once a month in Kentucky, Montana and West Virginia and bi-weekly in Illinois. Nebraska distributes a newsletter three times during the interim, and North Dakota publishes one on a sporadic basis, usually twice each biennium. In all instances, the Legislative Council or similar service agency is responsible for the publication. The newsletter is distributed to all members and to other interested parties.

Some states, such as Florida and South Dakota, use an interim calendar which is distributed to all members. Published on a monthly basis, the calendars contain information about the time, place and date of committee meetings, and committee agendas. Florida's interim calendar also includes a list of prefiled bills, the committee of reference, and a short bill summary.

In an effort to minimize the intrusion on members' time and to preserve the part-time nature of the legislature, 23 legislative bodies have established scheduling procedures to control interim activities. Some states establish immediately following the end of a session, a schedule of all committee meetings to be held during the interim. Other states schedule interim committees to meet once a month. For instance, Minnesota has set up a "mini-session." Once a month, members go to the Capitol for a week and attend standing committee meetings and take action on bills. West Virginia and Washington utilize mini-sessions, but for a shorter period of time. In West Virginia, committees meet once a month from Sunday through Tuesday. Interim committees in Washington meet once a month for a "legislative weekend," Friday, Saturday and sometimes Sunday.

D. Staff

Background: The presence of staff is widely recognized as an essential expansion of the legislative capacity to deal with issues and problems of increasingly greater complexity. Legislative staff provide a professional resource to lawmakers whose background and knowledge characterize the citizen nature of representative government. The presence of staff allows legislatures to handle, process and utilize more and more information.

The increased growth in staff has led to the need for more formal oversight and management by legislators. Legislatures have found it increasingly important to develop written personnel procedures covering such topics as position classification, compensation, sessional employee benefits and partisan activities. These procedures have enabled legislatures to more effectively manage and control staff.

1. The Alaska Legislature should develop a systematic way of hiring and dealing with equities in qualifications and pay for legislative staff.

2. The Alaska Legislature should standardize and clearly define staff benefit policies between the two houses.

3. The Alaska Legislature should develop an administrative manual for staff which covers such topics as compensation, benefits, and other personnel procedures pertinent to the Alaska Legislature.

4. The Alaska Legislature should clarify the definition of "session" and "interim" employment, including the status of interim employees. Full-time employees should be considered and treated as such.

Discussion: Members of the Alaska Legislature first acquired personal staff in 1979, at which time they were allowed to employ a part-time secretary. Since then there has been tremendous staff growth, with each member now having a minimum of two to three staff persons. Currently, the number of personal staff for the Alaska House and Senate is 186. In addition, members have available staff from the House Research Agency, Senate Advisory Council, chamber staffs, and Legislative Affairs Agency. Excluding the Legislative Affairs Agency, the others would increase staff by over fifty. The tremendous expansion of staff over a relatively short period of time has caused some growing pains for the Alaska Legislature.

The Alaska Senate in 1981 adopted a staff and salary policy. The policy enumerates the number of staff each member can hire, the type of staff positions, the salary range for the staff positions, and provisions covering temporary session employees. The House only adopted the section on temporary employees, but has been following the rest of the policy informally. The Senate Rules Committee issued a similar policy for the 1983 session.

During the interviews it was pointed out, however, that neither policy is being strictly followed or enforced. Some members have hired more than their allotted number of staff. Others are hiring staff for positions they are not qualified to fill. It was pointed out that discrepancies exist in the salary scales for member's personal staff. The variance exists because

each member determines his or her staff's salary with the only control being the number of sessions the individual staff person has worked. The problem is further exacerbated by the lack of position descriptions for professional assistant, session administrative assistant, professional secretary and session secretary.

Other discrepancies exist between House and Senate staff policies and session-interim and session-only staff policies. Staff in the Alaska House of Representatives accrue leave time, while Senate staff do not. Session employees salaries are not in line with the salary schedule. Other legislative employees have received salary increases, but the daily rate paid session employees has not been adjusted. If the daily paid session employees are adjusted to be paid equitably to the monthly legislative paid employees, the daily rates should coincide with the salary schedule.

Another problem concerning session-only staff and interim staff was raised during the interviews with Alaska legislators and staff. In many instances, the only way a staff person can be paid year-round is for the individual to be hired to work for an interim committee. There is a legitimate role for session staff. Session staff and interim staff should not be a way to get around a system that does not recognize the need for continuity. Full-time employees should be considered and treated as such.

The Alaska Legislature needs to develop a system that allows members to hire staff, and also places some controls on them. The system should balance members independence and the need for equity among staff. Texas' staffing policy allows the most independence for its members. Members of the Texas Senate receive a flat allowance for the session and interim of $14,500 and $10,000 respectively. Staff expenses, rental of office equipment, supplies and some travel are paid from these funds. In California members have a set number of positions allocated to them. The legislature has developed very specific salary scales and job classifications, though. The Rules Committee must approve the hirings. Each member still decides who he or she wants to hire, but has less discretion over the salary and job classification. Iowa uses a combination of the Texas and California system. Every member is allowed to hire a session secretary. The legislature has established two salary schedules to cover these employees as a control. One is for qualified secretaries and the other covers anyone else. The salary is used as a control to maintain a standard. Florida, on the other hand, has a very elaborate classification system and leadership controls all the hiring and firing.

To clarify personnel policies, many state legislatures have developed personnel manuals. These enable staff to know what to expect in terms of compensation, benefits, and a variety of other items. Texas and Connecticut have developed very comprehensive manuals. The Connecticut manual is divided into eight categories that include general employment policies, permanent, part-time and caucus employees, compensation, hiring, benefits, accrued time, leave of absence, special benefits, and use of state equipment and state cars. At a minimum a personnel manual should cover hiring and dismissal, compensation, benefits, position classification plan, and leave, vacation and holiday privileges.

Like other legislatures, Alaska still increases the size of its staff during the session. It is extremely important to provide adequate benefit provisions for sessional employees because of the increasing difficulty many

legislatures have in recruiting session staff. Since sessional jobs are not career positions, there must be the incentives of compensation and benefits. In Kansas, most session staff are hired by the Division of Legislative Administrative Services. Session staff are provided with unemployment compensation. Session employees are paid on an hourly basis, but are guaranteed a minimum weekly salary in recognition of fluctuating work hours during the session. In addition, session staff receive three leave days to be used as the employee wishes. The unused leaves may be awarded to the employee in pay at the end of session. The Connecticut Joint Committee on Legislative Management grants session employees five leave days for the session, and the Missouri House allows session employees to accrue sick leave at the rate of one day a month.

PART II

THE BUDGET PROCESS

Between FY 1979 and FY 1982, the budget of the State of Alaska nearly tripled, growing from $1.4 billion to approximately $4 billion. For FY 1984, however, projected revenues are down; the 1983-84 budget is expected to be just over $3 billion. The sudden growth and recent decline in state revenues have put significant strains on the legislature's budget-setting and oversight processes. The legislature has had to sort through a myriad of suggestions both for increasing and decreasing state budgets. It has had to bolster its capacity to track appropriations and oversee budget management. And the legislature has had to tackle the difficult problems brought on by the boom and bust in oil prices. Not surprisingly, because of the sizable changes in the state's budget, people both in and out of the Alaska Legislature have begun to ask whether changes should be made in the budget process to better enable the legislature to handle the shifting budget context. The purpose of this portion of the study is to address that question.

In preparing this part of the report, staff from the National Conference of State Legislatures conducted on-site interviews with legislators, legislative staff, and executive agency officials. NCSL also talked with representatives of several public interest groups who expressed an interest in our research. We examined executive and legislative budget documents, read commentaries on the Alaska budget process, and reviewed guides which described the process. Finally, we researched the ways in which other legislatures handle state budgets, looking for ideas and suggestions which might apply to Alaska.

Our interviews with legislators and legislative staff indicated there were five areas in which the legislature was interested in receiving some guidance: the operating budget, the capital budget, finance committee structure and procedures, staffing, and budget information. Each of these areas is addressed in the following sections. The recommendations which we make are designed to streamline the budget process, strengthen the legislature's role in budgeting, improve the quality of the legislature's fiscal information, and enhance public access to the budget process.

A. The Operating Budget

Background: The operating budget of the state of Alaska includes all the funds necessary to administer state government and deliver state services. In FY 1984, Alaska's operating budget will total approximately $2 billion. Over the past five years, this budget has grown dramatically fueled in large part by the development of and revenues associated with oil production in Alaska. Today, however, the state is seeing a major reduction in the rate at which oil revenues are flowing into the treasury. As a consequence, the state must curb its expenditures. The challenge for state government in

managing a large but constrained budget in the mid-1980's is a major one--one in which the legislature needs to play a major role.

For the most part, the Alaska Legislature has a very sound process for reviewing and passing the state's operating budget. Alaska, like 29 other states, passes an annual operating budget. (Because Alaska relies heavily on oil revenues and hence there is a high degree of uncertainty from year to year about state revenue collections, biennial budgeting is not a viable option for the state.) As is the case in a majority of the states, the Alaska Legislature has separate House and Senate committees which are responsible for reviewing the operating budget. Until last year, these committees relied on a central fiscal staff for aid in analyzing the operating budget. Two strengths of the Alaska Legislature's budget review process are that a single committee in each house (Finance) is responsible for both appropriations and revenues, and in the Senate, members of the Finance Committee also sit on other committees while in the House, standing committee members are encouraged to sit in on finance subcommittee meetings. These two features mean that the finance committees are especially alert to the linkage between revenue and expenditure options and the concerns of the standing committees.

While on the whole Alaska has a good system for legislative review of the state's operating budget, there are several steps the legislature should consider taking to further strengthen its role in developing the state's operating budget. These are outlined below.

1. <u>The Alaska Legislature should require all agencies to submit modified zero-based budgets.</u>

<u>Discussion:</u> In interviews with legislators, staff, and members of the public, many people said they felt the operating budget was "out of control." In their opinion, no one--including the administration, really is sure just what the agencies are actually spending their money on, towards what ends. With the huge growth in the operating budget that has occurred since 1979, there is a general feeling that the state has lost track of where all its dollars are being spent--particularly with respect to the operating budget.

Zero-based budgeting (ZBB) offers legislators one means of getting a better handle on the operating budget. As used in a 1979 survey of state budget practices, ZBB in its broadest sense is:

> . . . a method which formally considers reduced levels of expenditure rather than merely increases above current expenditure levels. The distinctive purpose of ZBB is to determine whether each activity warrants continuation at its current level or at a

different level, or should be terminated. The ZBB format provides for the submission of budget requests at alternative funding levels, and for the priority ranking of activities in successively increasing levels of funding, starting from a level significantly below the current level.[1]

Alaska is already using a modified form of ZBB, called "project budgeting" for three of its agency budgets (Fish and Game, Environmental Conservation, and Natural Resources). Under project budgeting, agencies must group and rank their expenditures into definable projects that have a specific purpose and measurable outcomes. This allows the legislature to relate expenditures to easily recognizable activities and gives the legislature an idea of how important each agency considers its current activities. Because there has been general satistfaction expressed with the project budgeting technique where it has been used, the legislature should consider expanding the use of this modified ZBB approach to other departments. In so doing, it should make sure that agencies define a "project" as a narrowly enough circumscribed activity that specific measurable goals and objectives may be associated with each activity.

2. Before each budget hearing, the finance committees and/or appropriate finance subcommittees, should provide agency budget officials with the questions, issues or concerns they have about the budget which is to be reviewed at the hearing.

Several people interviewed in the course of reviewing Alaska's budget process complained that budget hearings were often merely "dog and pony shows." Members of the public were especially interested in seeing more questions raised about agency budgets at public hearings. They noted that legislators had copies of the agency budgets before the hearings and so it was not necessary for hearing time to be spent having agencies review their operations. Both executive and legislative staff noted that in some cases agencies had attended a hearing, been asked very few questions, walked away secure that there were no problems with their requests, and were surprised to discover that portions of their budget were cut or requests denied when the finance committees did final mark-ups on their budgets.

There are two different approaches Alaska may want to consider in implementing this recommendation. Under the first, the finance committee staff submits to the agency, at least five days before its budget hearing, a list of issues concerning the agency's budget, which have been compiled by legislative fiscal staff. The agency then comes to the committee hearing prepared to directly address the major concerns the legislative committee and staff have about their budget. Colorado uses this approach. Under the second approach, the legislative fiscal staff prepares and publishes a formal analysis of the governor's budget proposal early in the session. This analysis is distributed to all legislators and is available to the public. California uses this approach. Each year, the Office of the Legislative Analyst prepares an "Analysis of the Budget Bill" which reports the results of its detailed examination of all programs and activities funded in the Governor's Budget. A summary companion document, The "19XX-XX Budget: Perspectives

and Issues," identifies the major issues facing the legislature in the upcoming year. Once again, this document alerts the agencies to the issues they should address at their budget hearings. The California approach has the added advantage that it alerts the public to the issues and concerns regarding the state's operating budget which are of paramount interest to the legislature.

3. The Alaska legislature should require the executive branch to submit a formal, detailed justification for each of its supplemental budget requests.

Discussion: The current method of handling supplemental budget requests in Alaska is for the governor to submit a bill making a supplemental appropriation to a department. Each supplemental bill very briefly gives the general purpose of the bill and the amount(s) to be appropriated for certain line items in a department's budget. No formal justification or back-up documents routinely accompany these bills. In order to strengthen the legislature's oversight of executive budget administration and encourage good management practices on the part of executive agencies, it is important that the legislature allow supplementals only where absolutely necessary.

The legislature should require information such as the following on each supplemental request:

- Amount requested
- Expenditures to date and estimated total expenditures for the year
- Purpose and justification of the request
- Specific reason for this request at this time (i.e., emergency or an act of God; technical error in calculation of original appropriation; data not available when appropriaton was made; unforseen contingency; or balance of a partial year appropriation)
- Steps agency has already taken to reduce the financial impact of the contingency
- Outline of alternatives agency will pursue if supplemental is not forthcoming

Not only will this information enable the legislature to make better-informed decisions about supplemental requests but it will also aid legislators, and legislative fiscal and audit staffs in monitoring agency expenditures to see if state funds are being spent as intended.

B. The Capital Budget

Background: Probably no aspect of the Alaska budget process has been the subject of more comment than the capital budget. In recent years, total appropriations for capital items have amounted to between $500 million and

$1 billion, or between 12 and 25 percent of total state appropriations (including federal funds). (What number one uses depends on how a "capital appropriation" is defined, and how one counts the monies originally appropriated for capital projects in one year and then partially reappropriated for another project in another year.) However it is measured, Alaska spends more in absolute terms on capital projects than many larger states and has the highest per capita expenditures for capital outlay of any state in the nation.

In many respects, Alaska's procedures for capital budgeting are like those of other states. Typically, using an executive planning and budgeting process, the governor develops a list of capital projects which is submitted to the legislature. These projects are usually contained in the governor's proposed capital budget, though sometimes major capital items may appear in other, special bills. Most legislatures are quick to admit they devote no where near the time to reviewing capital budgets that they do to reviewing operating budgets. Frequently-heard complaints about a state's capital budgeting process include: the legislature is not involved early enough in the capital budgeting process, detailed project justifications are often lacking, and proposed projects need to be ranked. Legislatures today are also concerned about the need for long-term capital planning. Insofar as statewide capital projects are concerned, Alaska's budgeting process and its attendent weaknesses are like other states'.

A unique aspect of Alaska's capital budget is that the state makes appropriations not only for specific state capital projects but also for local capital projects. In other states, local capital projects are financed by local government. Several factors account for the fact that monies are appropriated for specific local projects in the state's capital budget. Most importantly, large areas of Alaska are unincorporated. In these areas "local" government is the state and the only locally-elected public officials are state senators and representatives. As a legislative staff person noted, "In many ways, Alaska is more like a county than a state." The state percentage of state-local general expenditure from own revenue sources is also higher in Alaska (83.5 percent in 1981) than in any other state.[2] Compared to local government, state government in Alaska has much greater revenue capacity. There has also been an exceptional growth in the demand for new infrastructure in Alaska over the past five years, fueled in large part by the oil boom and associated population growth. While other states, such as Wyoming and Montana, also saw sharp increases in the demand for new capital finance in the late 70's and early 80's, these states generally dealt with the problem by collecting the "tax windfall" from energy production at the state level and turning much of the funds back to local government to address local capital needs. Because many areas of Alaska lack any local government structure, the state bears a disproportionate share of the demand for local capital finance. Moreover, several legislators reported that the only major way in which the state affects their areas is in the appropriation of funds for local capital projects. Consequently, the budget for local capital projects is of preeminent concern to them.

To the extent that Alaska's capital budgeting task is similar to that of other states, its budgeting process tends to suffer from the same weaknesses as other states' and approaches used elsewhere will be applicable in Alaska.

To the extent that Alaska is unique, solutions for dealing with the troublesome aspects of Alaska's capital budgeting process must be carefully tailored to meet Alaska's unique situation.

1. The capital budget for local projects should be separated from the state capital budget and included either in a separate bill or in a separate secton of the state appropriations bill. A specific deadline should be established for submission of the local capital budget.

Discussion: Over the past several years, a pattern has been established for the development of the Alaska capital budget. The governor develops a list of projects mainly, but not exclusively, of a statewide nature and uses up to a third of the monies available for capital finance to fund these. At the same time, each house of the legislature takes another third of the capital budget, divides up the funds among its members and allows the members to propose local capital projects. These projects are added onto the governor's list, and the result is the "state" capital budget. In fact, the capital budget is a hybrid that is neither a "state" nor a "local" capital budget.

A number of those interviewed for this study said they felt the most serious flaw in the current capital budgeting process is that neither local nor state capital projects receive a thorough review. Caught up with the development of what is in fact the local capital budget, individual legislators spend little time reviewing the governor's proposed list of state capital projects. Likewise, the executive branch has little opportunity to review the local capital budget since it is usually relatively late in the session before the legislature produces its list of local projects. In fact, individual legislators themselves have almost no opportunity to review the list of proposed local capital projects.

The legislature and the governor should thoroughly review all proposed capital projects and the public should have ample opportunity to examine and comment on these proposals. By separating the local and state capital budgets and requiring that these budgets be submitted early in the session, all interested parties will be able to carefully review the budgets, and state elected officals will be able to make explicit decisions as to how much should be spent on state versus local projects.

One state which has adopted an approach to capital budgeting not altogether unlike the one recommended here is Colorado. Included in Colorado's single state appropriations bill is a section which lists, by department, all capital construction appropriations for the year. Under the capital construction appropriation to the Department of the Treasury, there appears a multimillion dollar appropriation of Oil Shale Trust Fund monies. These monies are earmarked for expenditure in the western, energy-impacted counties of the state to relieve the effects of oil shale production. In a footnote to the oil shale appropriation are listed all the specific, local capital projects for which these monies are to be spent.

2. The Alaska Legislature should develop a standard form for capital projects which describes the purpose of and need for each project. A completed form should accompany each proposed capital project and be available for public inspection.

Discussion: In order to make well-informed decisions about capital projects, legislators need detailed information on the purpose of and need for each proposed project. Several legislators expressed frustration over the often inadequate documentation for proposed capital projects--especially local projects.

The standard form should include, at minimum, the following elements:

- Project title
- Project purpose
- Project justification (e.g., needed to protect health or welfare of citizens, to respond to court order, to encourage economic development, etc.)
- Alternative ways of dealing with the problem at hand
- Alternative funding sources if project is not funded
- Estimated capital expenditure requirements over the next five years, by year
- Estimated operating expenses which will be generated by this project, over the next five years, by year

A compendium of the completed capital project forms should accompany the proposed state and local capital budgets when they are taken up for consideration by the finance committees.

3. Legislative Finance Division staff or consultants should be responsible for reviewing all capital project proposals to see if the fiscal notes included are reasonable.

Discussion: In recent years, millions of dollars have been reappropriated by the Alaska legislature from excess capital funds appropriated in earlier years. This suggests that initial capital appropriations were unnecessarily generous. With revenue projections no where near as rosy as

they were just three years ago, the Alaska legislature can ill afford to appropriate more for any particular purpose than is actually needed.

In most states, the initial fiscal note on a proposed capital project is developed by an agency or entity that has a vested interest in seeing the project generously-funded. Typically, the corrections department develops the request for a new prison, the department of higher education develops the request for funds to remodel a dormitory, and the department of natural resources prepares the request for improving a lake habitat. While a state's central budget office and/or state buildings division may review these requests, it is important that the legislature conduct its own independent review, with an eye toward shaving any unnecessary costs. The Alaska legislature should have the capability, whether in-house or on a consulting basis, to independently and objectively examine proposed project costs before appropriating funds for capital projects.

4. A minimum of four joint hearings of the House and Senate finance committees should be held on the state and local capital budgets, preferably in different parts of the state.

Discussion: This recommendation addresses two weaknesses of the current Alaska capital budgeting process frequently cited by those interviewed in the course of this study. The first is that the finance committees do not schedule enough time for discussion of the final version of the capital budget. Senate and House capital projects are added onto the governor's proposed list relatively late in the session leaving little time for public review and comment on the whole capital budget. The second weakness is that the procedure used by the legislature for developing its list of local capital projects tends to encourage the inclusion of projects benefiting a specific, identifiable legislative district to the exclusion of projects benefiting a larger local area. The Anchorage Daily News wrote in a March 1983 editorial, "The breakdown in [legislative] negotiations [over the supplemental capital budget] limits the chances that areawide needs will be addressed. . . in the budget. . . House members from Anchorage apparently couldn't agree to work together to pool funds for major projects. . ."

By holding several hearings on the capital budget, in different parts of the state, people at the local level will have ample opportunity to testify on items in the proposed capital budget. Finance committee members will also be able to question local residents about the need for projects proposed for their areas. An added advantage of holding committee meetings in different parts of the state is that members of the finance committee can visit the sites of proposed new projects or examine the buildings which require expansion or remodeling.

5. The Alaska Legislature and governor should work together to develop goals and criteria for ranking capital projects. Using these goals and criteria, the state should write and annually update a five-year, long-term capital investment plan.

Discussion: As the cost of and demand for new infrastructure grows, more and more states are seeing the need to develop long-range capital investment plans. The necessity for such planning has become all the more acute in recent years as states have adopted measures to control total state expenditures. Alaska faces these same pressures.

Almost every legislator interviewed by NCSL for this study cited the need for better long-range capital planning by the state. Such planning requires a major analysis of future capital needs and a public decision about what the state should view as its funding priorities.

There are several models Alaska should consider for developing long-range capital investment plans and prioritizing projects.[3] New Jersey has a Commission on Capital Budgeting which advises the governor and the legislature. The Commission, which has four public members, four legislative members and four members from the executive branch, has the following responsibilities:

> (1) to develop and maintain, on an ongoing basis, short and long-range capital spending plans for the State; (2) to analyze and report on the mpact of capital spending programs on future operating budgets; and (3) to present the plans for short and long-range capital investments, recommending to the Governor and the Legislature items for inclusion in the annual budget. The Commission is required to recommend the means by which capital projects should be funded, to comment on capital projects recently completed or presently under construction, as well as to make annual recommendations on the maintenance of State facilities.[4]

In developing its recommendations for FY 1982, the Commission used the following criteria: 1) needs must be critical and well-defined; 2) careful planning must precede each capital project; 3) maximum utilization must be made of available federal matching monies, and 4) expenditures must be cost-effective with a minimal adverse impact on future operating budgets.

In Maryland, capital planning is the responsibility of the Department of State Planning, which prepares an annual and a proposed five-year, prioritized capital improvement plan. The Maryland State Planning Commission, consisting of nine members, seven of whom are legislators, serves as a capital advisory group to the Department of State Planning. Each year, the Department and the legislature's budget committees jointly hold hearings on the short and long-range capital plans.

6. The Alaska Legislature and the governor should agree on the definition of a "capital item." Only those items which meet this definition should be included in the capital budget.

Discussion: Interviews with legislators and members of the public indicated that Alaska employs no consistent definition of a capital project. As

a consequence, a "capital project" may or may not appear in the capital budget. By the same token, operating budget items not infrequently are found in the capital budget. To aid in the planning process and assist people in reading the state budget, Alaska should adopt a working definition of a capital item and include all such items and only these items in the capital budget.

There are a number of ways in which a capital item may be defined. The Municipal Finance Officers Association's definition of capital expenditures includes programs that result in the acquisition of assets of a long-term character. Ohio's capital improvements bill describes the general purposes for which its appropriations can be used as follows:

> Land acquisition; construction, architectural, and engineering expenses, complete heating and lighting systems, utilities, and ventilating, plumbing and sewer systems; machinery which is part of the structure at the time of construction or acquisition; and equipment essential to bring the facility up to its intended use, provided that its unit cost is at least $10 and the item has a useful life of five years or more. Disallowed purchases are replacement equipment, vehicles, adding machines, calculators, dictating equipment and normal supply and maintenance items.[5]

Colorado's "Guide to the State Budget" defines capital construction as "the purchase, construction, remodeling or renovation of major capital facilities." Not included under the definition of capital construction are: equipment (automobiles, typewriters); alterations and replacement of buildings costs less than $15,000; new structures costing less than $15,000; and non-new structural improvements to land costing less than $5,000.

7. Those entities responsible for spending capital appropriations should be required to submit annually to the legislature a status report on each project which has been funded by the legislature.

Discussion: The Alaska Legislature is inadequately informed as to how projects which have been funded by the state are progressing. The legislature does not routinely receive information on the status of state-funded local capital projects. Tracking of capital project expenditures is poor. According to the state auditor, excess capital project appropriations are not always being returned to the General Fund as they should be. Inadequate oversight of capital project expenditures has resulted in several deficits. Finally, poor tracking of exactly what capital project funds have been reappropriated, when, and for what purposes has resulted in differing estimates by executive agencies, the Office of Management and Budget, and legislative staff as to how much money is actually available at any time for previously-approved projects and for reappropriation.

The governor should be required to submit annually to the legislature a status report on every capital project for which funds have been appropriated. At minimum, this status report should include the following information:

-- Project name and purpose

-- Total appropriated by the state for this project

-- Additional funds committed to this project (e.g., federal or local funds)

-- Expenditures to date by object of expenditure and type of funds used

-- Estimated total expenditures over the life of the project by object of expenditure and type of fund used

-- Accrued but unpaid liabilities to date by object of expenditure and fund type

-- Monies returned to the General Fund

-- Description of the current status of the project.

8. The Alaska House and Senate should form a joint subcommittee on debt policy of the finance committees.

Discussion: There has been a significant increase in recent years in legislative concern over debt levels and debt policy. As legislatures have reviewed these issues, their recommendations are very similar. The Maryland Legislature created the Capital Debt Affordability Committee, composed of the State Treasurer, State Comptroller, and Secretaries of the Departments of State Planning and Budget and Fiscal Planning. This committee is required to submit to the Joint Budget and Audit Committee a review of the size of state debt and an estimate of the amount of new debt that may be prudently authorized. In a review of debt in Oregon, the Bonded Debt Advisory Commission recommended creation of a similar body, and also recommended creation of a subcommittee of the Joint Ways and Means Committee to review all debt authorizations. A recent report of the California Legislative Analyst recommended both creation of a long-term capital outlay plan and subcommittees of each fiscal committee "for overseeing on an ongoing basis all bond-related legislation."

By using a debt policy subcommittee, the Alaska Legislature would be better able to establish a clear link between its capital outlays and the need for bond financing; it would also be able to review debt issuance on a comprehensive basis, rather than issue by issue. A joint subcommittee, or one which at least held joint hearings, could make more efficient use of limited legislative time, particularly when considering new issues or holding oversight hearings.

C. Finance Committee Structure and Procedures

Background: Alaska's finance committees play a critical role in shaping the state's budget. It is their job to hold hearings on the budget, to analyze, review and modify the governor's proposed budget, and to oversee all aspects of executive branch budget management. Finance Committee members are responsible for knowing every aspect of the budget. They must review agency budget requests, decide on what capital projects should be funded, and determine the cost of new legislation.

The organization of and procedures used by a finance committee influence its ability to carefully review and analyze the budget. These factors also have an effect on public access to the process.

Alaska's appropriations committee structure is like that in many other states. Alaska has a House and a Senate Finance Committee. These committees handle both revenue and appropriations issues. In 39 other states, there are separate House and Senate committees; in 14 of these states the committees are combined appropriations-revenue committees. Like most other states, Alaska relies on its finance subcommittees to hold hearings on agency budgets and make recommendations on individual agency budgets. There are 23 states that write a single omnibus state budget bill; Alaska is one of these. In Alaska, all bills with fiscal impact are referred to the finance committees, as is true in about half the states.

Not everything about Alaska's finance committee structure and procedures is typical. A much larger portion of the legislature sits on the finance committees in Alaska than do in most states. In large part because the legislature is so small, almost one-third (7 members) of the Alaska Senate, and over one-fourth (11 members) of the House sit on Finance.. Having noted the large proportion of legislators serving on the finance committees, it is nonetheless true that in absolute numbers, the Alaska finance committees are small. Only five states have smaller finance committees than Alaska--Colorado, Delaware, Oregon, Wyoming, and Wisconsin--and Wisconsin is the only other state where the finance committee is responsible both for revenues and appropriations. What this means is that the legislators on finance in Alaska bear an especially heavy load.

The load on Senate Finance Committee members in Alaska is still heavier, for all Senate Finance Committee members also serve on other committees and indeed several even chair other committees. Again, because the Alaska Legislature is so small, the overlap in committee assignments is necessary.

The recommendations which follow are designed to aid the Alaska legislature in making the budget process more efficient and effective.

1. The Alaska Legislature should amend its rules to require joint hearings but not necessarily joint decisionmaking on all budget bills.

Discussion: When asked what recommendations they had for strengthening the legislative budget process in Alaska, those interviewed for this study most frequently mentioned joint hearings. There were several reasons for this. A number of people thought it was important to "streamline" the budget process. The easiest way to do this is to cut down the amount of time legislators spend listening to testimony on the budget bill. Members of the public and agency personnel complained that valuable time was taken up in making the same presentation twice. Since the subcommittees are so small and frequently there are only one or two members present at a subcommittee hearing, those interviewed thought it would be more efficient to have joint hearings, where three to five members would listen to testimony. Finally, several people thought it was important that the House and the Senate finance committees hear the same testimony, that in reviewing the budget they work from the same information base.

Hearings are held jointly by separate House and Senate appropriations committees in Georgia and New York. In Montana, the House and Senate subcommittees of appropriations hold joint hearings.

In order for the House and Senate finance subcommittees to hold joint hearings, careful coordination between the House and Senate calendars would be required. While this might be somewhat onerous, the legislature and the public would gain greatly. The House and Senate should consider setting aside specific times each week for joint hearings when either no other business would be calendared or other committees with overlapping finance subcommittee membership would not be scheduled.

2. Standing committee members who are not on Finance should be appointed to those subcommittees of Finance which consider budgets in the areas for which the standing committees are responsible.

Discussion: The small size of Alaska's finance committees puts an undue burden on each committee member. In the Senate, the seven-member Finance Committee has ten subcommittees, as does the eleven-member House. House and Senate finance committee members are being spread too thin. By inviting standing committee members to sit on the subcommittees of finance, the finance committees will benefit from the substantive expertise of their colleagues. Because standing committee members are familiar with agency programs, they can provide valuable assistance in questioning agency personnel in budget hearings and bringing information to the finance committees.

Standing committee members formally participate in relevant appropriations committee or subcommittee hearings in Idaho, Kentucky, Maine, Michigan and North Dakota.

An alternative to the one recommended here for improving coordination between the finance and substantive committees and reducing the finance committee members' workload is to adopt the Hawaii model. Under this approach, which represents a significant departure from current practice, the money committees set overall funding ceilings and let the subject matter committees specify budget detail on programs within their jurisdiction.

3. The number of subcommittees of finance should be reduced to around five.

Discussion: As the budget review process is currently organized in Alaska, only two or three legislators in each chamber are likely to have indepth knowledge of any one agency's budget. This is in large part because there are so many subcommittees. The large number of subcommittees also reduces the likelihood that more than one or two legislators will be at a hearing. Senate staff reported that frequently there is only one member at a hearing. The large number of subcommittees as compared to the size of the finance committees also all but guarantees that a freshman legislator will chair a subcommittee. The disadvantage of this arrangement is that a novice legislator will have to bear prime responsibility for holding hearings and making recommendations to the full committee on a budget which he or she has never seen before.

Alaska has more finance subcommittees than almost any other state. Most states have three to six subcommittees with an average of five members per subcommittee. For instance, Arizona uses four subcommittees with an average of four members on each subcommittee; Washington uses three subcommittees of Ways and Means in the House and four in the Senate with an average subcommittee size of four to eight members.

Wisconsin has five informal subcommittees of its Joint Committee on Finance. These are:

- Education
- Natural Resources and Public Debt
- Transportation, Justice and Commerce
- Health and Social Services
- Taxes, Shared Revenue and Property Tax Relief

In consolidating its 10 subcommittees, Alaska may wish to follow the Wisconsin model. Another way of organizing subcommittees is:

- Health and Rehabilitation Services
- Education
- State Affairs
- Community and Regional Affairs
- Revenue and Debt Policy

D. Fiscal Committee Staff

Background: Most legislatures rely heavily on staff for information, research, analyis, and recommendations. In order to play a central role in the oversight of the state budget, legislators need staff who are familar with finance issues, can read and analyze often confusing agency budgets, and are well-versed in the operation and functions of state agencies.

Traditionally, the Alaska legislature has relied on a highly professional, central fiscal staff for budget analyses and information. During the past year, as a result of the resignation of a number of analysts on the Legislative Finance Division (LFD) staff, legislators have relied much more heavily on their own personal staffs. The legislature has, however, hired a new LFD director and appears committed to continuing with a central budget staff.

Thirty-five states have joint, house-senate fiscal staffs. The average size of these staffs is 14 professionals. Typical responsibilities for legislative staff include preparing budget bill summaries, analyzing budget bills, summarizing data from executive agencies, writing fiscal notes, and preparing revenue estimates. In some states, legislative fiscal staff also formulate the legislative budget, prepare longer-range forecasts than the budget period, analyze federal policy, and review local government finance. Staff in 31 states make recommendations to the appropriations committees on agency budget requests.

1. The Alaska Legislature should make every attempt to restaff the Legislative Finance Division as quickly as possible with professionals who are experienced fiscal analysts.

Discussion: In order to successfully "compete" with the executive branch in the process of budget analysis and figure setting, the Alaska legislature needs a cadre of experienced fiscal analysts on whom it can rely for research and analysis. Several people, particularly agency personnel, were concerned that, because the legislature lacked a fully-staffed LFD and had to rely this year on personal staffs, there was a greatly increased likelihood of major errors in the budget bill. The absence of a central fiscal staff was sorely felt by a number of freshmen legislators interviewed for this study. They complained that they had no experienced budget staff to turn to for information about agency operations or budget issues. And executive agency staff complained that significant amounts of their time was being used in answering the hundreds of questions they were getting from legislators' personal staffs--questions which the former LFD staff could easily have answered.

Without a strong, ongoing fiscal staff, the legislature loses a large piece of its "institutional memory." A regular fiscal staff is needed to provide legislators with an historical perspective on the problems the legislature has had with particular budgets, the options it has considered and rejected, and the promises agencies have made to the legislature in previous years. With the virtual dissolution of the LFD over the past year, a number of people cited the loss of an experienced fiscal staff as a major problem.

Most state legislatures require fiscal staff to have a bachelor's degree and give strong preference in hiring to those with masters degrees. Virtually every state requires legislative fiscal staff to have related experience in finance, budgeting, public administration, statistics, accounting or economics. Legislatures usually hire analysts with expertise in a particular area and then assign them responsibility for agency budgets related to their area of expertise (e.g. those with a background in health economics are assigned the budgets of the department of health). The Alaska legislature should also staff the LFD with highly qualified and experienced, professional budget analysts.

2. In addition to the responsibilities which it traditionally has had, the Legislative Finance Division should be required to formally review and propose revisions in agency-prepared fiscal notes and proposed capital project appropriations. It should also be encouraged to make formal recommendations to the finance committees on agency operating and capital budgets.

Discussion: Currently executive agencies in Alaska bear the full responsibility for preparing fiscal notes on bills. As a bill with fiscal impact works its way through the legislative process, the appropriate executive agency makes revisions in the bill's fiscal note to reflect amendments in the bill. Sometimes finance committee members or other legislators will raise questions about the fiscal note and upon final passage of a particular bill, the legislature may choose to revise upward or downward the attached fiscal note.

The method now used for handling bills which require an appropriation does not involve any formal legislative analysis of their estimated fiscal impacts. Yet often these bills add up to millions of dollars each year. Today, legislative fiscal staffs in 35 states routinely prepare fiscal notes. The Alaska legislature should require its budget staff to review and propose as necessary revisions in the fiscal notes prepared by executive agencies.

Legislative review of fiscal notes is important not only in setting appropriations for new programs but also in making appropriations for capital projects. The absence of a procedure for critically reviewing estimated costs is particularly striking in the budgeting process for local capital projects. As things stand currently, the finance committees spend little time reviewing the governor's proposed capital projects and almost no time reviewing each of the projects proposed by individual legislators. As the constraints on Alaska's budget become more and more pronounced, it will be

increasingly important for the state to avoid all unnecessary expenditures. By having the LFD critically review all proposed capital projects and make recommendations to the finance committees on a reasonable appropriation for each capital project, the legislature will have the benefit of independent, objective project cost review and likely will save money.

E. Budget Information

Background: The availability, quality, and format of state budget information greatly affect both the legislature's and the public's ability to monitor and analyze state government expenditures. The legislature needs information which will aid it in establishing priorities, making appropriations, and assessing the performance of executive agencies. The public needs information which allows it to track budget decisions and assess the effectiveness of government.

Several important steps have been taken in recent years to improve budget information in Alaska. As noted in an earlier section, several departments have begun to prepare project budgets. Under project budgeting, agencies group and rank expenditures into definable projects that have a specific purpose and measurable outcomes. The legislature and the Office of Management and Budget have also begun discussions on ways to develop more compatible computer systems for budgeting purposes. And the legislature has become more insistent that agencies provide them with meaningful performance measures.

Each year, the Legislative Finance Division publishes a Summary of Appropriations. This excellent document includes a summary of appropriations by agency as well as copies and summaries of the following: general appropriations acts and veto messages, and attorney general letters relating thereto; special or new program appropriations; bond authorizations; supplemental appropriations; and other measures relating to appropriations. The LFD also annually publishes documents which detail the budget allocations to each agency and line item. These documents show, for each item: prior appropriations and exepnditures; the agency's request for this year; the Governor's recommended funding level; the House and Senate's recommended funding levels; and the actual appropriation.

Earlier sections of this report presented recommendations for improving capital and operating budget information. In this section, we offer recommendations for improving information about the budget process.

1. The Legislative Finance Division should write an appropriations report at the conclusion of each session which explains the actions of the legislature with respect to the budget.

Discussion: The Alaska legslature is currently all but buried in budget data. Each year the LFD and Office of Management and Budget produce bound

computer print-outs which detail agency expenditures, requests and appropriations. The problem with these reports is that they are difficult to read through and even harder to interpret. Both the legislature and the public would benefit from having a report which explains, in easy-to-understand English, what changes have been made in each program budget and why. This would allow people to easily track from year to year the changes in program budgets and capital expenditures.

A number of states produce appropriations reports. In Colorado, the report explains for each agency how the appropriation compares to the prior year's appropriation. Typical explanations include such things as, "this is a continuation of funding reflecting a 6 percent allowance for inflation," "the apparent decrease in this appropriation arises from the fact that funding for program X is now shown in another agency's budget," "due to an increased client population, this appropriation has been increased by 21 percent," or "the $150,000 decrease in this appropriaton is due to the elimination of 7 positions in the auditing section." New York's "Report of the Fiscal Committees on the Executive Budget" explains legislative actions on each agency budget request. The following are excerpts from New York's FY83 report:

- Physician Shortage Tuition Reimbursement Program: Funds are reduced by ($500,000) to reflect the elimination of funding for this new program.

- State Operations, Administration: Personal services are decreased ($40,000) to reflect savings resulting from the restructuring of this program and savings in temporary services.

- Family and Children Services, General Fund: The recommended $2,500,000 for preventive services is transferred to the Title XX appropriation.

Florida prepares an annual "Fiscal Analysis in Brief." This report includes the following information for each executive agency:

- Brief description of agency purpose and functions

- Total appropriations by source of funds

- Total number of positions authorized

- Major program changes a) to continue current programs and b) for improved and new programs

2. **The Alaska Legislature should produce and distribute a guide to the legislative budget process which describes when, where and who makes what budget decisions.**

3. **In election years, the Alaska Legislature should hold formal training sessions on the budget for freshmen legislators and new staff.**

Discussion: Budget documents prepared by the executive branch for the legislature and made available for public review include a wealth of information about program operations and budgets. Unfortunately, these documents are difficult for the uninitiated to use. A different but related problem is that new legislators and staff are unfamiliar with, and the public tends to be confused about, the budget process. Few legislators could explain to the NCSL staff how the capital budget was put together. At least three legislative staff people admitted they had no idea how the legislature decided on fiscal notes. And few people could decode all the information included in the legislature's own appropriations books. Clearly, something more than the LFD's eight-page summary of the budget process is needed.

A guide to the legislative decision making process would help the public follow the process and aid legislators and legislative staff who are unfamiliar with it. The guide should explain exactly how the capital and operating budgets are put together. The role and functions of the subcommittees should be made clear. Opportunities for changing the budget and procedures for doing so at each stage in the process should be detailed. General information about the sources and uses of state funds should be appended to the guide and updated regularly.

In 1982, the Governmental Research Institute, a Columbus, Ohio private nonprofit firm, produced "Citizens Guides to Ohio Finances." Included in this handbook are the following guides:

1. Ohio Financial Trends Summary
2. Ohio's Budget Process
3. Revenues of Ohio and Comparison States
4. Expenditures of Ohio and Comparison States
5. Ohio Local and State Revenues
6. Ohio Taxes and Other Revenues
7. Ohio Local and State Expenditures
8. Ohio Operating and Capital Expenditures
9. Ohio Revenue Estimates
10. Ohio Expenditure Projections
11. Ohio Taxpayers Manual
12. Evaluation of Ohio Tax Alternatives

Maryland has a guide entitled, "The Legislator and the Budgetary Process and Program Evaluation." Examples of items discussed in the guide are: agency budget requests, budget alternatives, explanation of state budget code classification numbers, state budget books, examples of data presented in state budget book, the budget bill, legislative budget hearings, committee/subcommittee hearings, first house action, budget supplements, budget amendments, the capital budget, the relationship of capital budget to operating budget, state debt and debt affordability, and program evaluation in Maryland. Alabama, Maine and several other states produce succinct guides on the budget process, state tax and expenditure programs, and historic trends in spending, tax and debt.

The legislature should also institute a formal training session for new legislators and their staff. The session should be used to explain how the executive puts the budget together, how to read agency budget requests, program versus project budgeting, the legislative budget process, and how to read legislative budget documents. Legislators should also be told of the types and sources of information available to them.

4. The Alaska Legislature should cease the practice of allowing appropriations to be included in the front section of the appropriations bill. Funds for operating purposes should be included in the operating budget portion of the bill and appropriations for capital projects should be listed in the capital budget portion of the same bill.

Discussion: Confusion about how much money is being appropriated for what purposes is unnecessarily compounded as the number of appropriations vehicles increases. Several people noted that because the legislature has no clear guidelines for what appropriations should appear where, it is possible for the same appropriation to show up three or four times: in the operating budget, the capital budget, the front section of the bill or in a separate bill. To reduce the likelihood of this happening, we recommended in an earlier section that the legislature settle on and abide by a definition of "capital item" that would be used to determine what should and should not be in the capital budget. It is also recommended that the legislature reserve the front section of the appropriation bill for procedural matters and not allow any appropriations to be included there.

PART II -- NOTES

1. Shick, Allen. Zero Base '80, The Urban Institute, December 1979, p. 3.

2. Gold, Steven D. "State-Local Fiscal Relations in the Early 1980s," National Conference of State Legislatures, May 1983, Table 6, "Percentage of State-Local General Expenditure, From Own Revenue Sources, Total and for Selected Functions, By State, 1981," p. 136 (unpublished).

3. For more information about capital procedures in other states, see: Board of Directors, Denver Chamber of Commerce. Capital Planning for the State of Colorado, Chapter III.

4. New Jersey Commission on Capital Budgeting. State of New Jersey Annual Capital Investment Improvement Plan, April 1981, p. 2.

5. Sheridan, Richard G. State Budgeting in Ohio, Ohio Legislative Budget Office, 1978.

PART III

CONFLICT OF INTEREST LEGISLATION

The NCSL was asked by the Alaska Legislature to assist them in developing conflict of interest legislation in response to an Attorney General's opinion outlining basic common law standards governing ethical practices for persons in the public trust. The Attorney General has promised to begin enforcing the common law regarding conflict of interest unless the legislature acts quickly to remedy the inadequacies in the existing state law. In this respect, NCSL's role in offering assistance with the conflict of interest legislation is different from the charge it has been given in reviewing the legislature's rules or its budget process. With regard to the latter two aspects of NCSL's role in the Alaska project, recommendations are to be made for strengthening and streamlining the legislative operations after a review of the legislative rules and the legislative budget process.

In March, the NCSL staff prepared a memorandum addressing the legal issues raised in the Attorney General's opinion as well as an analysis of existing state law, two legislative proposals, and conflict of interest legislation in the other 49 states. These materials were delivered to the members of the Special Joint Committee on Legislative Reform at a presentation by NCSL on March 21. Several recommendations were given and certain policy decisions to be made by the committee were identified. These policy decisions were the focus of a working session of legislators, legislative staff, and NCSL staff held on March 22. The NCSL staff continued to consult with legislators and their staff about specific provisions in the proposals which were introduced throughout the process.

In this way, the NCSL staff attempted to facilitate the process of drafting appropriate conflict of interest legislation during the 1983 legislative session in order to establish a body of statutory law to supercede the likely enforcement of the common law by the Attorney General. Consequently, the final report on conflict of interest legislation does not include recommendations or findings. Instead, this part of the final report summarizes the process by which NCSL delivered on-going assistance to the Alaska Legislature in formulating the conflict of interest legislation which is currently pending final action by the legislature.

To assist the Special Joint Committee on Legislative Reform in its deliberations on the conflict of interest issue, the NCSL staff has completed the following tasks:

- a detailed search and analysis of statutory provisions dealing with conflict of interest and related legislative ethics issues in the other 49 states;
- a review and analysis of legislative rules provisions dealing with voting procedures and conflict of interest in the other 49 state legislatures;
- in-depth telephone interviews with legislative staff and ethics authorities in four states where similar legislative characteristics or ethics problems have been addressed;

- analyses of current Alaska ethics statutes and five conflict of interest proposals introduced to the Alaska Legislature;
- on-site interviews with legislators, legislative staff and others;
- presentations before the Special Joint Committee on Legislative Reform on fundamental ethics questions; and
- participation in a decision making workshop designed to facilitate the committee's consideration of ethics legislation.

Attached are the background documents, bill analyses, research memoranda, and the preliminary report prepared by the NCSL staff for the committee.

As of the time of writing this final report, no conflict of interest legislation has been adopted by the legislature. However, the various legislative proposals which have been introduced this legislative session conform to the major policy decisions identified by the committee. In terms of these major policy decisions, the NCSL staff offers the following summary of the process of developing an appropriate conflict of interest law for Alaska.

Scope of Coverage

The legislature has considered proposals which pertain only to legislators and their staff and proposals which cover all public employees. One piece of legislation which has progressed farther in the process than the others proposes coverage only for legislators and their employees.

Discussion: Among all public employees, legislators have the most difficult task in fulfilling their responsibilities to the public trust. Certainly, a comprehensive conflict of interest law to encompass all public employees is a desirable goal for all states. However, given the unique characteristics of a citizen legislature, a bill pertaining solely to legislators and legislative staff persons is probably more realistic and feasible at this time. Thirty-three states have drafted specific legislation pertaining only to legislators and their staff. Fourteen states have implemented conflict of interest legislation encompassing all public employees. Due to the complexity of the issue of legislative ethics, the more simply a bill can be drafted to identify the essential components of conflict of interest legislation, the more quickly law can be adopted on this issue to forestall enforcement under the common law as prescribed by the Attorney General. In the absence of consensus on the scope of conflict of interest legislation the majority opinion in Alaska seems to hold that to draft legislation governing legislators and their staff is a positive first step.

Control Mechanism/Policing Body

A decision with regard to the type of control mechanism to incorporate in the conflict of interest legislation was one of the most difficult to make. The prevailing mood of legislators, staff and members of the public interviewed was to have an internal committee acting as the policing agent for legislative ethics. Upon reflection and thorough debate, the more recent proposals have identified an external control mechanism as the appropriate body to police the conflict of interest law. The most promising proposal

seems to establish an independent legislative ethics commission with appointed members of the legislature included on the body.

Discussion: In reviewing other state experiences, eight states have standing legislative ethics committees, 28 states have external authorities responsible for enforcing conflict of interest statutes, while no state has established a joint legislative ethics committee with oversight of conflict of interest shared by members of both houses of the legislature. Once again, the control authority must be fashioned to fit the needs of a particular state's situation. In Alaska at the present time, public accountability is crucial to the ultimate succes of the conflict of interest legislation. Although the electoral process, partisan legislative politics, and the checks and balances offered by the two other branches of government act to control the ethical processes of the legislature, public perception of a highly objective, critical and just administration of the state's conflict of interest law is best served through an agent which has distance and independence from the body it is charged to police. Practical difficulties are also averted with respect to majority, minority and factional representation on a legislative committee appointed from a relative small pool of eligible candidates.

Confidentiality of the preliminary stages in an investigation or advisory process is an appropriate and desirable safeguard to build into any conflict of interest legislation. In Alaska, general consensus has been achieved that the proceedings of any ethics body should be confidential until such time as findings and rulings are concluded and published. Once again, a delicate balance exists between the citizenry's right to know what transpires in the public domain and an individual's right to privacy. Many persons interviewed expressed concern that the mere allegation of a conflict of interest offense was enough to bring a conviction in the mind of the public. Some states have assessed financial penalties to those persons found negligent and malicious in filing false conflict of interest charges in order to reimburse public officials for the expense of defending themselves in investigations and in the courts.

Conflict of Interest

The background information prepared by the NCSL discusses at length the arguments set forth in the Attorney General's opinion on the political, constitutional and statutory foundation establishing public office as a public trust. It is uncontested that one of the basic tenets of our republican form of government is the exercise of independent judgment for the benefit of the public's welfare. Not only is it essential to protect the public trust, but the success of the electoral system depends substantially on the confidence of the public in their system of government and their willingness to participate in the political process. Appearances of impropriety and conflicts of interest in the discharge of official duties lead to general political apathy which ultimately threatens the vitality of the polity.

Given Alaska's sparse population, relative wealth, the active involvement of most of the population in Alaskan business concerns, and the desire to maintain the Alaska Legislature as a citizen legislature, early disclosure, rather than express prohibition of legislator involvement in the financial interests of the state, is perceived by a majority of individuals as the most satisfactory solution to the conflict of interest problem. Rather than to proscribe activity for each instance in which a conflict of interest may

occur, the more rational approach may be to establish guidelines for the general conduct of legislative business and to ensure that all such activity is conducted in the open with high visibility for the edification of the public. Everyone consulted on the issue seemed to concur that early and full disclosure should be the basis of conflict of interest legislation in Alaska. The legislative proposals on the topic, especially the latter ones, appear to subscribe to this principle.

Discussion: In establishing guidelines for legislative ethics, two fundamental principles rise above the rest: public office should not be used for personal gain, and office holders should not conduct outside business which conflicts with the conscientious performance of duties or the independent exercise of judgment. Forty states have statutory restrictions on the use of public office to obtain personal benefit; giving benefits to influence public officials or public employees is prohibited in 33 of the states; use of confidential information for personal benefit is proscribed in 22 of the states; and post-governmental employment, "revolving door" statutes, are invoked in 22 states. Twenty-three states have statutes regulating the receipt of fees and honoraria for public speaking, and 28 states restrict public officials from representing clients before public agencies.

Alaska represents a singular example among the states with respect to the complicated practical applications of any restrictions on citizen legislator activity in the private sector or for the possibility of conflict of interest arising in the course of legislative duties. As it is almost impossible for a legislator in Alaska to abstain from all possible conflicts of interest due to state contracting practices and the nature of state loan programs, early and complete disclosure seems a workable and satisfactory method of alerting colleagues and the public alike to possible conflicts.

One other matter of particular import in Alaska is the legislative rules which prohibit members from voting on matters in which they have a direct personal or pecuniary interest. Currently, the most prevalent practice in the Alaska Legislature is to allow the member to state the reasons for not voting and then, without debate, to have the rest of the membership vote to excuse the member. Alaska's rules require unanimous consent of the body to excuse a member from voting; and consequently, in giving consideration to the necessity of maintaining a quorum, few legislators are ever excused from voting for reasons of conflict of interest. It is important to consider that, in a small legislative body, abstaining from a vote may contribute to a potential conflict of interest as much as voting on the issue in question. Therefore, the most judicious method to resolve these situations is probably through early and full disclosure of the potential conflict.

Nevada has an unique statutory provision pertaining to quorums. Nevada legislators are prohibited from voting upon any matter in which they have a private or personal interest. However, if a member of the legislative branch declares a conflict and abstains from legislative action and a quorum problem subsequently arises, the statutes allow the body to reduce the quorum requirement by the vote of those abstaining. This would be a viable alternative to resolving the problem of balancing quorum considerations with conflict of interest concerns, except for constitutionally required quorums and majority decisions.

Disclosure

Having established the necessity of full and complete disclosure in any conflict of interest legislation, a discussion of what this implies is appropriate. Current Alaska law requires the disclosure of income over a minimum amount, business interests and ownership, real property, trusts, loans, and contracts with the state. Considering the problems to be corrected and the needs of the state, the most recent legislative proposal requires disclosure of all state loans, state contracts let by competitive bidding over a certain minimum amount, any "formation or maintenance of a close economic association involving a substantial financial matter" between public officials as defined by statute, and gifts. An added feature of the proposal is the definition of what is not a conflict of interest subject to the requirements of full and complete disclosure.

Discussion: Thirty-four states require disclosure of a public official's source of income, and most states require disclosure of real estate interests, investments, business directorships, and creditor indebtedness. Only three states have no disclosure requirements for public officials. In Alaska, consensus is apparent on the issue of early disclosure of potential conflicts of interest and the necessity of reporting potential conflicts as soon as a legislator is aware that a conflict may exist.

State Loans

With regard to the eligibility of legislators for state loans, the issue is resolved in legislative proposals in two parts. First, the committee and persons interviewed were in general agreement that legislators should be eligible for non-discretionary state loans with fixed eligibility standards and minimal discretion used in determining qualifying recipients. Second, application for discretionary loans would be carefully reviewed by the ethics agency to determine any potential conflict of interest and ultimate qualification for the loan. This second part has been controversial. The need to make the administrative procedures for these discretionary loans as stringent as possible to obviate any potential conflict of interest problems has been suggested. Legislative proposals have been developed vesting the state agencies with the responsibility for adopting regulations and separate procedures for granting and reviewing loans for legislators and their staff.

Discussion: No other state can offer the benefit of its experience to Alaska in resolving the problem of the eligibility of legislators or their staff for state loans. The relevant factors in formulating appropriate legislation in this regard include the size, availability and discretionary aspect of the loan in question. There seems to be a clear understanding on the part of the legislature and persons interviewed in the course of this project that loans with standard criteria as to qualification, amount, security and repayment, and general availability are acceptable for legislators and their staff. On the other hand, large commercial loans involving discretion in determining credit-worthiness, terms and administration, and which are of limited availability, are more problematic. For instance, it is not assumed that the legislator or staff person would intentionally attempt to use the influence of their position to receive the benefit of a state discretionary loan, but perhaps the very fact that the person occupies a position of power is reason in the public's mind to believe that some undue influence is felt by the person reviewing the qualifications of the loan application. The legislator or staff may never have to say a word in order for there to be some unspoken expectation influencing an application for benefit. At a minimum, a conflict of interest statute dealing with state

loans should require full and early public disclosure of loans and loan applications by public officials.

State Contracts

General consensus exists among legislators and others interviewed that legislators should be eligible for contracts with the state under competitive bidding procedures. Current Alaska law does not prohibit public officials from contracting with the state in business arrangements. The Attorney General's opinion found that the common law prohibits such contracts with the exception of sole-source contracts in certain instances. Discussion on the issue of allowing legislators and their staff to contract with the state included discussions on "de minimus" contracts, where the contract is small in value or the vested interest is a fraction of the total amount, and competitive contracting. Although competitive bidding procedures were endorsed by most of the individuals interviewed as an acceptable measure for controlling contracting with the state, that was not considered free of problems. The temptation to use confidential information and the use of improper influence in awarding and administering contracts is always a potential problem unless contracts with the state are prohibited.

Proposed legislation provides for competitive bidding in letting contracts with the state. A de minimus value under which no competitive bidding is required is established at $1,000. An important component of the proposals are definitions of "direct or indirect financial" benefits and interests.

Discussion: Competitive bidding procedures in awarding state contracts are established in 14 states. Thirty-one states have specific restrictions which pertain to public leases or contracts in which public officials are a party. Oftentimes, a minimum amount is established, either in dollar value or by percentage, under which competitive bidding is not required. As a minimum standard, the NCSL suggests that early and full disclosure be required of legislator bids on contracts and contract awards to lawmakers.

In an ancillary issue to state contracts, the appearances of legislators before state agencies was discussed. Most persons consulted agreed that some restrictions would be appropriate for legislators representing constituents, themselves, or other clients before state agencies for compensation. While it is a traditional legislative responsibility to intercede with state bureaucracies on behalf of constituents, agreement was generally reached that this should be distinguished from appearing as a principal in a court of law or appearing on behalf of a paying client. One legislative proposal would prohibit public officials from assisting for compensation other persons who are seeking to obtain contracts or claims.

The most recent proposal does proscribe a legislator or legislative employee from representing another person "for compensation before an agency, board, or commission of the state." This proposal is specific in allowing a member of the legislature to represent a client in a court of law or in a matter pending at the time he or she assumed office. Most proposals and expositions on the subject agree that a conflict of interest cannot be avoided by waiving compensation for representing another person under circumstances when payment would ordinarily be expected.

Nineteen states require disclosure of compensation received by public officials who represent clients or constituents before state agencies, and 28 states restrict appearances by public officials. Disclosure, once again, is imperative, and public perceptions of undue influence should not be underestimated when formulating legislation with stringent safeguards against the appearance of wrongdoing.

Action on a Conflict of Interest

Basically, a legislator faced with a potential conflict of interest has three choices: resign, divest himself or herself of the interest, or disclose the conflict to the appropriate authorities. Seldom will a legislator or staff choose to resign, and divestiture may be entertained as a solution in limited circumstances. As we have noted in arguments already presented, full disclosure and a sworn statement that independent judgment will be exercised is perhaps the most workable solution to be undertaken.

Current Alaska law provides that a violation of a conflict of interest may be punishable by a fine and/or imprisonment. Under the most viable legislative proposal tendered this session, when a majority of the commission members find an individual has violated a provision of the conflict of interest statutes, the matter is to be referred to the presiding officer of the appropriate house of the legislature for final action. The commission may, in addition, recommend the imposition of civil and monetary penalties, divestment of a particular interest, repayment of any benefit accrued as a result of the conflict of interest, censure, removal from legislative responsibilities, or expulsion. It is in the discretion of the legislative body considering the matter what course of action they pursue in imposing appropriate sanctions for the proven conflict.

Discussion: A great deal of latitude exists in the method states use to sanction conflict of interest violations and the options they give public officials in resolving potential problems. Information is not available for all states, but Maryland does provide that the legislature may, by resolution, require compliance, issue a reprimand, or censure the guilty member. Wisconsin statutes allow the ethics board to make a recommendation to the district attorney in whose jurisdiction a violation has occurred in order that criminal prosecution can be instituted. Maine is unique in having a statutory penalty for anyone convicted of falsely filing a charge of conflict of interest with the ethics commission. While the needs of the state must be considered in developing the appropriate sanctions for conflict of interest legislation, the proposals should be formulated in the whole with attention to how particular provisions of the law are to be enforced. The credibility of the final product will ultimately be judged on what standards of legislative conduct can be enforced and by the manner in which the legislation is implemented and accepted by the legislature.

Conclusion

At the time of writing this report, the legislature has not adopted final legislation on conflict of interest. Thoughtful discussion and thorough debate has definitely given the appropriate direction and laid the important foundation for laws which will supercede the common law as outlined by the

state's Attorney General. The NCSL staff paid careful attention to providing the Special Joint Committee on Legislative Reform with background information, suggestions, and critical analysis of proposals which have been developed in this process. The most crucial policy decisions have been reviewed and selected for the unique problems experienced by Alaska. Developing conflict of interest legislation while trying to balance the requirements of credibility imposed by the public and the press with the need to maintain the citizen legislature as an attractive commitment for enterprising and creative individuals from the community is a most difficult task requiring perseverance and tenacity. As new situations evolve with the development of the state, it will undoubtedly have new requirements for and impose new standards on its conflict of interest legislation.

Three courses of action were suggested at the inception of this project to develop conflict of interest legislation. One option open to the legislature was to enact a legislative ethics bill for legislators and their staff during the 1983 session. This was the option adopted. Another possible plan of action was to proceed on the development of a comprehensive bill for all public employees including the legislature. A third option was to defer action until a future legislative session in order to allow the opportunity for a more extensive study of conflict of interest legislation in the context of the Alaska experience. This last option could include a further investigation of laws regulating lobbyists, open meetings and campaign financing. The development of adequate and appropriate conflict of interest legislation has been a difficult process in every state. Defining conflict of interest legislation to meet the unique needs of Alaska may require more than one legislative session. However, the NCSL staff concludes that the basic policy decisions have been made providing a strong foundation upon which the process will successfully evolve.

SUMMARY OF THE RECOMMENDATIONS

Part I: RULES AND PROCEDURES

A. Session Length

1. The Alaska Legislature should establish a series of deadlines for scheduling session work and controlling the length of the session. The legislature should consider, at a minimum, scheduling session work (whether by rules or leadership direction) to cover the following:

- Bill draft requests
- Introduction of bills in house of origin
- Committee action for house of origin bills
- Final floor action in house of origin
- Committee action for bills from opposite house
- Final floor action for bills from the opposite house
- Conference committee reports.

2. The Alaska Legislature should adopt a session scheduling system which emphasizes committee work early in the session and floor activity in the later weeks. The legislature should consider removing the limit of ten prefiled bills per member and encourage members to prefile the majority of bills during the interim before the start of the session. Leadership should be able to assign bills to committees during the interim.

B. Committee Process

1. The Alaska Legislature should establish a training program for committee chairmen and staff to assist them in learning their jobs and to strengthen committee performance.

2. The Alaska Legislature should maintain the five-day posting requirement for committee meetings and apply it to all meetings of committees. The provision that the notice be given to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday should be eliminated.

C. Interim Period

1. The Alaska Legislature should encourage standing committees to continue their work in the interim and discontinue the practice of creating interim committees. The standing committees should work on issues raised during the session, prefiled legislation, and topics identified by leadership. Leadership should consider establishing "mini-session" schedule for

committee meetings during the interim to minimize time for members and to maximize citizen participation.

2. The leadership of the Alaska Legislature should work with the standing committee chairmen to determine interim work assignments and establish specific reporting requirements.

3. The leadership of the Alaska Legislature should provide for the continuity of committee staff from the session to the interim

D. Staff

1. The Alaska Legislature should develop a systematic way of hiring and dealing with equities in qualifications and pay for legislative staff.

2. The Alaska Legislature should standardize and clearly define staff benefit policies between the two houses.

3. The Alaska Legislature should develop an administrative manual for staff which covers such topics as compensation, benefits and other personnel procedures pertinent to the Alaska Legislature.

4. The Alaska Legislature should clarify the definition of "session" and "interim" employment, including the status of interim employees. Full-time employees should be considered and treated as such.

Part II: THE BUDGET PROCESS

A. The Operating Budget

1. The Alaska Legislature should require all agencies to submit modified zero-based budgets.

2. Before each budget hearing, the finance committees and/or appropriate finance subcommittees, should provide agency budget officials with the questions, issues or concerns they have about the budget which is to be reviewed at the hearing.

3. The Alaska Legislature should require the executive branch to submit a formal, detailed justification for each of its supplemental budget requests.

B. The Capital Budget

1. The capital budget for local projects should be separated from the state capital budget and included either in a separate bill or in a separate section of the state appropriations bill. A specific deadline should be established for submission of the local capital budget.

2. The Alaska Legislature should develop a standard form for capital projects which describes the purpose of and need for each project.

A completed form should accompany each proposed capital project and be available for public inspection.

3. Legislative Finance Division staff or consultants should be responsible for reviewing all capital project proposals to see if the fiscal notes included are reasonable.

4. A minimum of four joint hearings of the House and Senate finance committees should be held on the state and local capital budgets, preferably in different parts of the state.

5. The Alaska Legislature and governor should work together to develop goals and criteria for ranking capital projects. Using these goals and criteria, the state should write and annually update a five-year, long-term capital investment plan.

6. The Alaska Legislature and the governor should agree on the definition of a "capital item." Only those items which meet this definition should be included in the capital budget.

7. Those entities responsible for spending capital appropriations should be required to submit annually to the legislature a status report on each project which has been funded by the legislature.

8. The Alaska House and Senate should form a joint subcommittee on debt policy of the finance committees.

C. Finance Committee Structure and Procedures

1. The Alaska Legislature should make every attempt to restaff the Legislative Finance Division as quickly as possible with professionals who are experienced fiscal analysts.

2. In addition to the responsibilities which it traditionally has had, the Legislative Finance Division should be required to formally reviw and propose revisions in agency-prepared fiscal notes and proposed capital project appropriations. It should also be encouraged to make formal recommendations to the finance committees on agency operating and capital budgets.

D. Budget Information

1. The Legislative Finance Division should write an appropriations report at the conclusion of each session which explains the actions of the legislature with respect to the budget.

2. The Alaska Legislature should produce and distribute a guide to the legislative budget process which describes when, where and who makes what budget decisions.

3. In election years, the Alaska Legislature should hold formal training sessions on the budget for freshmen legislators and new staff.

4. The Alaska Legislature should cease the practice of allowing appropriations to be included in the front section of the appropriations bill. Funds for operating purposes should be included in the operating budget portion of the bill and appropriations for capital projects should be listed in the capital budget portion of the same bill.

National Conference of State Legislatures

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President William F. Passannante Speaker Pro Tem New York State Assembly

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TO: Special Joint Committee on Legislative Reform

FROM: The National Conference of State Legislatures

RE: Preliminary Report on Work on Conflict of Interest Legislation

DATE: April 1, 1983

As required under the contractual agreement between the Alaska Legislature and the National Conference of State Legislatures, this report is submitted to the Joint Special Committee on Legislative Reform and will recap the work and findings to date in the NCSL's work on the issue of conflict of interest.

SUMMARY OF ACTIVITIES TO DATE

Following an initial on-site visit by NCSL staff to Juneau to determine the priorities and parameters of the overall project, the NCSL staff has devoted most of its efforts to the immediate concern over the development of conflict of interest legislation during the 1983 legislative session. To assist the Joint Special Committee on Legislative Reform in its deliberations on this issue, the NCSL staff has completed the following tasks:

- o a detailed search and analysis of statutory provisions dealing with conflict of interest and related legislative ethics issues in the other 49 states;
- o a review and analysis of legislative rules provisions dealing with voting procedures and conflict of interest in the other 49 state legislatures;
- o in-depth telephone interviews with legislative staff nd ethics authorities in four states where similar legislative characteristics or ethics problems have been addressed;
- o analyses of current Alaska ethics statutes and four legislative proposals currently pending before the Alaska Legislature;
- o on-site interviews with legislators, legislative staff and others;
- o presentations before the Joint Special Committee on Legislative Reform on fundamental ethics questions; and
- o participation in a decision-making workshop designed to facilitate the committee's consideration of ethics legislation.

Attached are the background documents, bill analyses and research memoranda prepared by the NCSL staff for the committee.

DISCUSSION OF THE PROJECT TO DATE

Ethics issues are complex, requiring great balance between personal liberties, public service obligations and institutional legislative needs. The job of drafting appropriate legislation on this issue currently is complicated in Alaska by pressures of time in the current legislative session.

The NCSL staff has attempted to provide the Joint Special Committee on Legislative Reform with information which will further the understanding and discussion of legislative ethics issues. In addition, the NCSL staff has tried to help facilitate the process by identifying the major policy decisions which must be addressed in legislation. (The attached workshop summary from March 22,1983, reflects the outline of decisions facing the committee.) In terms of these major policy decisions, the NCSL staff offers the following comments and findings on the process of developing a legislative ethics bill thus far.

Scope of Coverage

The legislature has before it proposals which would deal with only legislators and ones which would cover all public officials. There is no consensus on this issue.

Comment: Given th constraints of the legislative session, a bill covering only legislators and legislative staff persons is probably more realistic and feasible at this time. Conflict of interest statutes covering only legislators and legislative staff persons are in force in 33 states, and the separation of powers doctrine makes it appropriate for the legislature to deal with ethics issues for itself, independent of other government officials.

Control Mechanism/Policing Body

1. There seems to be a consensus that a legislative committee with public citizen members should be established to oversee and enforce provisions of a legislative conflict of interest or ethics bill.

Comment: The separation of powers doctrine and constitutional bases give credence to the concept of an internal legislative ethics committee. At the same time, the involvement of independent citizen members mitigates some of the difficult dynamics which legislative members face when judging and penalizing their peers. A selection process controlled by the presiding legislative officers is appropriate with safeguards for minority representation. To insure a balance of independence, citizen members probably should be appointed by some independent process, e.g., selection by the state judiciary or nominees by the state judiciary or the governor and selection by lottery.

2. The staffing of an ethics committee must be adequate to the powers assigned to do it.

Comment: If the powers of an ethics committee are primarily advisory and the principal enforcement strategy is for full and early disclosure, a limited legal and administrative staff may be adequate to serve the

committee. If, however, an ethics committee is vested with investigatory responsibilities, then a more substantial staff is required.

3. There seems to be a consensus that the proceedings of an ethics committee should be confidential until such time as findings and rulings are concluded and published.

Comment: Confidentiality in the preliminary stages of an investigation and in an advisory process is appropriate.

Conflict of Interest

1. There seems to be a consensus that early disclosure of potential conflicts of interest is essential, and that a legislator is obliged to report a potential conflict as soon as he or she is aware of such a conflict.

Comment: This approach is fundamental and appropriate.

2. A legislator must represent constituents and vote on matters before the legislative body.

Comment: Most state legislative rules prohibit members from voting on matters in which they have a direct personal or pecuniary interest, and the most common practice is to allow the member to state the reasons for not voting and then, without debate, to have the rest of the membership vote by simple majority to excuse the member. It is valid to balance quorum considerations with the process of minimizing potential conflicts of interests, however, Alaska's rules which require unanimous consent of the body to excuse a member from voting are among the most stringent. Ony three other legislative bodies require unanimous consent to excuse a member. In a small legislative body, abstaining from a vote and legislative action may contribute to the conflict of interest. Consequently, the most equitable method to resolve these situations is by early and full disclosure of the potential conflict. Particularly in light of the unanimous consent provision, the NCSL staff suggests that disclosure include a sworn statement that independent judgment will be exercised.

Loans

1. Legislators should be eligible for non-discretionary state loans.

Comment: This is appropriate and reflects a consensus among the legislators.

2. There is no consensus on the question of whether state legislators should be eligible for discretionary loans.

Comment: Alaska represents a unique situation for which there is no parallel in other states. The dominant role of the state in the commercial loan market is not evident in other jurisdictions. At a minimum, a conflict of interest statute dealing with state loans should require full and early public disclosure of loans and loan applications by public officials.

Contracts

1. There seems to be consensus that legislators should be eligible for contracts with the state under competitive bidding procedures.

Comment: In 31 states, public official face some restrictions on entering into public leases or contracts. Fourteen states allow public officials to enter into contracts through a competitive bidding process. Again, as a minimum standard, the NCSL suggests that early and full disclosure be required of legislator bids on contracts and contract awards to lawmakers.

Appearances

1. There seems to be consensus that some restrictions would be appropriate on legislators representing constituents or themselves for compensation before state agencies.

Comment: Nineteen states require disclosure of compensation received by public officials who represent clients or constituents before state agencies, and 28 states restrict appearances by public officials. Disclosure is imperative in these instances, and public perceptions of undue influence may require more stringent safeguards.

CONCLUSION

To date, no specific piece of legislation before the legislature reflects a consensus view on conflict of interest. Opinions remain divided on major policy questions. Fundamental decisions must be addressed by the Joint Special Committee on Legislative Reform and by the legislature as a whole on this question. Given the time constraints of the legislative session, resolution at this time may not be possible, however, inaction on the part of the legislature must be balanced with public perceptions of the immediacy of this question.

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MEMORANDUM

TO: Alaska Legislature--Special Joint Committee on Legislative Reform

FROM: Ken Wonstolen, Esq., consultant to NCSL
Candace Romig, Staff Associate, NCSL

DATE: March 15, 1983

RE: Legislative Ethics

This memorandum is organized as follows:

I. Background
--NCSL assistance
--purpose of memo

II. Introduction and Overview
--public trust doctrine
--appearance of impropriety
--practical code of ethics
• public pressure/Attorney General's Opinion
• policy rationale
--Alaska situation

III. Control Mechanisms
--elective process
--public exposure
--partisanship
--executive branch
--judiciary
--legislative commission
• intramural
• independent

IV. Selected Issues
--personal gain
--conflict of interest
• nature of duty
• disclosure and abstinence
• disclosure and excuse
--voting/vested interest
--state loans

--state contracts
--agency appearances

V. Legislative Guidance
--courses of action
- legislative ethics bill
- comprehensive legislation
- interim study

--policy questions

I. Background

NCSL has been commissioned to assist the Committee in its deliberations. Three general areas have been identified for study: Legislative rules and procedures; the legislative budget process; and legislative ethics. Ethics have been identified as the area of most immediate and pressing concern, and this memo is part of NCSL's response. The purpose of this memo is to stimulate the thinking of interested legislators and staff and provide a vehicle for discussion by and guidance from the committee. NCSL is also preparing a detailed analysis that reviews current legislative initiatives on ethics vis-a-vis other state and model codes. In addition, NCSL staff will visit Alaska during the week of March 21 to communicate directly with the Committee, as well as other interested legislators and staff. The Committee's discussion of this memorandum on March 21 and a subsequent working session with Alaska legislative staff on March 22 are designed to result in a specific ethics proposal.

II. Introduction and Overview

Both the American political tradition and Alaska's statutes hold that "public office is a public trust" (see footnote #1) in which independent judgement must be exercised to further the public welfare. The United States Supreme Court has recognized as fundamental the right to be governed by representatives whose judgements are untrammelled by considerations of personal gain. (See footnote #2)

This trust responsibility is imposed on legislators not just to safeguard the public welfare, but also to maintain public confidence in the system of government. Instances of corruption, influence peddling and personal gain-seeking undermine public faith in institutions. This means that even the appearance of impropriety and the "danger of conflict of interest" (see footnote #3) must be avoided. Legislators are held to a high standard, commensurate with their positions of influence and responsibility.

Recognizing these basic tenets, the next step is to devise and implement a practical code of ethics to govern day-to-day legislative affairs. This is a difficult and complex task. The goal should be to develop a set of guiding principles, supplemented by specific rules for recurring, clearly-defined situations. This must be coupled with a process whereby these principles and rules may be extended to novel situations. Finally, provision must be made for enforcement.

The Alaska legislature has engaged this challenge. Cases of actual or perceived misconduct have led to public pressure for reform. The

Attorney General has issued an opinion indicating the applicability of common law standards absent statutory controls. Since the common law is not well settled on the majority of ethical issues, confusion and uncertainty persist. The common law does have a role to play in guiding the practical application of statutory ethics, however. Almost all statutes acquire a judicial gloss over time, whereby the common law is created or supplemented. The advisory opinions of an enforcement body would be a valuable "common law" adjunct to an ethical statute.

Nevertheless, legislative enactment of an ethical code is a worthy goal. It would provide more definitive guidance than the common law. Public desires for reform would be accommodated. Most importantly, a process would be established for applying, extending and enforcing ethical provisions.

Alaska's special situation must be kept in mind in developing such legislation. That is, the state has a relatively small population and pool of potential legislators. The legislature itself is a compact body. Further, members are part-time legislators, retaining their varied outside business interests. Finally, state government is heavily involved in Alaska's economy. These factors call for sensitivity to the possibility of discouraging the pursuit of political office by capable, commercially active citizens.

III. Control Mechanisms

The fundamental control over legislative conduct is, of course, the elective process. Ironically, the elective process may also generate those personal obligations which tend to create potential conflicts. In addition, state legislative elections are more likely to turn on local issues or party affiliation than on subtle questions of ethics. Therefore, the elective process is an unreliable and unpredictable control mechanism.

Associated with the elective process is the effect of the light of publicity. Its power is dependent on open processes, active media and interested citizens. Alaska has disclosure requirements for certain public officials, including legislators (see footnote #4). It has also made provision for public notice and participation in its legislative processes. Any ethical control method adopted by the legislature must balance individual rights to privacy against the public right to know.

It has also been suggested that partisan considerations may operate as a control over legislative ethics. While it is true that disclosure of ethical violations might occur due to partisan motives, there are objections to relying on partisanship as an ethical control. First, there may be a temptation to use knowledge of a violation for partisan advantage, rather than disclosing the problem. Second, considerations of comity dictate against reliance on a mechanism which would tend to exacerbate partisan divisions. Finally, public accountability is minimal.

The executive branch may also exert some control over legislative ethics. The Attorney General is currently occupying the field. He asserts the right to advise on ethical issues and bring legal actions for ethical violations. The Governor might, by executive order, establish

ethical parameters for agency actions, including dealings with legislators. Conversely, the legislature may exert its authority over executive branch ethics by enacting a statute.

Courts are probably the ultimate arbiters of legislative ethics. For constitutional reasons (see footnote #5) plus a disinclination to deal with "political questions", courts play this role with reluctance. However, legal precedent indicates that legislative authority over intramural affairs may be limited by the public trust doctrine. (See footnote #6.) Nevertheless, statutory guidance is important to the judicial process as well.

Courts are less likely to assert jurisdiction over legislative ethics in the presence of some formal control mechanism established by statute. There is a natural desire to preserve legislative autonomy in this regard. The legislature has the constitutional authority to judge its members, and peer review is an accepted means of establishing ethical standards in many professions. An internal policing body may be taken more seriously by legislative members and has certain advantages in the advisory or consultative process involved in ambiguous or unclear ethical situations. However, exercising this prerogative is unlikely to assuage judicial or public concerns over legislative ethics. Practical difficulties are raised as to majority, minority and factional representation, as well as the small pool of legislators available. Partisanship would be a troubling element. Finally, the record of such intramural bodies is mixed. (See footnote #7.)

An independent legislative ethics commission is a concept worthy of consideration. It would have enhanced credibility vis-a-vis the other branches of government, the media and the public. It would minimize the practical and partisan concerns raised by intramural bodies. And, it would isolate the ethical arena from the vagaries of legislative attention. Members of such an independent commission might include former legislators, retired judges, university deans and corporate directors. The Attorney General might be an ex-officio member. Appointments might be made by the majority and minority leadership of each house, as well as the Governor, State Bar Association and Chamber of Commerce.

IV. Selected Issues

Whatever the control mechanism adopted, substantive statutory guidance will be essential. Several major issues will be considered here. Additional points will be covered in NCSL's detailed comparative analysis.

Ethical concerns may, perhaps, be summed up by two basic proscriptions. First, public office should not be used for personal gain. This includes such violations as accepting bribes or kickbacks, exerting improper influence, using or disclosing confidential information, and using state property for personal purposes. Second, office holders should not conduct outside business which conflicts with the conscientious performance of duties or the independent exercise of judgment. Conflict of interest implies an interest which is present and personal, and not shared by the general community. It includes the notion of vested interest, as well as the notion of division of loyalty.

Disclosure and abstinence are the proper courses of action regarding conflicts of interest. A higher duty is imposed, however. Legislators are elected to exercise their judgment on matters of public concern and should strive to conduct their outside business so as to minimize conflict situations (see footnote #8). Indeed, a legislator may not receive a personal benefit by declaring a conflict, abstaining and letting a "disinterested colleague" make the decision. (See footnote #9.)

This raises a concern relating to the current Alaska practice of allowing a single vote to prevent a legislator from abstaining on a decision after declaring a conflict. The possibilities for collusion and abuse are apparent. It is unlikely that the common law would excuse an ethical violation on this basis. Similarly, full disclosure and a sworn statement that independent judgment will be exercised may be insufficient to excuse a conflict. Quorum considerations are the only justification for such practices. They should be used with restraint and should be specifically covered in a statute.

The Attorney General's opinion raises three specific issues. One relates to the notion of vested interest. That is, a legislator may vote on a bill by which he benefits, as long as the benefit is not peculiarly personal. If the legislator is one of a small class of beneficiaries or if the bill affects a venture with which he is commercially connected, he must abstain.

A second issue relates to state loans to legislators. Here the relevant factors involve the size, availability and discretionary aspect of the loan in question. Loans with standard criteria as to qualification, amount, security and repayment, and general availability, are acceptable. Large commercial loans involving discretion in determining creditworthiness, terms and administration, and which are of limited availability, are more problematic.

A third issue relates to legislators contracting with the state. The Attorney General finds the common law to prohibit such contracts, with limited exceptions (see footnote #10). Some states allow legislator/state contracts which are "de minimus" (small in value or legislator has fractional interest). Others allow competitive contracting. The latter exception is problematic, raising concerns over improper influence, use of confidential information and discretion in the awarding and administration of such contracts. The course of action most consistent with the duty of legislators to avoid even the appearance of conflict would be a prohibition.

A final issue, not raised by the Attorney General's opinion, relates to legislator appearances before state agencies. While it is a traditional legislative function to intercede with state bureaucracies on behalf of constituents, this must be distinguished from appearing as a principal or in a representative capacity. Some states allow appearance as a principal to maintain the status quo regarding a business interest, but not to obtain a new franchise. Some allow representation of a client, even for compensation, if such compensation is disclosed and is not contingent on the agency action. Public perceptions should be considered in this regard.

V. Legislative Guidance

Three courses of action are suggested for legislative consideration:

- Enact a legislative ethics bill during the 1983 session. NCSL assistance, including this memo and a detailed comparative analysis, as well as on-site consultation is being provided under NCSL's contract with the Committee. Senator Fischer has prepared a working draft which could form the basis of a bill.

- Enact a companion bill for other state officers and employees, or a comprehensive statute covering all public officials. HB 20 (by Rep. Miller, et al) could serve as the basis for a comprehensive approach.

- Defer action on one or both of the above areas (legislators/other public officials) until the next session and conduct additional study during the interim. Such an interim study could be organized and staffed by NCSL as a follow-on to its existing contract, consistent with its commission to assist the enhancement of Alaska's legislative process.

If immediate action is chosen as a course of action, legislative guidance would be useful on a number of specific policy areas:

- What kind of control mechanism or policing body is preferred?
  —intramural/independent
  —publicity of proceedings, remedies
  --advisory/enforcement function

- How broadly or narrowly should conflict of interest be construed?
  —nature of duty
  —role of disclosure
  —excuses: collegial; sworn statement; quorum issues
  —vested interests: peculiar benefit; degree of connection

- How should state loans be dealt with in legislation?
  —specific consideration of existing programs
  —general principles/advisory opinions

- How should legislator contracts with the state be handled?
  —prohibition/allowance
  —exceptions: de minimus; only source; common goods
  —competitive processes: role of disclosure

- To what extent should legislator appearances before state agences be regulated?
  —for constituents

--as principal
--as client

- What additional or related ethical issues should be addressed?
  --lobbyist controls
  --open meetings
  --campaign finance

These areas all call for the exercise of legislative policy judgment, in the light of the ethical principles and concerns raised in this memo. Specific guidance will be essential to staff in drafting legislation.

FOOTNOTES

1. AS 39.50.010 (b)(1)
2. Tool Co. v. Norris, 69 U.S. 45, 54-55 (1865)
3. AS 39.50.010 (b)(1)
4. AS 39.50.030
5. Alaska Constitution Article II, Section 12
6. U.S. v. Ballin, 144 U.S. 1, 5 (1892); cf. U.S. v. Smith 286 U.S. 6 (1932)
7. See 76 Harv. Law Rev. 1209 (1963)
8. See AG Opinion pp. 37-38
9. See AG Opinion p.2
10. See footnote 14, p. 26 of AG Opinion

PROVISION	ALASKA LAW (Chapter 90)	HOUSE BILL 29	SENATOR LEDGER'S MEMORANDUM	OTHER STATES
Scope of Statutes	The statute covers: • All legislators • Judicial officials • All candidates for state and municipal elective offices • The governor, lieutenant governor, and selected state agency officers.	The legislation would cover: • All legislators and legislative employers • All municipal officers and employers • The governor and lieutenant governor.	Legislation would apply to: • All legislators • Legislative staff working with committees and legislators • Legislative members-elect • Former legislative members.	• Idaho, Vermont, and West Virginia have no disclosure laws or restricted activities • Public officials, including legislators (14 states) • Specific legislation for legislators (33 states)
Disclosure Requirements	Requires disclosure of: • All income over $100 by official or family • Business interests and ownership • Real property • Trusts • Loans or loan guarantees, and • Contracts or offers to contract with the state. Assets or liabilities under $500 need not be disclosed Disclosure statement filed annually; sworn statements required of some officials. Blind trusts are acceptable but must be reported.	Requires disclosure of: • All items required under AS 39.50.020 • Specific conflicts require preparation of a separate statement by certain state executive officials and municipal officers • Other public officials required to state a conflict at the time of official action.	Legislation would require disclosure of the following: • Direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with an individual with direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with a person lobbying, or who hires a lobbyist, to propose legislation or to influence legislators' votes • Gifts, loans, or payments in the aggregate amount of $100 or more from anyone with an interest in an enterprise affected by a vote on proposed legislation • Fees and honorariums received in excess of $100 • Financial transactions involving legislators and staff in excess of $1000 • All contracts with the state	States require disclosure for: • Source of income (34) • Income of business if partnership or shareholder (23) • Investments (29) • Real estate interests (33) • Offices and/or directorships (31) • Creditor indebtedness (24) • Leases or contracts with public agencies (14) • Gifts (19) • Compensated representation before state agencies (19) • Fees or honorariums (23) • Reimbursement of travel expenses by private sources (10) • Professional or occupational licenses held (8) • Deposits in financial institutions (10) • Retainers (4) • Cash surrender value of insurance (5) • Nature of outside employment (22)

Provision	ALASKA LAW (Chapter 58)	HOUSE BILL 29	SENATOR FISCHER'S AMENDMENT	OTHER STATES
Disclosure Requirements (continued)			Recommended procedures for disclosure: • Legislator declares conflict of interest on the floor of the legislative body and requests to be disqualified from voting • A written statement submitted to the committee describing conflict bars legislator or staff from further action on the legislation in question, unless the statement asserts to the satisfaction of the committee the objective ability of the party to participate in the legislative action.	• Professional services rendered (11) • Identification of trusts by trustee (11) • Identification of trusts by beneficiary (18) • Financial interests of official's spouse and dependents (33) Reports and statements are generally required to be filed within a specified time period.
Conflicts of Interest: General	The statutes prohibit public officials from: • Using his office for financial gain to himself, business or family • Soliciting money for legislative advice or other assistance relating to his public employment • Representing a client before a state agency for a fee (Municipal officers similarly are barred from representing a client before their municipal body.).	The bill would prohibit public officials from: • Soliciting gifts to influence or reward an official action • Using public office to seek employment, contracts or compensation benefiting the official or his household • Using public time, equipment or facilities for private or political purposes • Soliciting financial transactions in businesses an offical supervises • Using confidential information for personal gain • Participating in actions affecting a business or property in which a public offical has a personal financial interest • Representing a person before a state agency for compensation (legislators and staff)	Legislation would proscribe the following as conflicts of interest: • Undue influence exerted as a result of public office • Participation in outside business or professional activity inconsistent or in conflict with official duties • Misuse of state property or funds • Owning capital stock in a corporation in excess of $1000 • Acting as an officer, director, or agent of a corporation • Representation for pay of a client before any state or local agency • Nepotism, excepting unpaid relatives • Confidential information not available to general public and obtained in the course of official duties used for personal benefit.	States have restrictions on the following: • Use of public position to obtain personal benefits (40) • Giving benefits to influence public officials and/or public employees (33) • Use of confidential information (37) • Post-governmental employment (22) • Receipt of gifts (31) • Public officials representing clients before public bodies (28) • Receipt of fees and honorariums (23) • Nepotism (15) • Public official's outside employment or business activity (28)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 29	SENATOR FISCHER'S PROPOSAL	OTHER STATES
Conflicts of Interest: General (continued)		• Assisting persons for compensation to pass or defeat legislation or secure a contract, claim or transaction before the legislature, a state or municipal agency. Former officials would be prohibited from: • Using confidential information for personal gain • Representing persons in transactions in which the official was involved. (12 mos. time period)		
Conflicts of Interest: Contracts and Loans	The statutes do not prohibit public officials from receiving state loans or contracts.	The bill would not prohibit public officials from receiving state loans or contracts. The bill would prohibit public officials from assisting for compensation other persons who are seeking to obtain contracts, claims, etc.	Legislation would proscribe the following activities with regard to contracts and loans; • Contracts made with state and local governmnet without public competitive bid process; non-bid contracts may be awarded at the discretion of the committee provided no undue influence is exerted to obtain the contract and it does not conflict with the conscientious performance of official duties • Discretionary state benefits not available to the general public such as loans and land disposals in which the decision-making process does not safeguard against the appearance of improper influence.	Specific restrictions pertaining to contracts and loans: • Public officials entering into public leases or contracts (31) • Competitive bidding (14)
Activities Not Restricted	No unrestricted activities are specifically identified.	No unrestricted activities are specifically identified.	Proposed legislation specifically allows: • Outside employment and business opportunities, provided an advisory opinion of the committee is sought in cases of potential conflict	• Kansas, Maine, and Missouri are three states which allow a state officer to contract with the state in a process of competitive bidding or for which the price or rate is fixed by law

[illegible]	ALASKA LAW (Chapter 50)	HOUSE BILL 29	SENATOR TORGERSON'S PROPOSAL	OTHER STATES
Activities Not Restricted (continued)			• former legislators and staff may lobby or work for state agencies immediately upon leaving the legislature subject to the constitutional ban on legislators taking a position with a salary increase created while the legislator was a member.	• In Maine, legislators may serve on public boards, commissions or other authority created by the legislature provided no consideration is paid.
Control Authority	The statute is administered by the Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers include a provision to: • Maintain records, reports and disclosure statements and establish reporting procedures The commission is not authorized to initiate or conduct investigations relative to violations. All disclosure statements and reports are public records.	The bill would assign new duties to the already existing Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers would include to: • Issue advisory opinions and publish edited versions of opinions to maintain confidentiality • Accept, initiate and investigate complaints • Subpoena witnesses, take testimony and hold hearings on complaints • Maintain necessary records, reports, forms and establish reporting procedures • Make determinations of appropriate action • Assess civil penalties for violations • Refer impeachable offenses to other state officials for subsequent action • Refer determinations warranting removal to the appropriate appointing authority. Advisory opinions may be edited for confidentiality. Complaints and a determination by the commission are public record.	Proposed legislation provides: • Creation of a standing ethics committee in each house • Duties --investigate complaints of ethics violations --issue findings --issue advisory opinions and statements of policy --make reports to the legislature and the public • Powers --initiate complaint alleging ethics violation --hold hearings --subpoena witnesses and documents --take testimony under oath --appoint special investigator when needed --issue a private reprimand --make recommendations to the legislative body for remedies. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion.	• 8 states have standing legislative ethics committees • No state has a joint legislative ethics committee • 28 states have external commissions, agencies or boards with responsibility for conflict of interest; it is uncertain what jurisdiction over the legislature all of the agencies have • All external agencies but three were created by statute.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 29	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Penalties	Penalties for violation of reporting requirements include: • Fines, imprisonment or both for false or misleading reports • Fines for late filings • Removal from office for failure to file • Barring a candidate from assuming office for failure to file. Penalties for violation of conflict of interest requirements include: o A misdemeanor punishable by fine and/or imprisonment.	Penalties would include: • Impeachment • Removal from office • Fines not to exceed twice the economic benefit derived by the official or a fine of not more than $2000 where no benefit is received • Contracts entered into in violation of these provisions are voidable by the state or a municipality.	Legislation provides the following penalties: • Violations are subject to private written reprimand from the committee • Upon the recommendation from the committee the legislative body may act to censure or expel the member or may recommend that the attorney general prosecute under criminal statutes • Attorney general may bring a civil action to recover compensation for damages • Members of the committee or their staff found guilty of disclosing the identity of anyone requesting an advisory opinion may have a civil action brought against them for damages • Staff found guilty of violating these provisions are terminated from employment • Any agreement contracted illegally is voidable • It is a violation of law to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an ethics violation subject to the specified penalties of this legislation.	Information is not available for all states, however: • Maine provides that anyone convicted of filing a false charge of conflict of interest with the commission will be guilty of a Class E crime. • Maryland provides that the legislature may, by resolution, require compliance, issue a reprimand, or censure the guilty member • Wisconsin provides that the ethics board can make a recommendation to the district attorney in whose jurisdiction the violation occurred to commence criminal prosecution.
Other	The statutes allows a "qualified Alaska voter" to bring a civil action to enforce the provision.	The bill would allow legislators and other public officials to participate in an action or decision even in the case of a conflict if: • Participation is necessary to constitute a quorum • The official has filed a disclosure statement	Other features of the proposed legislation are: • Transferrable promotional benefits resulting from official business become the property of the state • When circumstances prevent the divesture of property or contracts to meet the requirements of law, disclosure must be made and an advisory opinion requested of the committee	• California defines financial interest as having an investment or interest of over $1000, having any source of income over $250 within 12 months or being employed as management in a business entity.

[illegible]	ALASKA LAW (Chapter 50)	HOUSE BILL 79	SENATOR FISCHER'S AMENDMENT	OTHER STATES
Other (continued)		• The official announces the nature of the conflict when action is taken. The attorney general is counsel to the commission, but the chief justice of the supreme court may appoint a special counsel if requested by the commission.	• Meetings of the committee are covered by the open meetings law, but any meeting which may tend to prejudice the reputation and character of any person may be closed. Privacy of anyone mentioned in a committee opinion will be protected. • Specific definitions prescribed: household, business associate, compensation, personal financial interest.	• Kansas provides that legislators cannot be litigants in legal proceedings involving constitutionality of law enacted while he or she was a legislator. • In Maryland legislators may participate in legislative action provided their vote is needed to obtain a quorum and they have submitted a signed statement identifying conflict; the commission is required to compile a list of business entities doing business with the states. • Missouri and Oklahoma restrict the sale, rent or lease of property to the state. • Montana legislators are prohibited from participating on legislation affecting a business competitive with their own. • Nevada legislators are prohibited from suppressing documents and disclosing confidential information for money. • All New York legislators must receive, read, and understand the ethics code.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 29	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)				• South Carolina legislators must put assets in a blind trust to avoid conflicts of interest and may not appear before a board on rate- or price-fixing matters; statement declaring a conflict of interest delivered to presiding officer within 24 hours of action or decision is in compliance with the law. • The Wisconsin ethics board must report the identity of person seeking information from a statement of economic interests to the person who filed the information; no orders become effective until 20 days after it is issued.

WORKSHOP SUMMARY (Prepared by NCSL Staff)

Special Joint Committee on Legislative Reform
March 22, 1983

Participants

Senator Faiks
Representative Lacher
Representative Phillips
Jens Zehbe - Sen. Faiks
Lewis Schnaper - Sen. V. Fischer
Janet Seitz - Rep. Phillips
Mike Ford - Rep. Miller
Diane Colim - Attorney General
Candace Romig - NCSL
Ken Wonstolen - NCSL

I. Scope/Coverage
A. Chair asked staff to concentrate on legislative ethics only at this time. AG representative indicated that the department was likely to suggest legislation covering other public officials.

II. Control Mechanism/Policing Body

A. Type
1) Standing committee in each house (5 in house; 3-5 in Senate). Most interviews confirmed this preference.

2) Representative Phillips indicated preference for members from the public-at-large to be included for credibility purposes. Sen Ray also preferred external participation and suggested that the Governor be allowed to appoint 2 representatives.

B. Selection process (no consensus from interviews)
1) by presiding officers (guarantee of minority representation)

2) by presiding officers plus majority/minority leaders

3) few ideas on method of appointing citizen members

C. Staff
1) Chair indicated preference for small staffs initially (attorney/secretary) with no independent investigatory authority.

D. Publicity
1) Proceedings would be confidential (under Rule 22);

findings and ruling to be made public. Consensus of interviews support this position.

2) Mike Ford suggested opening proceedings once determination of probable violation made, subsequent action to be public.

E. Powers
1) advisory only; recommendations to full body for action
2) details of procedural powers (eg-subpoena ability) to be worked out later.

III. Conflict of Interest

A. High duty affirmed: legislators must conduct outside business so as to minimize impediments to conscientious performance of duties.

B. Early disclosure is key element in dealing with conflicts. Suggested language: Obligation to report arises as soon as the legislator is aware of a conflict or should reasonably be aware of such conflict (National Municipal League Model)

C. The legislator's duty is to represent constituents and vote on all matters, absent a unanimous vote of the body to excuse the member. Early and full disclosure serves to put the body on notice of potential conflicts and the exertion of undue influence.

D. NCSL staff suggested that disclosures include a sworn statement that independent judgment will be exercised.

E. Determination of the existence of a conflict of or vested interest in relation to size of class receiving detriment/benefit would be function of ethics committee in advisory role. Statutory determination is difficult in advance and would be abitrary.

IV. Loans

A. "Non-discretionary" loans represent little difficulty. Consensus of working group and interviews.

B. Views are split on discretionary (commercial) loans

1) many feel that full public disclosure is adequate protection. Intent is to allow full participation by citizen (part-time) legislators.

2) some feel that foregoing such loans is price of being legislator

3) Chair suggested that agencies publish all loans to

legislators, including loan status. Rep. Phillips wanted subsidized loan distinguished.

V. Contracts

A. "Sole-source"loans represent little difficulty. Consensus of working group and interviews.

B. Public, competitive bidding procedures are adequate protection.

C. NCSL staff suggest that a statement be filed with ethics committee whenever legislator bids on contract and that all state contracts be subject to disclosure laws.

D. Competitive requirement extends to contracts with persons/business entities in close economic association with legislators.

VI. Appearances

A. Representing constituents is recognized as valid legislative function; no separate compensation shall be involved.

B. Appearing as principal is all right to preserve status quo regarding existing business interests, not to promote a new interest.

C. Legislator/lawyers may represent clients in criminal and civil matters (where state is not a party) in courts but not before quasi-judicial agencies.

D. Legislators should be restricted from employment as a lobbyist or representing clients before state agencies for one year after leaving legislature. Some interviewers object to a waiting period.

VII Malicious Accusations

A. Many interviewers expressed concern that mere leveling of charge was tantamount to public conviction. Some desired a penalty, such a payment of costs, for parties bringing charges found to be without merit.

VIII. Venicle

A. Staff to Sen. V. Fischer and Rep. Miller proffered SB 192 and HB 20.

B. Rep. Phillips suggested that Committee wait for AG proposal since they created issue.

C. NCSL staff advised exercise of legislative prerogative rather than responding to executive initiative.

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New York State Assembly

Executive Director
Earl S. Mackey

March 23, 1983

Review of SB 198
Ken Wonstolen, NCSL

Statement of Purpose

(a) add: Legislators and legislative staff must conduct their outside business affairs so as to minimize potential conflicts of interest with the conscientious performance of their duties and the exercise of independent judgement.

(b)(3) delete: "enforce the provisions of the law"; substitute: "administer this chapter"; add: (b)(4) supersede the common law where it conflicts with any provision of this chapter.

24.60.010: no comment

24.60.020: note coverage of former legislators; add: coverage of staff not on personal staff of legislator (e.g. - Legislative Affairs, House Research Agency, Legal Services) by using term "legislative staff person: instead of "person on staff of a legislator" throughout the bill. Define "legislative staff" in appropriate section.

24.60.030/040: no comment

24.60.50: a number of issues (appearances, loans, contracts, voting) are included under this general "conflict of interest" heading. Perhaps each should receive its own heading and section, as follows (ideas suggested):

- o conflict of interest - A conflict of interest arises when a legislator has a personal interest* in a matter which is distinct from that of a member of a public-at-large and which would tend to impair the exercise of independent judgment. Legislators and legislative staff persons must avoid activities which tend to create even the appearance of a conflict of interest, and, further, must disclose any potential conflict of interest to (ethics body) at the earliest possible opportunity. This obligation to disclose arises as soon as the legislator or legislative staff person is, or reasonably should be, aware of a potential conflict.
- o Voting - The essence of the legislative function is to represent constituents in all legislative decisions. Therefore, a legislator must vote on all matters, unless excused by a unanimous vote of the members of his body. If the legislator feels that a conflict of interest may exist with regard to a particular matter, he shall disclose the relevant facts and

* Should be defined to include interests of family members and business associates.

sign a sworn statement that he will exercise independent judgment. If unable to sign such a statement, a legislator may ask the consent of the members of his body to abstain from voting.

- o Appearances - SB 198 would allow appearances before "quasi-judicial" agencies and courts, even where state is party. Substitute: Representing a constituent before a "state agency" (department, board, commission or instrumentality) is a traditional legislative function and is compatible with the ethical standards of this chapter, providing no compensation is solicited or received. Legislators and legislative staff persons may appear as a principal in such proceedings in order to preserve an existing business interest, but not to promote a new interest. Legislator/lawyers may represent clients before courts in matters to which the state is not a party. Legislators and legislative staff persons may not accept employment as a lobbyist or represent clients before state (agencies) for one year after the expiration of their term or employment.
- o Loans - SB 198 allows loans "available to the public at large"; instead, allow all loans providing disclosure is made and loans are published. Executive should promulgate strict rules for agencies to follow when dealing with legislative applicant.
- o Contracts - SB 198 allows competitive contracts; add: need to file statement of intent to pursue a state contract with ethics body and subject all contracts to disclosure. Also, personal interest should include business associations as employee, director/officer, as well as stock ownership.

24.60.060-090: These sections of SB 198 establish the Legislative Ethics Commission and its powers. Note that it would provide for 2 current legislators, 1 former legislator and 4 citizens who have not held an elected office. It allows the commission to determine staff needs. Other details of procedures and powers are reasonably close to ideas considered by committee and working group.

24.60.900: add: definitions of "legislative staff"; personal interest"; "state agency".

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MEMORANDUM

TO: Special Committee on Legislative Reform

FROM: Candace Romig, NCSL

DATE: April 5, 1983

RE: REVIEW OF THE BILL SUBMITTED BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

AS 39.57.010. Perhaps the legislative findings should include a statement to the effect that high standards of ethical conduct in public office must be maintained and that public office must not be used for private gain. A statement might be included to emphasize that no public official can have any interest, business transaction or professional activity, or any obligation which would tend to impair the exercise of independent judgment in the conscientious performance of official duties.

AS 39.57.020.

(b) Prohibiting all conflicts of interest may be an untenable assertion, and describing an adequate mechanism to prohibit conflict of interest would be difficult. Conflict of interest legislation should be structured to minimize the instances in which a public official finds himself or herself confronted with a conflict of interest rather than to prohibit all such circumstances. The concensus of committee members and legislators who were interviewed is that a standing committee in each house would be the most acceptable form of control mechanism. Strong support has also been shown for having committee members from the public-at-large. Consequently, having an external body such as the APOC determine the appearance of potential conflicts would be a difficult position to champion. Definitions are needed for interests which are "relatively insignificant". The purpose of subsection (b) (2) is confusing and may actually be in conflict with the statement "All conflicts of interest are prohibited....."

AS 39.57.030.

(d) If the state and the municipalities were authorized to adopt policies to limit the extent to which officials could be awarded contracts, each governmental unit would have separate rules and regulations which could be confusing and conflicting. Who would adopt these policies with regard to the legislature?

(e) This section would proscribe contracts with the state or municipalities for individuals whose public employment had been terminated less than one year from the date of proposed contract which seems an unreasonable and an unworkable requirement.

AS 39.57.040. No comment.

AS 39.57.050.

(a) add: "in which the public official has input into the regulatory process affecting that interest." As the statute reads in its present form, public officials would be prohibited from owning stock in oil companies.

AS 39.57.060. Interests between public officials who are not in a supervisory capacity are not covered by this legislation. Early and complete disclosure of the potential conflict is not addressed. This section needs a mechanism to determine if an actual conflict exists similar to 39.57.030, 39.57.040, and 39.57.050.

Subsection (2) is unclear.

AS 39.57.070. Early and full disclosure provisions could minimize the potential conflicts of interest from gifts received or solicited by public officials from persons or groups who stand to benefit from action or inaction by the state or municipality.

AS 39.57.080.

(b) The purpose of this subsection is confusing. "Live-in" relationships are not covered by the definition of "relative".

AS 39.57.110.

(a) delete: "advise or assist a client for compensation", and substitute "represent a client for compensation."

(b) The meaning of this subsection is unclear.

AS 39.57.120. The general concensus of committee members is not to restrict employment of individuals after they leave the public's employ.

AS 39.57.130. This section seems superfulous in light of the other provisions. The purpose of this section is unclear.

AS 39.57.140. No comment.

AS 39.57.200. This section does not seem to apply to legislators. After a control mechanism is chosen to oversee the conflict of interest legislation with regard to the legislature, the powers of the ethics body must be delineated. Is the ethics body to have any enforcement power or will it be primarily an advisory group?

AS 39.57.210. No comment.

AS 39.57.220. General agreement seems to be that proceedings of the etnics body would be confidential under Rule 22 while the findings and ruling would be made public. The proposed legislation parallels one suggestion that proceedings be open to the public once it is determined by the ethics body that a probable violation exists. Concensus appears to be that the ethics body would have advisory powers only and would make recommendations to the appropriate legislative body for action.

AS 39.57.230. No comment.

AS 39.57.300. No comment.

AS 39.57.900. Definition of "person in close economic association" would seem instead to define "personal interest." The definition of "public official" appears to categorize relatives of officials as public officials. Add: definition for "sole source contract," "conpensation," "fungible commodity," and "state and municipal agency."

National Conference of State Legislatures

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80202

President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

TO: Special Joint Committee on Legislative Reform

FROM: The National Conference of State Legislatures

RE: Preliminary Report on Work on Conflict of Interest Legislation

DATE: April 1, 1983

As required under the contractual agreement between the Alaska Legislature and the National Conference of State Legislatures, this report is submitted to the Joint Special Committee on Legislative Reform and will recap the work and findings to date in the NCSL's work on the issue of conflict of interest.

SUMMARY OF ACTIVITIES TO DATE

Following an initial on-site visit by NCSL staff to Juneau to determine the priorities and parameters of the overall project, the NCSL staff has devoted most of its efforts to the immediate concern over the development of conflict of interest legislation during the 1983 legislative session. To assist the Joint Special Committee on Legislative Reform in its deliberations on this issue, the NCSL staff has completed the following tasks:

- o a detailed search and analysis of statutory provisions dealing with conflict of interest and related legislative ethics issues in the other 49 states;
- o a review and analysis of legislative rules provisions dealing with voting procedures and conflict of interest in the other 49 state legislatures;
- o in-depth telephone interviews with legislative staff nd ethics authorities in four states where similar legislative characteristics or ethics problems have been addressed;
- o analyses of current Alaska ethics statutes and four legislative proposals currently pending before the Alaska Legislature;
- o on-site interviews with legislators, legislative staff and others;
- o presentations before the Joint Special Committee on Legislative Reform on fundamental ethics questions; and
- o participation in a decision-making workshop designed to facilitate the committee's consideration of ethics legislation.

Attached are the background documents, bill analyses and research memoranda prepared by the NCSL staff for the committee.

DISCUSSION OF THE PROJECT TO DATE

Ethics issues are complex, requiring great balance between personal liberties, public service obligations and institutional legislative needs. The job of drafting appropriate legislation on this issue currently is complicated in Alaska by pressures of time in the current legislative session.

The NCSL staff has attempted to provide the Joint Special Committee on Legislative Reform with information which will further the understanding and discussion of legislative ethics issues. In addition, the NCSL staff has tried to help facilitate the process by identifying the major policy decisions which must be addressed in legislation. (The attached workshop summary from March 22,1983, reflects the outline of decisions facing the committee.) In terms of these major policy decisions, the NCSL staff offers the following comments and findings on the process of developing a legislative ethics bill thus far.

Scope of Coverage

The legislature has before it proposals which would deal with only legislators and ones which would cover all public officials. There is no consensus on this issue.

Comment: Given th constraints of the legislative session, a bill covering only legislators and legislative staff persons is probably more realistic and feasible at this time. Conflict of interest statutes covering only legislators and legislative staff persons are in force in 33 states, and the separation of powers doctrine makes it appropriate for the legislature to deal with ethics issues for itself, independent of other government officials.

Control Mechanism/Policing Body

1. There seems to be a consensus that a legislative committee with public citizen members should be established to oversee and enforce provisions of a legislative conflict of interest or ethics bill.

Comment: The separation of powers doctrine and constitutional bases give credence to the concept of an internal legislative ethics committee. At the same time, the involvement of independent citizen members mitigates some of the difficult dynamics which legislative members face when judging and penalizing their peers. A selection process controlled by the presiding legislative officers is appropriate with safeguards for minority representation. To insure a balance of independence, citizen members probably should be appointed by some independent process, e.g., selection by the state judiciary or nominees by the state judiciary or the governor and selection by lottery.

2. The staffing of an ethics committee must be adequate to the powers assigned to do it.

Comment: If the powers of an ethics committee are primarily advisory and the principal enforcement strategy is for full and early disclosure, a limited legal and administrative staff may be adequate to serve the

committee. If, however, an ethics committee is vested with investigatory responsibilities, then a more substantial staff is required.

3. There seems to be a consensus that the proceedings of an ethics committee should be confidential until such time as findings and rulings are concluded and published.

Comment: Confidentiality in the preliminary stages of an investigation and in an advisory process is appropriate.

Conflict of Interest

1. There seems to be a consensus that early disclosure of potential conflicts of interest is essential, and that a legislator is obliged to report a potential conflict as soon as he or she is aware of such a conflict.

Comment: This approach is fundamental and appropriate.

2. A legislator must represent constituents and vote on matters before the legislative body.

Comment: Most state legislative rules prohibit members from voting on matters in which they have a direct personal or pecuniary interest, and the most common practice is to allow the member to state the reasons for not voting and then, without debate, to have the rest of the membership vote by simple majority to excuse the member. It is valid to balance quorum considerations with the process of minimizing potential conflicts of interests, however, Alaska's rules which require unanimous consent of the body to excuse a member from voting are among the most stringent. Ony three other legislative bodies require unanimous consent to excuse a member. In a small legislative body, abstaining from a vote and legislative action may contribute to the conflict of interest. Consequently, the most equitable method to resolve these situations is by early and full disclosure of the potential conflict. Particularly in light of the unanimous consent provision, the NCSL staff suggests that disclosure include a sworn statement that independent judgment will be exercised.

Loans

1. Legislators should be eligible for non-discretionary state loans.

Comment: This is appropriate and reflects a consensus among the legislators.

2. There is no consensus on the question of whether state legislators should be eligible for discretionary loans.

Comment: Alaska represents a unique situation for which there is no parallel in other states. The dominant role of the state in the commercial loan market is not evident in other jurisdictions. At a minimum, a conflict of interest statute dealing with state loans should require full and early public disclosure of loans and loan applications by public officials.

Contracts

1. There seems to be consensus that legislators should be eligible for contracts with the state under competitive bidding procedures.

Comment: In 31 states, public official face some restrictions on entering into public leases or contracts. Fourteen states allow public officials to enter into contracts through a competitive bidding process. Again, as a minimum standard, the NCSL suggests that early and full disclosure be required of legislator bids on contracts and contract awards to lawmakers.

Appearances

1. There seems to be consensus that some restrictions would be appropriate on legislators representing constituents or themselves for compensation before state agencies.

Comment: Nineteen states require disclosure of compensation received by public officials who represent clients or constituents before state agencies, and 28 states restrict appearances by public officials. Disclosure is imperative in these instances, and public perceptions of undue influence may require more stringent safeguards.

CONCLUSION

To date, no specific piece of legislation before the legislature reflects a consensus view on conflict of interest. Opinions remain divided on major policy questions. Fundamental decisions must be addressed by the Joint Special Committee on Legislative Reform and by the legislature as a whole on this question. Given the time constraints of the legislative session, resolution at this time may not be possible, however, inaction on the part of the legislature must be balanced with public perceptions of the immediacy of this question.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Scope of Statutes	The statute covers: • All legislators • Judicial officials • All candidates for state and municipal elective offices • The governor, lieutenant governor, and selected state agency officers.	The legislation would cover: • All legislators and legislative employers • All municipal officers and employers • The governor and lieutenant governor.	Legislation would apply to: • All legislators • Legislative staff working with committees and legislators • Legislative members-elect • Former legislative members.	• Idaho, Vermont, and West Virginia have no disclosure laws or restricted activities • Public officials, including legislators (14 states) • Specific legislation for legislators (33 states)
Disclosure Requirements	Requires disclosure of: • All income over $100 by official or family • Business interests and ownership • Real property • Trusts • Loans or loan guarantees, and • Contracts or offers to contract with the state. Assets or liabilities under $500 need not be disclosed Disclosure statement filed annually; sworn statements required of some officials. Blind trusts are acceptable but must be reported.	Requires disclosure of: • All items required under AS 39.50.020 • Specific conflicts require preparation of a separate statement by certain state executive officials and municipal officers • Other public officials required to state a conflict at the time of official action.	Legislation would require disclosure of the following: • Direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with an individual with direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with a person lobbying, or who hires a lobbyist, to propose legislation or to influence legislators' votes • Gifts, loans, or payments in the aggregate amount of $100 or more from anyone with an interest in an enterprise affected by a vote on proposed legislation • Fees and honorariums received in excess of $100 • Financial transactions involving legislators and staff in excess of $1000 • All contracts with the state	States require disclosure for: • Source of income (34) • Income of business if partnership or shareholder (23) • Investments (29) • Real estate interests (33) • Offices and/or directorships (31) • Creditor indebtedness (24) • Leases or contracts with public agencies (14) • Gifts (19) • Compensated representation before state agencies (19) • Fees or honorariums (23) • Reimbursement of travel expenses by private sources (10) • Professional or occupational licenses held (8) • Deposits in financial institutions (10) • Retainers (4) • Cash surrender value of insurance (5) • Nature of outside employment (22)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Disclosure Requirements (continued)			Recommended procedures for disclosure: • Legislator declares conflict of interest on the floor of the legislative body and requests to be disqualified from voting • A written statement submitted to the committee describing conflict bars legislator or staff from further action on the legislation in question, unless the statement asserts to the satisfaction of the committee the objective ability of the party to participate in the legislative action.	• Professional services rendered (11) • Identification of trusts by trustee (11) • Identification of trusts by beneficiary (18) • Financial interests of official's spouse and dependents (33) Reports and statements are generally required to be filed within a specified time period.
Conflicts of Interest: General	The statutes prohibit public officials from: • Using his office for financial gain to himself, business or family • Soliciting money for legislative advice or other assistance relating to his public employment • Representing a client before a state agency for a fee (Municipal officers similarly are barred from representing a client before their municipal body.).	The bill would prohibit public officials from: • Soliciting gifts to influence or reward an official action • Using public office to seek employment, contracts or compensation benefiting the official or his household • Using public time, equipment or facilities for private or political purposes • Soliciting financial transactions in businesses an offical supervises • Using confidential information for personal gain • Participating in actions affecting a business or property in which a public offical has a personal financial interest • Representing a person before a state agency for compensation (legislators and staff)	Legislation would proscribe the following as conflicts of interest: • Undue influence exerted as a result of public office • Participation in outside business or professional activity inconsistent or in conflict with official duties • Misuse of state property or funds • Owning capital stock in a corporation in excess of $1000 • Acting as an officer, director, or agent of a corporation • Representation for pay of a client before any state or local agency • Nepotism, excepting unpaid relatives • Confidential information not available to general public and obtained in the course of official duties used for personal benefit.	States have restrictions on the following: • Use of public position to obtain personal benefits (40) • Giving benefits to influence public officials and/or public employees (3 • Use of confidential information (37) • Post-governmental employment (22) • Receipt of gifts (31) • Public officials representing clients before public bodies (28) • Receipt of fees and honoriums (23) • Nepotism (15) • Public official's outside employment or business activity (28)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Conflicts of Interest: General (continued)		• Assisting persons for compensation to pass or defeat legislation or secure a contract, claim or transaction before the legislature, a state or municipal agency. Former officials would be prohibited from: • Using confidential information for personal gain • Representing persons in transactions in which the official was involved. (12 mos. time period)		
Conflicts of Interest: Contracts and Loans	The statutes do <u>not</u> prohibit public officials from receiving state loans or contracts.	The bill would <u>not</u> prohibit public officials from receiving state loans or contracts. The bill would prohibit public officials from assisting for compensation other persons who are seeking to obtain contracts, claims, etc.	Legislation would proscribe the following activities with regard to contracts and loans: • Contracts made with state and local governmnet without public competitive bid process; non-bid contracts may be awarded at the discretion of the committee provided no undue influence is exerted to obtain the contract and it does not conflict with the conscientious performance of official duties • Discretionary state benefits not available to the general public such as loans and land disposals in which the decision-making process does not safeguard against the appearance of improper influence.	Specific restrictions pertaining to contracts and loans: • Public officials entering into public leases or contracts (31) • Competitive bidding (14)
Activities Not Restricted	No unrestricted activities are specifically identified.	No unrestricted activities are specifically identified.	Proposed legislation specifically allows: • Outside employment and business opportunities, provided an advisory opinion of the committee is sought in cases of potential conflict	• Kansas, Maine, and Missouri are three states which allow a state officer to contract with the state in a process of competitive bidding or for which the price or rate is fixed by law

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Activities Not Restricted (continued)			• Former legislators and staff may lobby or work for state agencies immediately upon leaving the legislature subject to the constitutional ban on legislators taking a posicion with a salary increase created while the legislator was a member.	• In Maine, legislators may serve on public boards, commissions or other authority created by the legislature provided no consideration is paid.
Control Authority	The statute is administered by the Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers include a provision to: • Maintain records, reports and disclosure statements and establish reporting procedures The commission is not authorized to initiate or conduct investigations relative to violations. All disclosure statements and reports are public records.	The bill would assign new duties to the already existing Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers would include to: • Issue advisory opinions and publish edited versions of opinions to maintain confidentiality • Accept, initiate and investigate complaints • Subpoena witnesses, take testimony and hold hearings on complaints • Maintain necessary records, reports, forms and establish reporting procedures • Make determinations of appropriate action • Assess civil penalties for violations • Refer impeachable offenses to other state officials for subsequent action • Refer determinations warranting removal to the appropriate appointing authority. Advisory opinions may be edited for confidentiality. Complaints and a determination by the commission are public record.	Proposed legislation provides: • Creation of a standing ethics committee in each house • Duties --investigate complaints of ethics violations --issue findings --issue advisory opinions and statements of policy --make reports to the legislature and the public • Powers --initiate complaint alleging ethics violation --hold hearings --subpoena witnesses and documents --take testimony under oath --appoint special investigator when needed --issue a private reprimand --make recommendations to the legislative body for remedies. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion.	• 8 states have standing legislative ethics committees • No state has a joint legislative ethics committee • 28 states have external commissions, agencies or boards with responsibility for conflict of interest; it is uncertain what jurisdiction over the legislature all of the agencies have • All external agencies but three were created by statute.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Penalties	Penalties for violation of reporting requirements include: • Fines, imprisonment or both for false or misleading reports • Fines for late filings • Removal from office for failure to file • Barring a candidate from assuming office for failure to file. Penalties for violation of conflict of interest requirements include: o A misdemeanor punishable by fine and/or imprisonment.	Penalties would include: • Impeachment • Removal from office • Fines not to exceed twice the economic benefit derived by the official or a fine of not more than $2000 where no benefit is received • Contracts entered into in violation of these provisions are voidable by the state or a municipality.	Legislation provides the following penalties: • Violations are subject to private written reprimand from the committee • Upon the recommendation from the committee the legislative body may act to censure or expel the member or may recommend that the attorney general prosecute under criminal statutes • Attorney general may bring a civil action to recover compensation for damages • Members of the committee or their staff found guilty of disclosing the identity of anyone requesting an advisory opinion may have a civil action brought against them for damages • Staff found guilty of violating these provisions are terminated from employment • Any agreement contracted illegally is voidable • It is a violation of law to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an ethics violation subject to the specified penalties of this legislation.	Information is not available for all states, however: • Maine provides that anyone convicted of filing a false charge of conflict of interest with the commission will be guilty of a Class E crime. • Maryland provides that the legislature may, by resolution, require compliance, issue a reprimand, or censure the guilty member • Wisconsin provides that the ethics board can make a recommendation to the district attorney in whose jurisdiction the violation occurred to commence criminal prosecution.
Other	The statutes allows a "qualified Alaska voter" to bring a civil action to enforce the provision.	The bill would allow legislators and other public officials to participate in an action or decision even in the case of a conflict if: • Participation is necessary to constitute a quorum • The official has filed a disclosure statement	Other features of the proposed legislation are: • Transferrable promotional benefits resulting from official business become the property of the state • When circumstances prevent the divesture of property or contracts to meet the requirements of law, disclosure must be made and an advisory opinion requested of the committee	• California defines financial interest as having an investment or interest of over $1000, having any source of income over $250 within 12 months or being employed as management in a business entity.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)		• The official announces the nature of the conflict when action is taken. The attorney general is counsel to the commission, but the chief justice of the supreme court may appoint a special counsel if requested by the commission.	• Meetings of the committee are covered by the open meetings law, but any meeting which may tend to prejudice the reputation and character of any person may be closed. Privacy of anyone mentioned in a committee opinion will be protected. • Specific definitions prescribed: household, business associate, compensation, personal financial interest.	• Kansas provides that legislators cannot be litigants in legal proceedings involving constitutionality of law enacted while he or she was a legislator. • In Maryland legislators may participate in legislative action provided their vote is needed to obtain a quorum and they have submitted a signed statement identifying conflict; the commission is required to compile a list of business entities doing business with the states. • Missouri and Oklahoma restrict the sale, rent or lease of property to the state. • Montana legislators are prohibited from participating on legislation affecting a business competitive with their own. • Nevada legislators are prohibited from suppressing documents and disclosing confidential information for money. • All New York legislators must receive, read, and understand the ethics code.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)				• South Carolina legislators must put assets in a blind trust to avoid conflicts of interest and may not appear before a board on rate- on price-fixing matters; statement declaring a conflict of interest delivered to presiding officer within 24 hours of action or decision is in compliance with the law. • The Wisconsin ethics board must report the identity of person seeking information from a statement of economic interests to the person who filed the information; no orders become effective until 20 days after it is issued.

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips
HOUSE DISTRICT 15

MEMORANDUM

TO: ALL HOUSE MEMBERS

FROM: REPRESENTATIVE RANDY PHILLIPS R.E.P.

DATE: MAY 17, 1983

RE: NCSL REPORT

Attached is the final report from the National Conference of State Legislatures. This report was prepared for the Joint Special Committee on Legislative Reform and was referred to in that committee's April 15 report to this body.

If you have any questions, please do not hesitate to contact my office.

BASIC ETHICS POLICY QUESTIONS

by Rep. Mike Miller

1. What officials or employees should be covered?

   Example: Legislators
   Legislative Staff
   Governor and Lt. Governor
   Appointed Executive Branch Officials
   Judicial Branch Employees
   Municipal Officials and Employees

2. How should ethics legislation be administered or enforced?

   Example: Separate agency in each branch of government.
   Expand powers of existing A.P.O.C.
   Create a new commission

3. What powers should responsible enforcement body have?

   Example: Investigation
   Advisory opinions
   Criminal referrals
   Adopt regulations

4. When do complaints become public?

   Example: At filing
   After prelininary determination
   After final hearing

D R A F T

Sliding scale provisions for Sec. 24.60.040(1):

(1) a firm, corporation, or association which has assets in excess of $5,000,000 and in which the person has an ownership interest greater than 10% percent or which has assets of $5,000,000 or less and in which the person has an ownership interest greater than 25% percent; or

TELEPHONE CONVERSATION LOG

DATE: 25 May 1983 - 4:00 p.m.

PERSON CALLED OR CALLING Cheri Jacobus

MAILING ADDRESS FREE

PHONE NUMBER 561-8754

RE

Wanted to let you know that another letter is coming. FREE just reviewed a copy of the bill as the Senate passed out the bill and are much more pleased with that version (which version they just picked up at LIO yesterday which is when LIO received it).

After looking at this version FREE is sending out another letter saying that they basically support this version of the bill. They will suggest some changes (by page and line reference), some of which are cosmetic and some of which are not.

Will send this letter to Bussell with copy to all legislators. Going to Gold Streak it down tomorrow so we should receive it some time tomorrow.

FREE feels much more comfortable with the committee as proposed by this Senate version. She did mention that the Gifts section of the Senate version is not one FREE likes and FREE thinks the Gifts section of the original bill is better.

She is leaving tonight. If you have any questions, Hope Nelson (344-0186) or Pauline Martens (277-2718) can answer them.

Also, she understands that the meeting has been moved to Monday, according to the information she received from House Judiciary.

House Judiciary advised me that they had moved HB 362, HCR 33 and 34, to Monday because they just received the Senate Bill.

TELEPHONE CONVERSATION LOG

DATE: 25 May 1983

PERSON CALLED OR CALLING Cheri Jacqbus

MAILING ADDRESS FREE COMMITTEE

PHONE NUMBER 561-8754

RE

Her letter was not meant to be interpreted as taking potshots at what has been proposed and if it seems that way, she apologizes. What it was meant to do is to point out that there are other alternatives than what is being proposed.

She mentioned that FREE had sent some information to Faiks while the special committee was conducting hearings and this information was to have been shared with all committee members. One of the things that was pointed out early was that FREE didn't feel that a commission or committee was needed as the Rules Committee handles this type of thing and should continue handling.

She doesn't think much of Condon's opinion and feels that if the AG started to prosecute such cases, the Court would take a dim view of it in light of the Fairness Doctrine (which means that things should be fair). She indicated that the legislators have been conducting themselves in this manner for the past 20 years and to all of a sudden call a halt to it with no written statutes, she feels the courts would not view this very favorably (she's referring to the common law concepts). In addition, Condon's opinion seems to lean heavily on law review articles and doesn't discuss the constitution or the pertinent state statutes when making references to various cases. In FREE's review of the states' statutes, there are some states that totally restrict legislators from outside employment and have rather stringent rules.

FREE is also concerned that this commission will turn into another APOC, which was thought to be a good idea but has turned out not to be such a good way to go. She indicated that FREE felt that the dishonest person would find the loopholes in this and go right through them and that the honest politician who inadvertently missed filing something would be the one that would get caught and hurt. She indicated that FREE talked with TOM FINK about the proposed legislation and that he's not in favor of it because of what could happen.

FREE feels that the legislation should be reviewed and thought about over the interim. She also indicated that FREE would help in any way possible to get the AG to stay enforcement of his opinion (which she said Gorsuch could throw out anyway if he wanted to), advise the public that efforts were being made to fulfill campaign promises for ethics (she mentioned that a future COMPASS article has been written by FREE that points this out) and would cooperate in whatever manner they could. She also indicated that NCSL never did contact them with regard to FREE's views on these matters.

She emphasized that before anything is done on this matter, all legislators should take a good hard look at what APOC was proposed to be and do and what is practice.

She won't be here for hearing on Friday because she has some traveling to do. Believes Hope Nelson will be here on behalf of FREE.

FREE
Federation's Role in ou. Enterprise Economy

Cheri Jacobus
561-8754 (Chm)

23 May 1983

Representative Randy Phillips
Pouch V
Juneau, Alaska 99811

Re: Legislative Ethics -- SB 257 and HB 362

Dear Representative Phillips:

For the past two years, the FREE Committee has been concentrating on legislative ethics reform and is on record as recommending that a code of ethics be added to the Uniform Rules. Enclosure 1 is a copy of that recommendation.

The Committee recently completed a careful review of the ethics and conflict of interest laws in all 50 states and based upon that review identified several areas that should be addressed in any ethics legislation considered by the Legislature. Enclosure 2 is a copy of suggested changes to the existing Alaska law that was forwarded to the Joint Legislative Reform Committee in January.

In developing its recommendations, the FREE Committee was also concerned that amendments to the present law not become so restrictive that good legislators with other sources of income be prohibited from serving the public. Therefore, unlike the provisions in SB 257 and HB 363, the FREE Committee proposal would not prohibit public officials from obtaining loans or contracts from the state, so long as the suggested safeguards were incorporated.

We believe that public officials have the right to expect that ethical standards be clearly defined so that ethical problems can be avoided. With these things in mind, the Committee drafted language which if adopted would more clearly identify problem areas and which would provide for binding Attorney General opinions where the law is not clear.

The main difference between the FREE Committee proposal and the versions being considered by the legislature is that the FREE proposal addresses illegal activity and the legislative versions address improper but not necessarily illegal behavior. This distinction is significant, because the state constitution requires the legislature to be the sole judge of the improper behavior of legislators. By adding a code of ethics to the Uniform Rules, similar to that proposed in HCR 33 and SCR 21

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A committee of the GFWC Anchorage Woman's Club

(copies enclosed), the legislature could address infractions as a whole body, assigning various members the task of investigating complaints.

After careful consideration, the Committee rejected the approach taken in all versions of SB 257 and HB 362. This legislation would create a new commission whose main purpose is to evaluate and investigate legislator and legislative employee activities for conflicts and to recommend what action should be taken by Legislature. While this is a popular method chosen by other states and is superficially attractive, the Committee rejected this idea for four reasons.

First, this would unduly lengthen the process by creating another layer of government and since nearly every potential conflict would have to be run through the commission to determine whether there is in fact a conflict, the expense could be quite high. In fact, these bills should contain a fiscal note. Even after the process is completed, only the Legislature can finally decide whether disciplinary action should be taken.

Second, we are opposed to creating new governmental bodies if other less expensive and complicated approaches would provide the same or better results.

Third, this could result in politically motivated investigations and less than even handed treatment of persons who are investigated. While some of the versions envision a commission composed of a mix of legislators and citizens, the risk of politically motivated investigations is still real. Unless the citizen members were chosen from the population as a whole by lottery, they would be political creatures and not immune from political motivations.

Fourth, we believe strongly that a public official is a citizen who is serving the public and, therefore, deserves to know what activities are prohibited before being investigated. The present bills do not clearly identify improper behavior.

In summary, the FREE Committee believes that it is important to ensure that our legislators and their employees behave properly and avoid acting solely to enrich themselves. However, we believe that this goal can be accomplished with minimal rules and without creating a new and expensive body. The FREE Committee wants good legislators and, therefore, urges you to vote no on SB 257 and HB 362. We strongly believe no bill is better than a poor bill.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Chairman, Legislative Study

DELETIONS ARE BRACKETED AND ADDITIONS ARE UNDERLINED

(The following section changes filing requirements for the Alaska Public Offices Commission to be consistent with the other changes. Primarily these changes address inequities created by the law's requirement that nondependent children's income and spousal income be reported but not that income of persons living together. The changes are less wordy and the dollar amounts are more realistic.)

* Section 1. AS 39.50.030 is amended to read:

Sec. 39.50.030. Contents of Statements. (a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of his family or household as [specified in (b) of this section] defined in AS 39.50.200, to the extent that it is ascertainable by the public official or candidate. [An asset or liability under $500, household goods, and personal effects need not be identified.]

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over [$100] $500, including capital gains, whether or not taxable, received by him [or his spouse or dependent child of his or nondependent child of his who is living with him during the preceding calendar year] , his family or member of his household;

(2) the identity, by name and address, of each business in which he or [his spouse or dependent child of his or nondependent child of his who is living with him] his family or a member of his household was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by him or [his spouse or dependent child of his or nondependent child of his who is living with him,] by his family or by a member of his household, in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by him or [his spouse or dependent child of his or nondependent child of his who living with him,] by his family or by a member of his household during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which he [or his spouse or dependent child of his or nondependent child of his living with him,] his family or member of his household, held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to him or [his spouse or dependent child of his or nondependent child of his who is living with him,] to a member of his family or household and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom he or [his

spouse or dependent child of his or nondependent child of his who is living with him] a member of his family or household owed $500 or more;

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding year, held, bid or offered by him, [his spouse, dependent child of his or nondependent child of his who is living with him, his mother or father] a member of his family or his household or a partnership or professional corporation of which he is a member, or a corporation in which he or [his spouse or his children] a member of his family or household, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by him, [a dependent child of his or nondependent child of his who is living with him, his mother or father] a member of his family or his household or a partnership or professional corporation of which he is a member, or a corporation of which he or [his spouse or his children,] a member of his family or his household, or a combination of them, hold a controlling interest.

(The following section is rearranged, sections are added to make the law clearer, and certain activities would be punished as felonies. It should be noted that the present versions of SB 257 and HB 362 allow the legislature to impose a fine of up to $50,000.)

* Section 2. AS 39.50.090 is repealed and reenacted to read:

AS 39.50.090. **Prohibited Acts.** (a) Violation of this sub-section is a class C felony, punishable by a fine of not less than $5,000, nor more than $50,000, by imprisonment of up to 5 years, or by both.

(1) No public official may use his official position or office for the primary purpose of obtaining any financial or other type of benefit for himself, a member of his family or his household or business with which he or his family or household is associated or owns stock.

(2) No public official or former public official shall disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use of the information for his personal gain or the benefit of anyone.

(b) Violation of this sub-section is a misdemeanor, punishable by a fine of not less than $500, nor more than $2,000, by imprisonment up to one year, or by both.

(1) No person may offer or pay to a public official and no public official may solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to his public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer of the subject matter of the

legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes him a full-time state employee under AS 39.

(2) No public official may represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before his own commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes him a full-time state employee under AS 39.

(3) A former public official may not assist any person, business, instrumentality of the state or act in a representative capacity for a fee or other consideration, on matters in which he personally participated as a public official, nor may the former public official within twelve months after termination of office or employment act in a representative capacity for a fee or other consideration before any state agency. This subsection does not prohibit any agency from contracting with a former public official on a matter on behalf of the state and does not prevent the former public official from appearing before any agency with relation to such employment.

(4) A public official may not apply for a loan from a state agency unless the application is simultaneously filed with the commission. A state agency may not approve a loan to a public official who fails to file the application with the commission and a state agency may not grant special consideration to the application of a public official.

(5) No public official, member of his family or household, or business with which he, his family or household, is associated may enter into any contract with the state, valued at $100 or more, other than a contract of employment as a state employee or pursuant to a court appointment, unless the contract has been awarded in compliance with existing state law in an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. A member of the legislature shall simultaneously file the offer to contract with the commission; if the offer to contract is a sealed bid, the commission may not open the offer to contract until after the offer to contract has been opened by the agency receiving the offer to contract. A state agency may not award a contract to a public official or to a person known to be a member of the family or of the household of a public official or to a business that is associated with the public official or with a member of the family or of the household of a public official unless the offer to contract is filed with the commission.

(6) No member of the legislature, person acting on behalf of a member of the legislature, member of the legislator's family or household may solicit funds for political contributions to the campaign treasury of the member of the

legislature during a legislative session. Both the legislator and the person soliciting the contribution are liable and subject to penalty for any violation of this subsection.

(c) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state.

(d) No municipal officer may represent a client for a fee before the municipal body which he serves.

(The following section provides for advisory opinions from the Attorney General to help public officials from inadvertently violating the conflict of interest law. This approach is followed in a number of different jurisdictions.)

* Section 3. AS 39.50.095 is added to read:

Sec. 39.50.095. **Attorney General Opinion.** If any public official or member of his family or household or business with which he is associated is in doubt whether a proposed transaction or action constitutes a violation of this chapter, the public official or business may request in writing a written determination from the Attorney General's office. Within thirty days of such request, the Attorney General's office shall issue a written opinion based on the facts recited by the requester. If a legislator is involved, this advisory opinion shall be published in the daily legislative journal. A public official or business with which he is associated shall not be liable under this chapter, for any action or transaction carried out in accordance with such an advisory interpretation, provided he disclosed all the known facts to the Attorney General at the time of the request.

* Section 4. AS 39.50.200 (a)(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, his employer is the source of his income; but if he is self employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which he [or his spouse or his children,] , his family or a member of his household, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

* Section 5. AS 39.50.200 (a) is amended by adding new paragraphs to read:

(10) "member of his household" means any person whose permanent address is the same as the public official's permanent address or anyone who actually resides in the same household;

(11) "family" includes mother, father, spouse, children, parents in law;

(12) "financial gain" means economic benefit resulting from salary, gratuity, gift, or other compensation or remuneration from any individual, partnership, organization or association, or resulting from ownership or interest in a business entity.

CODE OF ETHICS

Any public office holder in a free government is entrusted with the security, safety, health, prosperity and general well-being of those whom he serves. With such a trust, high moral and ethical standards which produce the public's confidence should be the goal of every legislator.

FREE recommends that a code of ethics or standards of conduct be added to the uniform rules. Parameters for acceptable and unacceptable behavior must be drawn so that legislators know what kind of behavior to expect from one another. It is difficult to confront and correct unethical activities until the guidelines are drawn and understood by all.

General aspects of the Code of Ethics should include, but not be limited to, the following.

1. Any conflict between private interests and official duties must be avoided. No state legislator should accept any employment which could impair his independence and integrity of judgment nor should he exercise his position of trust to secure unwarranted privileges for himself or others. (Ref. Maine Legislative Code of Ethics, New Jersey Legislative Code of Ethics 2:1.a, California Joint Rules 44.(a)).

2. Members of the legislature should not directly or indirectly receive or agree to receive any compensation for any services which one knows or has reason to believe is given with the intent of influencing him in the performance of his duties as a legislator. (Ref. New Jersey Legislative Code of Ethics 2:1.6, California Joint Rules 44.(3)).

3. Legislators should be directly responsible for the ethical conduct of their staff. (Ref. California Joint Rule 44(f), Florida House Rule 5.11).

4. Legislators should notify the leadership prior to taking any action or voting upon any bill in which he or any member of his immediate family has a personal or professional interest which ensures his private gain or the gain of any principal by whom he is retained or employed. The legislator should disqualify himself from the vote in which he has a conflict of interest. (Ref. Florida House Rule 5.10, California Joint Rules 44.(s), Pennsylvania Senate Rule 22.2, Washington State Constitution Article 2, Sec. 30).

5. Legislative staffs should not be assigned to campaign or fund raising duties; legislative staff should not be considered to be political organizations.

6. Legislators should be prohibited from raising campaign funds during the legislative session. (Ref. New Jersey Legislative Code of Ethics 2:10.)

New Jersey has developed a comprehensive manual entitled "Legislative Code of Ethics" which would serve as an excellent resource instrument. In addition, North Carolina includes with their General Statutes a thorough "Code of Legislative Ethics".

It follows that once a Code of Ethics is established, some sort of mechanism needs to be implemented to deal with alleged violations. Many states have detailed disciplinary procedures which would make excellent guidelines. (Ref. Pennsylvania Senate Rule 37, 38, Illinois House Rule 12, New Jersey Joint R... 19(a,b), California Joint Rule 45(a-p), North Carolina General Statutes Article 14, Part 3).

Enclosure 3

Introduced: 4/25/83
Referred: Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO. 33

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of th United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

(9) expose corruption wherever discovered;

(10) uphold these principles, ever conscious that public office is a public trust.

Part 3. READING PREAMBLE. When a temporary presiding officer has assumed the chair under Rule 1(b) the temporary presiding officer shall have this preamble read to the members before calling for nomination of the permanent presiding officer.

Introduced: 4/27/83
Referred: Rules

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 21

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing the addition of a preamble relating to ethics to the Uniform Rules of the Alaska State Legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a preamble to read:

P R E A M B L E

Part 1. CONDUCT OF A LEGISLATOR. (a) A member of the legislature shall at all times engage in conduct that reflects creditably on the legislature.

(b) A member of the legislature shall adhere to the spirit and the letter of these rules and to other rules and law that govern legislative or official conduct.

Part 2. GENERAL PRECEPTS OF ETHICAL CONDUCT. A person in the legislative branch should

(1) put loyalty to the highest moral principles and to country above loyalty to persons or party;

(2) uphold the constitution and laws of the United States and of the State of Alaska and never be a party to their evasion;

(3) seek to find and employ more efficient and economical ways of getting tasks accomplished;

(4) not discriminate unfairly by the dispensation of special favors or privileges to anyone, whether or not for remuneration;

(5) never accept, either personally or for a family member, favors or benefits under circumstances that might be construed by

reasonable persons as influencing the performance of official or assigned duties;

(6) make no private promises of a kind binding on the duties of office, since a public officer or employee has no private word that can override public duty;

(7) engage in no business with the state, either directly or indirectly, that is inconsistent with the conscientious performance of official or assigned duties;

(8) use no information coming to the public officer or employee in the performance of government duties as a means for making a private profit;

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President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

April 26, 1983

The Honorable Randy Phillips
Co-Chair, Special Joint Committee
on Legislative Reform
House of Representatives
Pouch Y
Juneau, Alaska 99811

Dear Representative Phillips:

In response to your telephone call to Candace Romig, I am enclosing copies of all of the documents which the National Conference of State Legislatures has prepared thus far in its work for the Special Joint Committee on Legislative Reform. I apologize for the oversight, but I had assumed that copies were being routed to you. I routinely have been mailing six copies of every document to Senator Faiks office for distribution to the committee members. In the future, we will make sure that copies are sent to you directly.

Enclosed with the letter are:

- an NCSL memorandum on legislative ethics to the committee;
- a workshop summary by NCSL staff of a committee discussion on March 22;
- a NCSL analysis of current Alaska law, pending litigation, and other states' ethics statutes prepared March 15, 1983;
- NCSL analysis of SB 198 and a bill submitted by the governor to the Rules Committee on legislative ethics; and
- the preliminary report by the NCSL to the Special Joint Committee on Legislative Reform.

As you know, in addition to the preparation of these documents, the NCSL staff has been in Juneau on three occasions for interviews and discussions with the committee. We currently are preparing the final project report for submission on May 15, 1983.

If you have any questions about the project and its progress, please do not hesitate to call me. Again, I apologize for not sending you these materials directly.

Cordially,

Lucinda Simon

Lucinda S. Simon
Program Director
Legislative Management

LSS/lw
Enclosures
cc: Candace Romig

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President
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Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

MEMORANDUM

TO: Special Committee on Legislative Reform

FROM: Candace Romig, NCSL

DATE: April 5, 1983

RE: REVIEW OF THE BILL SUBMITTED BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

AS 39.57.010. Perhaps the legislative findings should include a statement to the effect that high standards of ethical conduct in public office must be maintained and that public office must not be used for private gain. A statement might be included to emphasize that no public official can have any interest, business transaction or professional activity, or any obligation which would tend to impair the exercise of independent judgment in the conscientious performance of official duties.

AS 39.57.020.

(b) Prohibiting all conflicts of interest may be an untenable assertion, and describing an adequate mechanism to prohibit conflict of interest would be difficult. Conflict of interest legislation should be structured to minimize the instances in which a public official finds himself or herself confronted with a conflict of interest rather than to prohibit all such circumstances. The concensus of committee members and legislators who were interviewed is that a standing committee in each house would be the most acceptable form of control mechanism. Strong support has also been shown for having committee members from the public-at-large. Consequently, having an external body such as the APOC determine the appearance of potential conflicts would be a difficult position to champion. Definitions are needed for interests which are "relatively insignificant". The purpose of subsection (b) (2) is confusing and may actually be in conflict with the statement "All conflicts of interest are prohibited....."

AS 39.57.030.

(d) If the state and the municipalities were authorized to adopt policies to limit the extent to which officials could be awarded contracts, each governmental unit would have separate rules and regulations which could be confusing and conflicting. Who would adopt these policies with regard to the legislature?

(e) This section would proscribe contracts with the state or municipalities for individuals whose public employment had been terminated less than one year from the date of proposed contract which seems an unreasonable and an unworkable requirement.

AS 39.57.040. No comment.

AS 39.57.050.

(a) add: "in which the public official has input into the regulatory process affecting that interest." As the statute reads in its present form, public officials would be prohibited from owning stock in oil companies.

AS 39.57.060. Interests between public officials who are not in a supervisory capacity are not covered by this legislation. Early and complete disclosure of the potential conflict is not addressed. This section needs a mechanism to determine if an actual conflict exists similar to 39.57.030, 39.57.040, and 39.57.050.

Subsection (2) is unclear.

AS 39.57.070. Early and full disclosure provisions could minimize the potential conflicts of interest from gifts received or solicited by public officials from persons or groups who stand to benefit from action or inaction by the state or municipality.

AS 39.57.080.

(b) The purpose of this subsection is confusing. "Live-in" relationships are not covered by the definition of "relative".

AS 39.57.110.

(a) delete: "advise or assist a client for compensation", and substitute "represent a client for compensation."

(b) The meaning of this subsection is unclear.

AS 39.57.120. The general concensus of committee members is not to restrict employment of individuals after they leave the public's employ.

AS 39.57.130. This section seems superfulous in light of the other provisions. The purpose of this section is unclear.

AS 39.57.140. No comment.

AS 39.57.200. This section does not seem to apply to legislators. After a control mechanism is chosen to oversee the conflict of interest legislation with regard to the legislature, the powers of the ethics body must be delineated. Is the ethics body to have any enforcement power or will it be primarily an advisory group?

AS 39.57.210. No comment.

AS 39.57.220. General agreement seems to be that proceedings of the ethics body would be confidential under Rule 22 while the findings and ruling would be made public. The proposed legislation parallels one suggestion that proceedings be open to the public once it is determined by the ethics body that a probable violation exists. Concensus appears to be that the ethics body would have advisory powers only and would make recommendations to the appropriate legislative body for action.

AS 39.57.230. No comment.

AS 39.57.300. No comment.

AS 39.57.900. Definition of "person in close economic association" would seem instead to define "personal interest." The definition of "public official" appears to categorize relatives of officials as public officials. Add: definition for "sole source contract," "conpensation," "fungible commodity," and "state and municipal agency."

WORKSHOP SUMMARY (prepared by NCSL staff)

Special Joint Committee on Legislative Reform
March 22, 1983

PARTICIPANTS

Senator Faiks
Representative Lacher
Representative Phillips
Jens Zehbe - Senator Faiks
Lewis Schnaper - Senator V. Fischer
Janet Seitz - Representative Phillips
Mike Ford - Representative Miller
Dianne Calvin - Attorney General
Candace Romig - NCSL
Ken Wonstolen - NCSL

I. SCOPE/COVERAGE

A. Chair asked staff to concentrate on legislative ethics only at this time. AG representative indicated that the department was likely to suggest legislation covering other public officials.

II. CONTROL MECHANISM/POLICING BODY

A. Type

1) Standing committee in each house (5 in House; 3-5 in Senate). Most interviews confirmed this preference.

2) Rep. Phillips indicated preference for members from the public-at-large to be included for credibility purposes. Sen. Ray also preferred external participants and suggested that the Governor be allowed to appoint 2 representatives.

B. Selection process (no consensus from interview)

1) By presiding officers (guarantee of minority representatives).

2) By presiding officer and majority/minority leaders.

3) Few ideas on method of appointing citizen members.

C. Staff

1) Chair indicated preference for small staff initially (attorney/secretary) with no independent investigatory authority.

D. Publicity

1) Proceedings would be confidential (under Rule 22); findings and rulings to be made public. Consensus of interviews support this position.

2) Mike Ford suggested opening proceedings once determination of probable violation made, subsequent action to be public.

E. Powers

1) Advisory only; recommendations to full body for action.

2) Details of procedural powers (eg - subpoena ability) to be worked out later.

III. CONFLICT OF INTEREST

A. High duty affirmed: legislator must conduct outside business to minimize impediments to conscientious performance of duties.

B. Early disclosure is key element in dealing with conflicts. Suggested language: obligation to report arises as soon as the legislator is aware of a conflict or should reasonably be aware of such conflict (National Municipal League model).

C. The legislator's duty is to represent constituents and vote on all matters, absent a unanimous vote of the body to excuse the member. Early and full disclosure serves to put the body on notice of potential conflicts and the exertion of undue influence.

D. NCSL staff suggested that disclosures include a sworn statement that independent judgment will be exercised.

E. Determination of the existence of a conflict of or vested interest in relation to size of class receiving detriment/benefit would be function of ethics committee in advisory role. Statutory determination is difficult in advance and would be arbitrary.

IV. LOANS

A. "Non-discretionary" loans represent little difficulty. Consensus of working group and interviews.

B. Views are split on discretionary (commercial) issues.

1) Many feel that full public disclosure is adequate protection. Intent is to allow full participation by citizen (part-time) legislators.

2) Some feel that foregoing such loans is price of being legislator.

3) Chair suggested that agencies publish all loans to legislators, including loan status. Rep. Phillips wanted subsidized loans distinguished.

V. CONTRACTS

A. "Sole-source" contracts would be prohibited, unless legislator was only party responding to a competitive bid. Advisory function of ethics body relevant to this possibility.

B. Public, competitive bidding procedures are adequate protection.

C. NCSL staff suggest that a statement be filed with ethics committee whenever legislator bids on contract and that all state contracts be subject to disclosure laws.

d. Competitive requirement extends to contracts with persons/ business entities in close economic association with legislators.

VI. APPEARANCES

A. Representing constituents is recognized as valid legislative function; no separate compensation shall be involved.

B. Appearing as principal is alright to preserve status quo regarding existing business interests, not to promote a new interest.

C. Legislator/lawyers may represent clients in criminal and civil matters (where state is not a party) in courts but not before quasi-judicial agencies.

D. Legislators should be restricted from employment as a lobbyist or representing clients before state agencies for one year after leaving legislature. Some interviewees object to a waiting period.

VII. MALICIOUS ACCUSATIONS

A. Many interviewees expressed concern that mere leveling of charge was tantamount to public conviction. Some deserved a penalty, such as payment of costs for filing a false charge with malicious intent.

VIII. VEHICLE

A. Staff to Sen. V. Fischer and Rep. Miller proffered SB 192 and HB 20.

B. Rep. Phillips suggested that committee wait for AG proposal since they created issue.

C. NCSL staff advised exercise of legislative prerogative rather than responding to executive initiative.

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March 23, 1983

Review of SB 198
Ken Wonstolen, NCSL

Statement of Purpose

(a) add: Legislators and legislative staff must conduct their outside business affairs so as to minimize potential conflicts of interest with the conscientious performance of their duties and the exercise of independent judgement.

(b)(3) delete: "enforce the provisions of the law"; substitute: "administer this chapter"; add: (b)(4) supersede the common law where it conflicts with any provision of this chapter.

24.60.010: no comment

24.60.020: note coverage of former legislators; add: coverage of staff not on personal staff of legislator (e.g. - Legislative Affairs, House Research Agency, Legal Services) by using term "legislative staff person: instead of "person on staff of a legislator" throughout the bill. Define "legislative staff" in appropriate section.

24.60.030/040: no comment

24.60.50: a number of issues (appearances, loans, contracts, voting) are included under this general "conflict of interest" heading. Perhaps each should receive its own heading and section, as follows (ideas suggested):

- o conflict of interest - A conflict of interest arises when a legislator has a personal interest* in a matter which is distinct from that of a member of a public-at-large and which would tend to impair the exercise of independent judgment. Legislators and legislative staff persons must avoid activities which tend to create even the appearance of a conflict of interest, and, further, must disclose any potential conflict of interest to (ethics body) at the earliest possible opportunity. This obligation to disclose arises as soon as the legislator or legislative staff person is, or reasonably should be, aware of a potential conflict.
- o Voting - The essence of the legislative function is to represent constituents in all legislative decisions. Therefore, a legislator must vote on all matters, unless excused by a unanimous vote of the members of his body. If the legislator feels that a conflict of interest may exist with regard to a particular matter, he shall disclose the relevant facts and

* Should be defined to include interests of family members and business associates.

sign a sworn statement that he will exercise independent judgment. If unable to sign such a statement, a legislator may ask the consent of the members of his body to abstain from voting.

- o Appearances - SB 198 would allow appearances before "quasi-judicial" agencies and courts, even where state is party. Substitute: Representing a constituent before a "state agency" (department, board, commission or instrumentality) is a traditional legislative function and is compatible with the ethical standards of this chapter, providing no compensation is solicited or received. Legislators and legislative staff persons may appear as a principal in such proceedings in order to preserve an existing business interest, but not to promote a new interest. Legislator/lawyers may represent clients before courts in matters to which the state is not a party. Legislators and legislative staff persons may not accept employment as a lobbyist or represent clients before state (agencies) for one year after the expiration of their term or employment.
- o Loans - SB 198 allows loans "available to the public at large"; instead, allow all loans providing disclosure is made and loans are published. Executive should promulgate strict rules for agencies to follow when dealing with legislative applicant.
- o Contracts - SB 198 allows competitive contracts: add: need to file statement of intent to pursue a state contract with ethics body and subject all contracts to disclosure. Also, personal interest should include business associations as employee, director/officer, as well as stock ownership.

24.60.060-090: These sections of SB 198 establish the Legislative Ethics Commission and its powers. Note that it would provide for 2 current legislators, 1 former legislator and 4 citizens who have not held an elected office. It allows the commission to determine staff needs. Other details of procedures and powers are reasonably close to ideas considered by committee and working group.

24.60.900: add: definitions of "legislative staff"; personal interest"; "state agency".

TO: Special Joint Committee on Legislative Reform

FROM: The National Conference of State Legislatures

RE: Preliminary Report on Work on Conflict of Interest Legislation

DATE: April 1, 1983

As required under the contractual agreement between the Alaska Legislature and the National Conference of State Legislatures, this report is submitted to the Joint Special Committee on Legislative Reform and will recap the work and findings to date in the NCSL's work on the issue of conflict of interest.

SUMMARY OF ACTIVITIES TO DATE

Following an initial on-site visit by NCSL staff to Juneau to determine the priorities and parameters of the overall project, the NCSL staff has devoted most of its efforts to the immediate concern over the development of conflict of interest legislation during the 1983 legislative session. To assist the Joint Special Committee on Legislative Reform in its deliberations on this issue, the NCSL staff has completed the following tasks:

- a detailed search and analysis of statutory provisions dealing with conflict of interest and related legislative ethics issues in the other 49 states;
- a review and analysis of legislative rules provisions dealing with voting procedures and conflict of interest in the other 49 state legislatures;
- in-depth telephone interviews with legislative staff nd ethics authorities in four states where similar legislative characteristics or ethics problems have been addressed;
- analyses of current Alaska ethics statutes and four legislative proposals currently pending before the Alaska Legislature;
- on-site interviews with legislators, legislative staff and others;
- presentations before the Joint Special Committee on Legislative Reform on fundamental ethics questions; and
- participation in a decision-making workshop designed to facilitate the committee's consideration of ethics legislation.

Attached are the background documents, bill analyses and research memoranda prepared by the NCSL staff for the committee.

DISCUSSION OF THE PROJECT TO DATE

Ethics issues are complex, requiring great balance between personal liberties, public service obligations and institutional legislative needs. The job of drafting appropriate legislation on this issue currently is complicated in Alaska by pressures of time in the current legislative session.

The NCSL staff has attempted to provide the Joint Special Committee on Legislative Reform with information which will further the understanding and discussion of legislative ethics issues. In addition, the NCSL staff has tried to help facilitate the process by identifying the major policy decisions which must be addressed in legislation. (The attached workshop summary from March 22,1983, reflects the outline of decisions facing the committee.) In terms of these major policy decisions, the NCSL staff offers the following comments and findings on the process of developing a legislative ethics bill thus far.

Scope of Coverage

The legislature has before it proposals which would deal with only legislators and ones which would cover all public officials. There is no consensus on this issue.

Comment: Given th constraints of the legislative session, a bill covering only legislators and legislative staff persons is probably more realistic and feasible at this time. Conflict of interest statutes covering only legislators and legislative staff persons are in force in 33 states, and the separation of powers doctrine makes it appropriate for the legislature to deal with ethics issues for itself, independent of other government officials.

Control Mechanism/Policing Body

1. There seems to be a consensus that a legislative committee with public citizen members should be established to oversee and enforce provisions of a legislative conflict of interest or ethics bill.

Comment: The separation of powers doctrine and constitutional bases give credence to the concept of an internal legislative ethics committee. At the same time, the involvement of independent citizen members mitigates some of the difficult dynamics which legislative members face when judging and penalizing their peers. A selection process controlled by the presiding legislative officers is appropriate with safeguards for minority representation. To insure a balance of independence, citizen members probably should be appointed by some independent process, e.g., selection by the state judiciary or nominees by the state judiciary or the governor and selection by lottery.

2. The staffing of an ethics committee must be adequate to the powers assigned to do it.

Comment: If the powers of an ethics committee are primarily advisory and the principal enforcement strategy is for full and early disclosure, a limited legal and administrative staff may be adequate to serve the

committee. If, however, an ethics committee is vested with investigatory responsibilities, then a more substantial staff is required.

3. There seems to be a consensus that the proceedings of an ethics committee should be confidential until such time as findings and rulings are concluded and published.

Comment: Confidentiality in the preliminary stages of an investigation and in an advisory process is appropriate.

Conflict of Interest

1. There seems to be a consensus that early disclosure of potential conflicts of interest is essential, and that a legislator is obliged to report a potential conflict as soon as he or she is aware of such a conflict.

Comment: This approach is fundamental and appropriate.

2. A legislator must represent constituents and vote on matters before the legislative body.

Comment: Most state legislative rules prohibit members from voting on matters in which they have a direct personal or pecuniary interest, and the most common practice is to allow the member to state the reasons for not voting and then, without debate, to have the rest of the membership vote by simple majority to excuse the member. It is valid to balance quorum considerations with the process of minimizing potential conflicts of interests, however, Alaska's rules which require unanimous consent of the body to excuse a member from voting are among the most stringent. Ony three other legislative bodies require unanimous consent to excuse a member. In a small legislative body, abstaining from a vote and legislative action may contribute to the conflict of interest. Consequently, the most equitable method to resolve these situations is by early and full disclosure of the potential conflict. Particularly in light of the unanimous consent provision, the NCSL staff suggests that disclosure include a sworn statement that independent judgment will be exercised.

Loans

1. Legislators should be eligible for non-discretionary state loans.

Comment: This is appropriate and reflects a consensus among the legislators.

2. There is no consensus on the question of whether state legislators should be eligible for discretionary loans.

Comment: Alaska represents a unique situation for which there is no parallel in other states. The dominant role of the state in the commercial loan market is not evident in other jurisdictions. At a minimum, a conflict of interest statute dealing with state loans should require full and early public disclosure of loans and loan applications by public officials.

Contracts

1. There seems to be consensus that legislators should be eligible for contracts with the state under competitive bidding procedures.

Comment: In 31 states, public official face some restrictions on entering into public leases or contracts. Fourteen states allow public officials to enter into contracts through a competitive bidding process. Again, as a minimum standard, the NCSL suggests that early and full disclosure be required of legislator bids on contracts and contract awards to lawmakers.

Appearances

1. There seems to be consensus that some restrictions would be appropriate on legislators representing constituents or themselves for compensation before state agencies.

Comment: Nineteen states require disclosure of compensation received by public officials who represent clients or constituents before state agencies, and 28 states restrict appearances by public officials. Disclosure is imperative in these instances, and public perceptions of undue influence may require more stringent safeguards.

CONCLUSION

To date, no specific piece of legislation before the legislature reflects a consensus view on conflict of interest. Opinions remain divided on major policy questions. Fundamental decisions must be addressed by the Joint Special Committee on Legislative Reform and by the legislature as a whole on this question. Given the time constraints of the legislative session, resolution at this time may not be possible, however, inaction on the part of the legislature must be balanced with public perceptions of the immediacy of this question.

National Conference of State Legislatures

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President
William F. Passannante
Speaker Pro Tem
New York State Assembly

Executive Director
Earl S. Mackey

MEMORANDUM

TO: Alaska Legislature--Special Joint Committee on Legislative Reform

FROM: Ken Wonstolen, Esq., consultant to NCSL
Candace Romig, Staff Associate, NCSL

DATE: March 15, 1983

RE: Legislative Ethics

This memorandum is organized as follows:

I. Background
--NCSL assistance
--purpose of memo

II. Introduction and Overview
--public trust doctrine
--appearance of impropriety
--practical code of ethics
- public pressure/Attorney General's Opinion
- policy rationale

--Alaska situation

III. Control Mechanisms
--elective process
--public exposure
--partisanship
--executive branch
--judiciary
--legislative commission
- intramural
- independent

IV. Selected Issues
--personal gain
--conflict of interest
- nature of duty
- disclosure and abstinence
- disclosure and excuse

--voting/vested interest
--state loans

--state contracts
--agency appearances

V. Legislative Guidance
--courses of action
- legislative ethics bill
- comprehensive legislation
- interim study

--policy questions

I. Background

NCSL has been commissioned to assist the Committee in its deliberations. Three general areas have been identified for study: Legislative rules and procedures; the legislative budget process; and legislative ethics. Ethics have been identified as the area of most immediate and pressing concern, and this memo is part of NCSL's response. The purpose of this memo is to stimulate the thinking of interested legislators and staff and provide a vehicle for discussion by and guidance from the committee. NCSL is also preparing a detailed analysis that reviews current legislative initiatives on ethics vis-a-vis other state and model codes. In addition, NCSL staff will visit Alaska during the week of March 21 to communicate directly with the Committee, as well as other interested legislators and staff. The Committee's discussion of this memorandum on March 21 and a subsequent working session with Alaska legislative staff on March 22 are designed to result in a specific ethics proposal.

II. Introduction and Overview

Both the American political tradition and Alaska's statutes hold that "public office is a public trust" (see footnote #1) in which independent judgement must be exercised to further the public welfare. The United States Supreme Court has recognized as fundamental the right to be governed by representatives whose judgements are untrammelled by considerations of personal gain. (See footnote #2)

This trust responsibility is imposed on legislators not just to safeguard the public welfare, but also to maintain public confidence in the system of government. Instances of corruption, influence peddling and personal gain-seeking undermine public faith in institutions. This means that even the appearance of impropriety and the "danger of conflict of interest" (see footnote #3) must be avoided. Legislators are held to a high standard, commensurate with their positions of influence and responsibility.

Recognizing these basic tenets, the next step is to devise and implement a practical code of ethics to govern day-to-day legislative affairs. This is a difficult and complex task. The goal should be to develop a set of guiding principles, supplemented by specific rules for recurring, clearly-defined situations. This must be coupled with a process whereby these principles and rules may be extended to novel situations. Finally, provision must be made for enforcement.

The Alaska legislature has engaged this challenge. Cases of actual or perceived misconduct have led to public pressure for reform. The

Attorney General has issued an opinion indicating the applicability of common law standards absent statutory controls. Since the common law is not well settled on the majority of ethical issues, confusion and uncertainty persist. The common law does have a role to play in guiding the practical application of statutory ethics, however. Almost all statutes acquire a judicial gloss over time, whereby the common law is created or supplemented. The advisory opinions of an enforcement body would be a valuable "common law" adjunct to an ethical statute.

Nevertheless, legislative enactment of an ethical code is a worthy goal. It would provide more definitive guidance than the common law. Public desires for reform would be accommodated. Most importantly, a process would be established for applying, extending and enforcing ethical provisions.

Alaska's special situation must be kept in mind in developing such legislation. That is, the state has a relatively small population and pool of potential legislators. The legislature itself is a compact body. Further, members are part-time legislators, retaining their varied outside business interests. Finally, state government is heavily involved in Alaska's economy. These factors call for sensitivity to the possibility of discouraging the pursuit of political office by capable, commercially active citizens.

III. Control Mechanisms

The fundamental control over legislative conduct is, of course, the elective process. Ironically, the elective process may also generate those personal obligations which tend to create potential conflicts. In addition, state legislative elections are more likely to turn on local issues or party affiliation than on subtle questions of ethics. Therefore, the elective process is an unreliable and unpredictable control mechanism.

Associated with the elective process is the effect of the light of publicity. Its power is dependent on open processes, active media and interested citizens. Alaska has disclosure requirements for certain public officials, including legislators (see footnote #4). It has also made provision for public notice and participation in its legislative processes. Any ethical control method adopted by the legislature must balance individual rights to privacy against the public right to know.

It has also been suggested that partisan considerations may operate as a control over legislative ethics. While it is true that disclosure of ethical violations might occur due to partisan motives, there are objections to relying on partisanship as an ethical control. First, there may be a temptation to use knowledge of a violation for partisan advantage, rather than disclosing the problem. Second, considerations of comity dictate against reliance on a mechanism which would tend to exacerbate partisan divisions. Finally, public accountability is minimal.

The executive branch may also exert some control over legislative ethics. The Attorney General is currently occupying the field. He asserts the right to advise on ethical issues and bring legal actions for ethical violations. The Governor might, by executive order, establish

ethical parameters for agency actions, including dealings with legislators. Conversely, the legislature may exert its authority over executive branch ethics by enacting a statute.

Courts are probably the ultimate arbiters of legislative ethics. For constitutional reasons (see footnote #5) plus a disinclination to deal with "political questions", courts play this role with reluctance. However, legal precedent indicates that legislative authority over intramural affairs may be limited by the public trust doctrine. (See footnote #6.) Nevertheless, statutory guidance is important to the judicial process as well.

Courts are less likely to assert jurisdiction over legislative ethics in the presence of some formal control mechanism established by statute. There is a natural desire to preserve legislative autonomy in this regard. The legislature has the constitutional authority to judge its members, and peer review is an accepted means of establishing ethical standards in many professions. An internal policing body may be taken more seriously by legislative members and has certain advantages in the advisory or consultative process involved in ambiguous or unclear ethical situations. However, exercising this prerogative is unlikely to assuage judicial or public concerns over legislative ethics. Practical difficulties are raised as to majority, minority and factional representation, as well as the small pool of legislators available. Partisanship would be a troubling element. Finally, the record of such intramural bodies is mixed. (See footnote #7.)

An independent legislative ethics commission is a concept worthy of consideration. It would have enhanced credibility vis-a-vis the other branches of government, the media and the public. It would minimize the practical and partisan concerns raised by intramural bodies. And, it would isolate the ethical arena from the vagaries of legislative attention. Members of such an independent commission might include former legislators, retired judges, university deans and corporate directors. The Attorney General might be an ex-officio member. Appointments might be made by the majority and minority leadership of each house, as well as the Governor, State Bar Association and Chamber of Commerce.

IV. Selected Issues

Whatever the control mechanism adopted, substantive statutory guidance will be essential. Several major issues will be considered here. Additional points will be covered in NCSL's detailed comparative analysis.

Ethical concerns may, perhaps, be summed up by two basic proscriptions. First, public office should not be used for personal gain. This includes such violations as accepting bribes or kickbacks, exerting improper influence, using or disclosing confidential information, and using state property for personal purposes. Second, office holders should not conduct outside business which conflicts with the conscientious performance of duties or the independent exercise of judgment. Conflict of interest implies an interest which is present and personal, and not shared by the general community. It includes the notion of vested interest, as well as the notion of division of loyalty.

Disclosure and abstinence are the proper courses of action regarding conflicts of interest. A higher duty is imposed, however. Legislators are elected to exercise their judgment on matters of public concern and should strive to conduct their outside business so as to minimize conflict situations (see footnote #8). Indeed, a legislator may not receive a personal benefit by declaring a conflict, abstaining and letting a "disinterested colleague" make the decision. (See footnote #9.)

This raises a concern relating to the current Alaska practice of allowing a single vote to prevent a legislator from abstaining on a decision after declaring a conflict. The possibilities for collusion and abuse are apparent. It is unlikely that the common law would excuse an ethical violation on this basis. Similarly, full disclosure and a sworn statement that independent judgment will be exercised may be insufficient to excuse a conflict. Quorum considerations are the only justification for such practices. They should be used with restraint and should be specifically covered in a statute.

The Attorney General's opinion raises three specific issues. One relates to the notion of vested interest. That is, a legislator may vote on a bill by which he benefits, as long as the benefit is not peculiarly personal. If the legislator is one of a small class of beneficiaries or if the bill affects a venture with which he is commercially connected, he must abstain.

A second issue relates to state loans to legislators. Here the relevant factors involve the size, availability and discretionary aspect of the loan in question. Loans with standard criteria as to qualification, amount, security and repayment, and general availability, are acceptable. Large commercial loans involving discretion in determining creditworthiness, terms and administration, and which are of limited availability, are more problematic.

A third issue relates to legislators contracting with the state. The Attorney General finds the common law to prohibit such contracts, with limited exceptions (see footnote #10). Some states allow legislator/state contracts which are "de minimus" (small in value or legislator has fractional interest). Others allow competitive contracting. The latter exception is problematic, raising concerns over improper influence, use of confidential information and discretion in the awarding and administration of such contracts. The course of action most consistent with the duty of legislators to avoid even the appearance of conflict would be a prohibition.

A final issue, not raised by the Attorney General's opinion, relates to legislator appearances before state agencies. While it is a traditional legislative function to intercede with state bureaucracies on behalf of constituents, this must be distinguished from appearing as a principal or in a representative capacity. Some states allow appearance as a principal to maintain the status quo regarding a business interest, but not to obtain a new franchise. Some allow representation of a client, even for compensation, if such compensation is disclosed and is not contingent on the agency action. Public perceptions should be considered in this regard.

V. Legislative Guidance

Three courses of action are suggested for legislative consideration:

- Enact a legislative ethics bill during the 1983 session. NCSL assistance, including this memo and a detailed comparative analysis, as well as on-site consultation is being provided under NCSL's contract with the Committee. Senator Fischer has prepared a working draft which could form the basis of a bill.

- Enact a companion bill for other state officers and employees, or a comprehensive statute covering all public officials. HB 20 (by Rep. Miller, et al) could serve as the basis for a comprehensive approach.

- Defer action on one or both of the above areas (legislators/other public officials) until the next session and conduct additional study during the interim. Such an interim study could be organized and staffed by NCSL as a follow-on to its existing contract, consistent with its commission to assist the enhancement of Alaska's legislative process.

If immediate action is chosen as a course of action, legislative guidance would be useful on a number of specific policy areas:

- What kind of control mechanism or policing body is preferred?
  --intramural/independent
  --publicity of proceedings, remedies
  --advisory/enforcement function

- How broadly or narrowly should conflict of interest be construed?
  --nature of duty
  --role of disclosure
  --excuses: collegial; sworn statement; quorum issues
  --vested interests: peculiar benefit; degree of connection

- How should state loans be dealt with in legislation?
  --specific consideration of existing programs
  --general principles/advisory opinions

- How should legislator contracts with the state be handled?
  --prohibition/allowance
  --exceptions: de minimus; only source; common goods
  --competitive processes: role of disclosure

- To what extent should legislator appearances before state agences be regulated?
  --for constituents

--as principal
--as client

- What additional or related ethical issues should be addressed?
  --lobbyist controls
  --open meetings
  --campaign finance

These areas all call for the exercise of legislative policy judgment, in the light of the ethical principles and concerns raised in this memo. Specific guidance will be essential to staff in drafting legislation.

FOOTNOTES

1. AS 39.50.010 (b)(1)
2. Tool Co. v. Norris, 69 U.S. 45, 54-55 (1865)
3. AS 39.50.010 (b)(1)
4. AS 39.50.030
5. Alaska Constitution Article II, Section 12
6. U.S. v. Ballin, 144 U.S. 1, 5 (1892); ct. U.S. v. Smith 286 U.S. 6 (1932)
7. See 76 Harv. Law Rev. 1209 (1963)
8. See AG Opinion pp. 37-38
9. See AG Opinion p.2
10. See footnote 14, p. 26 of AG Opinion

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Scope of Statutes	The statute covers: • All legislators • Judicial officials • All candidates for state and municipal elective offices • The governor, lieutenant governor, and selected state agency officers.	The legislation would cover: • All legislators and legislative employers • All municipal officers and employers • The governor and lieutenant governor.	Legislation would apply to: • All legislators • Legislative staff working with committees and legislators • Legislative members-elect • Former legislative members.	• Idaho, Vermont, and West Virginia have no disclosure laws or restricted activities • Public officials, including legislators (14 states) • Specific legislation for legislators (33 states)
Disclosure Requirements	Requires disclosure of: • All income over $100 by official or family • Business interests and ownership • Real property • Trusts • Loans or loan guarantees, and • Contracts or offers to contract with the state. Assets or liabilities under $500 need not be disclosed Disclosure statement filed annually; sworn statements required of some officials. Blind trusts are acceptable but must be reported.	Requires disclosure of: • All items required under AS 39.50.020 • Specific conflicts require preparation of a separate statement by certain state executive officials and municipal officers • Other public officials required to state a conflict at the time of official action.	Legislation would require disclosure of the following: • Direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with an individual with direct interest in an enterprise affected by a vote on proposed legislation • Financial benefit derived from a close economic association with a person lobbying, or who hires a lobbyist, to propose legislation or to influence legislators' votes • Gifts, loans, or payments in the aggregate amount of $100 or more from anyone with an interest in an enterprise affected by a vote on proposed legislation • Fees and honorariums received in excess of $100 • Financial transactions involving legislators and staff in excess of $1000 • All contracts with the state	States require disclosure for: • Source of income (34) • Income of business if partnership or shareholder (23) • Investments (29) • Real estate interests (33) • Offices and/or directorships (31) • Creditor indebtedness (24) • Leases or contracts with public agencies (14) • Gifts (19) • Compensated representation before state agencies (19) • Fees or honorariums (23) • Reimbursement of travel expenses by private sources (10) • Professional or occupational licenses held (8) • Deposits in financial institutions (10) • Retainers (4) • Cash surrender value of insurance (5) • Nature of outside employment (22)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Disclosure Requirements (continued)			Recommended procedures for disclosure: • Legislator declares conflict of interest on the floor of the legislative body and requests to be disqualified from voting • A written statement submitted to the committee describing conflict bars legislator or staff from further action on the legislation in question, unless the statement asserts to the satisfaction of the committee the objective ability of the party to participate in the legislative action.	• Professional services rendered (11) • Identification of trusts by trustee (11) • Identification of trusts by beneficiary (18) • Financial interests of official's spouse and dependents (33) Reports and statements are generally required to be filed within a specified time period.
Conflicts of Interest: General	The statutes prohibit public officials from: • Using his office for financial gain to himself, business or family • Soliciting money for legislative advice or other assistance relating to his public employment • Representing a client before a state agency for a fee (Municipal officers similarly are barred from representing a client before their municipal body.).	The bill would prohibit public officials from: • Soliciting gifts to influence or reward an official action • Using public office to seek employment, contracts or compensation benefiting the official or his household • Using public time, equipment or facilities for private or political purposes • Soliciting financial transactions in businesses an offical supervises • Using confidential information for personal gain • Participating in actions affecting a business or property in which a public offical has a personal financial interest • Representing a person before a state agency for compensation (legislators and staff)	Legislation would proscribe the following as conflicts of interest: • Undue influence exerted as a result of public office • Participation in outside business or professional activity inconsistent or in conflict with official duties • Misuse of state property or funds • Owning capital stock in a corporation in excess of $1000 • Acting as an officer, director, or agent of a corporation • Representation for pay of a client before any state or local agency • Nepotism, excepting unpaid relatives • Confidential information not available to general public and obtained in the course of official duties used for personal benefit.	States have restrictions on the following: • Use of public position to obtain personal benefits (40) • Giving benefits to influence public officials and/or public employees (33) • Use of confidential information (37) • Post-governmental employment (22) • Receipt of gifts (31) • Public officials representing clients before public bodies (28) • Receipt of fees and honorariums (23) • Nepotism (15) • Public official's outside employment or business activity (28)

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Conflicts of Interest: General (continued)		• Assisting persons for compensation to pass or defeat legislation or secure a contract, claim or transaction before the legislature, a state or municipal agency. Former officials would be prohibited from: • Using confidential information for personal gain • Representing persons in transactions in which the official was involved. (12 mos. time period)		
Conflicts of Interest: Contracts and Loans	The statutes do not prohibit public officials from receiving state loans or contracts.	The bill would not prohibit public officials from receiving state loans or contracts. The bill would prohibit public officials from assisting for compensation other persons who are seeking to obtain contracts, claims, etc.	Legislation would proscribe the following activities with regard to contracts and loans: • Contracts made with state and local governmnet without public competitive bid process; non-bid contracts may be awarded at the discretion of the committee provided no undue influence is exerted to obtain the contract and it does not conflict with the conscientious performance of official duties • Discretionary state benefits not available to the general public such as loans and land disposals in which the decision-making process does not safeguard against the appearance of improper influence.	Specific restrictions pertaining to contracts and loans: • Public officials entering into public leases or contracts (31) • Competitive bidding (14)
Activities Not Restricted	No unrestricted activities are specifically identified.	No unrestricted activities are specifically identified.	Proposed legislation specifically allows: • Outside employment and business opportunities, provided an advisory opinion of the committee is sought in cases of potential conflict	• Kansas, Maine, and Missouri are three states which allow a state officer to contract with the state in a process of competitive bidding or for which the price or rate is fixed by law

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Activities Not Restricted (continued)			• Former legislators and staff may lobby or work for state agencies immediately upon leaving the legislature subject to the constitutional ban on legislators taking a position with a salary increase created while the legislator was a member.	• In Maine, legislators may serve on public boards, commissions or other authority created by the legislature provided no consideration is paid.
Control Authority	The statute is administered by the Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers include a provision to: • Maintain records, reports and disclosure statements and establish reporting procedures The commission is not authorized to initiate or conduct investigations relative to violations. All disclosure statements and reports are public records.	The bill would assign new duties to the already existing Alaska Public Offices Commission, an independent commission within the Department of Administration. The commission duties and powers would include to: • Issue advisory opinions and publish edited versions of opinions to maintain confidentiality • Accept, initiate and investigate complaints • Subpoena witnesses, take testimony and hold hearings on complaints • Maintain necessary records, reports, forms and establish reporting procedures • Make determinations of appropriate action • Assess civil penalties for violations • Refer impeachable offenses to other state officials for subsequent action • Refer determinations warranting removal to the appropriate appointing authority. Advisory opinions may be edited for confidentiality. Complaints and a determination by the commission are public record.	Proposed legislation provides: • Creation of a standing ethics committee in each house • Duties --investigate complaints of ethics violations --issue findings --issue advisory opinions and statements of policy --make reports to the legislature and the public • Powers --initiate complaint alleging ethics violation --hold hearings --subpoena witnesses and documents --take testimony under oath --appoint special investigator when needed --issue a private reprimand --make recommendations to the legislative body for remedies. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion.	• 8 states have standing legislative ethics committees • No state has a joint legislative ethics committee • 28 states have external commissions, agencies or boards with responsibility for conflict of interest; it is uncertain what jurisdiction over the legislature all of the agencies have • All external agencies but three were created by statute.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Penalties	Penalties for violation of reporting requirements include: • Fines, imprisonment or both for false or misleading reports • Fines for late filings • Removal from office for failure to file • Barring a candidate from assuming office for failure to file. Penalties for violation of conflict of interest requirements include: o A misdemeanor punishable by fine and/or imprisonment.	Penalties would include: • Impeachment • Removal from office • Fines not to exceed twice the economic benefit derived by the official or a fine of not more than $2000 where no benefit is received • Contracts entered into in violation of these provisions are voidable by the state or a municipality.	Legislation provides the following penalties: • Violations are subject to private written reprimand from the committee • Upon the recommendation from the committee the legislative body may act to censure or expel the member or may recommend that the attorney general prosecute under criminal statutes • Attorney general may bring a civil action to recover compensation for damages • Members of the committee or their staff found guilty of disclosing the identity of anyone requesting an advisory opinion may have a civil action brought against them for damages • Staff found guilty of violating these provisions are terminated from employment • Any agreement contracted illegally is voidable • It is a violation of law to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an ethics violation subject to the specified penalties of this legislation.	Information is not available for all states, however: • Maine provides that anyone convicted of filing a false charge of conflict of interest with the commission will be guilty of a Class E crime. • Maryland provides that the legislature may, by resolution, require compliance, issue a reprimand, or censure the guilty member • Wisconsin provides that the ethics board can make a recommendation to the district attorney in whose jurisdiction the violation occurred to commence criminal prosecution.
Other	The statutes allows a "qualified Alaska voter" to bring a civil action to enforce the provision.	The bill would allow legislators and other public officials to participate in an action or decision even in the case of a conflict if: • Participation is necessary to constitute a quorum • The official has filed a disclosure statement	Other features of the proposed legislation are: • Transferrable promotional benefits resulting from official business become the property of the state • When circumstances prevent the divesture of property or contracts to meet the requirements of law, disclosure must be made and an advisory opinion requested of the committee	• California defines financial interest as having an investment or interest of over $1000, having any source of income over $250 within 12 months or being employed as management in a business entity.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)		• The official announces the nature of the conflict when action is taken. The attorney general is counsel to the commission, but the chief justice of the supreme court may appoint a special counsel if requested by the commission.	• Meetings of the committee are covered by the open meetings law, but any meeting which may tend to prejudice the reputation and character of any person may be closed. Privacy of anyone mentioned in a committee opinion will be protected. • Specific definitions prescribed: household, business associate, compensation, personal financial interest.	• Kansas provides that legislators cannot be litigants in legal proceedings involving constitutionality of law enacted while he or she was a legislator. • In Maryland legislators may participate in legislative action provided their vote is needed to obtain a quorum and they have submitted a signed statement identifying conflict; the commission is required to compile a list of business entities doing business with the states. • Missouri and Oklahoma restrict the sale, rent or lease of property to the state. • Montana legislators are prohibited from participating on legislation affecting a business competitive with their own. • Nevada legislators are prohibited from suppressing documents and disclosing confidential information for money. • All New York legislators must receive, read, and understand the ethics code.

PROVISION	ALASKA LAW (Chapter 50)	HOUSE BILL 20	SENATOR FISCHER'S MEMORANDUM	OTHER STATES
Other (continued)				• South Carolina legislators must put assets in a blind trust to avoid conflicts of interest and may not appear before a board on rate- or price-fixing matters; statement declaring a conflict of interest delivered to presiding officer within 24 hours of action or decision is in compliance with the law. • The Wisconsin ethics board must report the identity of person seeking information from a statement of economic interests to the person who filed the information; no orders become effective until 20 days after it is issued.

NCSL Staff has asked for the Committee's guidance on a course of action in these specific policy areas:

* What kind of control mechanisms or policing body is preferred?

  --intramural/independent

  --publicity of proceedings, remedies

  --advisory/enforcement function

* How broadly or narrowly should conflict of interest be construed?

  --nature of duty

  --role of disclosure

  --excuses: collegial; sworn statement; quorum issues

  --vested interest: peculiar benefit; degree of connection

* How should state loans be dealt with in legislation?

  --specific consideration of existing programs

  --general principles/advisory opinions

* How should legislator contracts with the state be handled?

  --prohibition/allowance

  --exceptions: de minimus; only source; common goods

  --competitive processes: role of disclosure

* To what extent should legislator appearances before state agencies be regulated?

  --for constituents

  --as principal

  --as client

* What additional or related ethical issues should be addressed?

  --lobbyist controls

  --open meetings

  --campaign finance

These areas all call for the exercise of legislative policy judgement, in light of the ethical principles and concerns raised in this memo. Specific guidance will be essential to staff in drafting legislation.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 19, 1983

SUBJECT: Letter of Intent

TO: Senator Jan Faiks
Representative Randy Phillips
Co-Chairmen, Joint Special Committee on
Legislative Reform

FROM: Richard A. Bradley
Legislative Counsel

You have requested a Letter of Intent for use with the legislative reform package of bills. I suggest the following:

Letter of Intent
for
SB 257 (or HB 362)

The Special Committee on Legislative Reform considered but has not recommended substantive language providing for a waiver of legislative immunity (Article II, section 6, Alaska Constitution) for a violation of the provisions of legislation proposed in HB 362 and SB 257. The committee is aware of the complex and difficult constitutional and policy arguments on this question made both on behalf of the state by the attorney general's office and by counsel for former Senator M. E. Dankworth. The committee was unwilling to appear to support either position in the adoption of language dealing with these questions. But the members of this committee will recommend substantive language dealing with these issues when a final decisions has been entered in the Dankworth case.

RAB:ljb
15/015

REPRESENTATIVE RANDY

phillips

HOUSE DISTRICT 15

HAND DELIVER

TO: REP. MIKE MILLER

FROM: REP. RANDY PHILLIPS RP

DATE: APRIL 20, 1983

RE: LETTER OF INTENT FOR HB 362

Please review the attached memorandum from Richard Bradley concerning the letter of intent for HB 362 and let me know if it meets with your approval.

If you have suggested changes or you approve of the proposed wording, please let me or my office know as soon as possible in order that we can get this letter of intent ready for signature and filing. My office phone numbers are 4949/4931/ 4932.

RP:jss

REPRESENTATIVE RANDY

phillips

HOUSE DISTRICT 8 15

HAND DELIVER

TO: REP. MIKE MILLER

FROM: REP. RANDY PHILLIPS RP

DATE: APRIL 20, 1983

RE: LETTER OF INTENT FOR HB 362

Please review the attached memorandum from Richard Bradley concerning the letter of intent for HB 362 and let me know if it meets with your approval.

If you have suggested changes or you approve of the proposed wording, please let me or my office know as soon as possible in order that we can get this letter of intent ready for signature and filing. My office phone numbers are 4949/4931/ 4932.

RP:jss

Alaska State Legislature

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

April 15, 1983

The Honorable Joe Hayes
Speaker, Alaska House of Representatives
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Speaker Hayes:

The Special Committee on Legislative Reform has completed the work assigned to it in the authorizing resolution and we are submitting this letter and the proposed legislation discussed herein as our final report and recommendations.

CONFLICT OF INTEREST

House Bill No. 362, "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission; and providing for an effective date." has been filed with the office of the Chief Clerk for introduction.

The committee held many hearings concerning the various aspects of the legislation and this bill represents the committee's consensus on the items contained therein.

One of the items not included in this conflict of interest legislation is a proposal concerning legislative immunity under the provisions of the Alaska Constitution. The letter of intent prepared for this bill and adopted by the committee reflects the committee's view on this question.

CODE OF ETHICS

The committee has requested that Legal Services draft a House Concurrent Resolution to include a Code of Ethics. After much discussion, the committee members felt that this Code properly belonged as a preamble and part of the Uniform Rules.

UNIFORM RULE CHANGES

The committee has requested that Legal Services draft a House Concurrent Resolution concerning recommended changes to the Uniform Rules.

An item not included in the committee's proposed legislation on Uniform Rule changes is a definition of the term "minority." We would like to assure you that the committee did discuss this item at length; however, no consensus could be reached. We would urge that the committee of referral take this matter into consideration as the resolution is before them.

NATIONAL CONFERENCE OF STATE LEGISLATURES' REPORT

Under the terms of the contract with NCSL, the final report from NCSL will be submitted by May 15, 1983. This report is to include "the Consultant's findings and recommendations on the legislative budget process and legislative rules and procedures. . .". A copy of this report will be provided to each member of the Legislature and the office of the Chief Clerk.

Respectfully submitted,

Representative Randy Phillips
Co-Chair

Representative Barbara Lacher

Representative M. Mike Miller

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 11, 1983

The Honorable Jan Faiks
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Randy Phillips
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Faiks and Representative Phillips:

My staff and I have reviewed the latest draft of proposed conflict of interest legislation that is currently pending before your committee. I would like to congratulate you for the progress you have made in codifying what I know is a difficult area of the law.

However, we do have a number of comments to make about this proposed legislation and we will list a few of them in this letter. Our views have already been expressed by us either in testimony before the committee, or in informal meetings with one or more of the members of the committee. We would be prepared to detail our concerns either in writing or in testimony before the committee. Alternatively, our views can be presented to the standing committees to which the legislation will be referred in each body.

Although we advocated for a single agency to review potential conflicts of interest, the committee's choice of a system with separate procedural mechanisms for each branch of government does have its advantages. We feel very strongly, however, that it is inappropriate to have different substantive provisions for each branch. Conduct that constitutes a conflict for one branch of government will almost invariably be a conflict if committed by a person in another branch.

In addition, we have particular concerns over some of the proposed substantive provisions, whether or not they are applied to all three branches of government. For example, the sections on contracts and loans are not consistent in their

treatment of a legislator's business relationships, although both contracts and loans are very business oriented. Records for state loans are made public, but not state contracts.

Of more concern, however, are provisions which impliedly legitimize conduct that has been prohibited in the criminal code. For example, contrary to AS 11.56.860, the provision on confidential information suggests that such information can be used if it is not used for financial gain. More importantly, the section covering gifts allows a legislator to solicit or receive a bribe, as long as it is less than $100. Presumably this provision would allow several people to offer a succession of $100 "gifts" in order to influence official action. I doubt that this result was intended, and it needs to be reconsidered.

The legislation should also contain provisions that describe the available remedies in more detail and whether the commission has authority to review the conduct of legislative employees. For example, the range of recommendations that the commission can make should not be limited to monetary penalties, but should include divesting the interest, establishing a blind trust, repaying profits, censure, removal from committee assignments, termination of legislative privileges or employment, or expulsion. In addition, it should be made clear whether the attorney general has authority to seek remedies in a court of law at any time, or whether he must wait for a decision by the commission.

Finally, there is the question of how this legislation effects any available criminal remedies and whether the committee will consider adopting the changes to the criminal law that we suggested in our letter to Senator Faiks of April 8, 1983.

Please let me know how the committee wishes to proceed in this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:DJG:lb-54

STATE OF ALASKA
DEPARTMENT OF LAW
CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

April 8, 1983

The Honorable Jan Faiks
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Randy Phillips
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Faiks and Representative Phillips:

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Please let me know how the committee wishes to proceed in this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:DJG:lb-54

Alaska State Legislature

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

LETTER OF INTENT
FOR HB 362

The Joint Special Committee on Legislative Reform considered but has not recommended substantive language providing for a waiver of legislative immunity (Article II, Section 6, Alaska Constitution) for a violation of the provisions of legislation proposed in HB 362. The committee is aware of the complex and difficult constitutional and policy arguments on this question made both on behalf of the State by the Attorney General's office and by counsel for former Senator M. E. Dankworth. The committee was unwilling to appear to support either position in the adoption of language dealing with these questions. But the members of this committee will recommend substantive language dealing with these issues when a final decision has been entered in the Dankworth case.

Respectfully Submitted,

Representative Randy Phillips
Co-Chairman

Representative Barbara Lacher
Member

Representative M. Mike Miller
Member

Alaska State Legislature

OFFICE OF THE MINORITY

POUCH V
JUNEAU, ALASKA 99811

House of Representatives

April 7, 1983

DRAFT CONFLICTS LEGISLATION REVISIONS

by Rep. Mike Miller

1. Delete AS 24.60.030(a), and insert the following;

Adopted "(a) No individual subject to this chapter shall use his public office for private advancement or gain."

Source - Model State Law, section 11(a).

2. Delete AS 24.60.030(b), and insert the following;

"(b) a conflict does not exist if the commission ~~determines~~ if ~~that~~ no benefit or detriment accrues to the individual subject to this act, beyond that which accrues uniformly to members of the profession, occupation, group, or public at large.

Source - HB 20

3. Delete AS 24.60.060(e)

4. Amend AS 24.60.110 as follows;

Pg. 6, Ln.26, delete "a person to whom this chapter applies" and insert "a member of the legislature".

5. Amend AS 24.60.170 as follows;

Pg. 12, Ln. 1, delete "three" and insert "four".

MEMORANDUM State of Alaska

TO: Norman C. Gorsuch
Attorney General

DATE: April 6, 1983

FILE NO:

TELEPHONE NO:

FROM: Dean J. Guaneli
Assistant Attorney General

SUBJECT: Analysis of Proposed Bill to Expand Criminal Conflicts of Interest

Senator Faiks asked that I prepare a brief sectional analysis of a proposed bill drafted by the "Free Committee". A copy of the proposed bill is attached to this memorandum.

Sections 1 and 2 of the proposed bill are amendments to the financial disclosure provisions of AS 39.50 and do not present any real problem.

The problem comes in section 3 of the bill which makes a much wider range on conduct criminal under AS 39.50.090. The bill breaks AS 39.50.090 into thirteen subsections, most of which will be discussed below.

(a) Subsection (a) prohibits a public official from using his position for the primary purpose of obtaining "special privileges, exemptions, or compensation" in addition to "financial gain", which is prohibited under current law. This subsection doesn't present any particular problem except that it lacks any definition for special privileges, exemption or compensation. What is more troublesome is that the conduct has been escalated to a class C felony, as opposed to the class A misdemeanor penalties that exist today. The type of conduct that is likely to arise under this subsection simply does not justify felony penalties. Present provisions under the criminal code would likely cover the more egregious examples of conflicts of interest, i.e., bribery, theft, or scheme to defraud. (The Dankworth case could have been charged as a felony offense but was not because of the unique factual circumstances.)

(b) Subsection (b) covers the same conduct that is currently prohibited under AS 11.56.860 (misuse of confidential information). Under the criminal code that conduct is a class A misdemeanor and there appears to be no good reason for changing it to a class C felony, as proposed in this legislation.

(c) Subsection (c) establishes the class C felony penalty provisions for subsections (a) and (b).

(d) Subsection (d) is a common exemption for official legislative conduct that effects the public generally or a class of people of which the legislator is a member.

(e) Subsection (e) covers the same conduct that is currently prohibited in AS 39.50.090(b) and AS 11.56.120 (receiving unlawful gratuities).

(f) These subsections would constitute new crimes under the law. There are a number of reasons why these new criminal provisions are not appropriate in the area of conflicts of interest. I'll try to set out a few of these reasons:

(1) From a philosophical standpoint it is not appropriate to expand the criminal law when civil or administrative remedies are sufficient to regulate certain conduct. Many common conflict of interest situations are not per se wrongful; rather, they are potential conflicts of interest depending upon the factual circumstances and certain policy decisions. It is therefore appropriate that policy questions be addressed by an administrative agency that would review these matters and issue advisory opinions. The courts are much less responsive to public opinion and changes in social policy and the issues would often be subject to the delays that are inherent in the criminal justice sytem. In order to deal with this area in an expeditious and comprehensive manner, we should proceed administratively and rely on criminal remedies, only in the most serious circumstances.

(2) Some of these provisions, particularly subparagraph (h), are so broad that it is not clear what conduct is being made criminal. The statute may therefore be void for vagueness.

(3) Subsections (i) and (j) would make it a crime to apply for a state loan or a state contract without simultaneously filing a copy of the application to the APOC. It seems to me that conduct of this sort would happen only if somebody forgot to file the proper forms and it clearly seems inappropriate to make such conduct criminal.

(4) Subsection (k) makes it a crime for a legislator or person acting on his behalf to raise campaign funds during a legislative session. Although I have not analyzed the situation carefully, it strikes me that an equal protection claim could be raised. Incumbent legislators would be at a disadvantage compared to non-legislators. Moreover,

other people of influence, such as high executive branch officials, would be allowed to campaign while in office. The only way around this problem would be to prohibit all campaigning during a legislative session, which may potentially raise First Amendment questions.

In general, there does not appear to be anything in these new provisions which ought to be punished as a criminal act. A subsidiary issue, and one that is not addressed at all in the proposed legislation, is the question of legislative immunity. As you know, a criminal prosecution against a legislator raises constitutional questions that have not as yet been addressed. Although we have taken the position in the Dankworth matter that legislative immunity has no application to the unique circumstances presented in that case, that doctrine will often preclude prosecutions against legislators. The legislative immunity problems does not, however, arise if the ethics agency reviewing the conduct of a legislator is within the legislative branch.

Section 4 of this proposed legislation permits public officials to request an attorney general's opinion to determine whether a violation exists. The attorney general would be required to issue an opinion within 30 days. It seems to me that the policy decisions underlying conflict of interest issues should come from the particular ethics agency that is going to be scrutinizing any conduct. If that agency has legal questions, it could then seek the opinion of the attorney general.

The remainder of the legislation presents no particular problem.

In conclusion, this proposed legislation does not present the type of comprehensive set of guidelines and procedures that everyone believes is required. In addition, the reliance on criminal penalties is inappropriate and overlooks the difficulties posed by criminal prosecutions in these types of cases.

If I can be of further assistance, please let me know.

13-0599
Bradley
2/2/83

FILE COMMITTEE
SHERRY JACOBUS
JAN BAUMHOFF

IN THE SENATE BY THE RULES COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to financial disclosure; and providing for an effective date."

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

* Section 1. AS 39.50.030(a) is amended to read:

(a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of the [HIS] family and of the household of the public official or candidate, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. An asset or liability under $1,000 [$500], household goods, and personal effects need not be identified.

* Sec. 2. AS 39.50.030(b) is amended to read:

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over $500 [$100], including capital gains, whether or not taxable, received by the public official or candidate or by a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the preceding calendar year;

(2) the identity, by name and address, of each business in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH

HIM] was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by the public official or candidate or by a member of the family or of the household of a public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF

HIS WHO IS LIVING WITH HIM] owed $500 or more;

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM, HIS SPOUSE, DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the public official or candidate or a member of the family or of the household of a public official or candidate [HIM, A DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest.

* Sec. 3. AS 39.50.090 is repealed and reenacted to read:

BROADER

Sec. 39.50.090. PROHIBITED ACTS. (a) The official position or office of a public official may not be used for the primary purpose of obtaining financial gain, special privileges, exemptions, or compensa-

tion for the benefit of the public official or for the benefit of a member of the family or of the household of the public official or for the benefit of a business with which the public official or a member of the family or of the household of the public official is associated or owns stock.

AS 11.56.860 (b) A public official and a former public official may not disclose information that by law or regulation is not available to a member of the public and that the public official or employee of the legislature acquired during the course of official duties for the personal gain or benefit of the public official or anyone else.

(c) Violation of a provision of (a) or (b) of this section is a class C felony.

(d) The provisions of (a) and (b) of this section do not preclude a member of the legislature from introducing, advocating, or voting for legislation that affects the public generally or that affects a specific class of individuals of which the member of the legislature or a member of the family or of the household of a member of the legislature is a member.

AS 11.56.120 (e) A person may not offer or pay to a public official and a public official may not solicit or receive money for advice or assistance given in the course of the public office or employment of the public official. Each member of a state commission or board who is a full-time public official of the state and each municipal officer who serves as a full-time employee with the municipality may not solicit or receive money for advice or assistance if the subject matter of the advice or assistance is related to the function of the commission, board, or municipality.

NEW CRIME (f) A full-time public official of the state may not represent a client before a state agency for a fee. Each member of a state

commission or board who is not a full-time employee of the state may represent a client before a different commission or board for a fee.

NEW CRIME (g) A municipal officer may not represent a client for a fee before the municipal body that the municipal officer serves.

NEW CRIME (h) A former public official may not within 12 months after termination of office or employment assist any person or act in a representative capacity for a fee or other consideration on a matter in which the public official personally participated as a public official. This subsection does not prohibit any agency from contracting with a former public official and does not prevent a public official from appearing before the public agency in regard to the office or employment.

NEW CRIME REQUIRES KNOWLEDGE OR INTENT (i) A public official may not apply for a loan from a state agency unless the application is simultaneously filed with the commission. A state agency may not approve a loan to a public official who fails to file the application with the commission and a state agency may not grant special consideration to the application of a public official.

NEW CRIME KNOWING OR INTENT (j) A public official, a member of the family or of the household of a public official, and a business with which the public official or the member of the family or of the household of a public official is associated may not enter into a contract with the state valued at $100 or more unless the contract is awarded under competitive bidding. A member of the legislature shall simultaneously file the offer to contract with the commission; if the offer to contract is a sealed bid, the commission may not open the offer to contract until after the offer to contract has been opened by the agency receiving the offer to contract. A state agency may not award a contract to a public official or to a person known to be a member of the family or

of the household of a public official or to a business that is associated with the public official or with a member of the family or of the household of a public official unless the offer to contact is filed with the commission.

EQUAL PROTECTION (k) A member of the legislature and a person acting on behalf of a member of the legislature and a member of the family or of the household of a member of the legislature may not solicit or accept funds for political contributions to the campaign treasury of the member of the legislature during a legislative session.

(l) A violation of AS 39.50.090(e) - (k) is a class A misdemeanor.

(m) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), each member of a commission or board established by law as an agency of the state.

* Sec. 4. AS 39.50 is amended by adding a new section to read:

MORE ATTY'S Sec. 39.50.095. ADVICE FROM ATTORNEY GENERAL. A public official, a member of the family or of the household of a public official, and OR a business with which the public official is associated, who ~~that~~ is concerned whether action may constitute a violation of this chapter may request the attorney general to determine whether a violation would exist under the situation presented in the request. The attorney general shall issue the determination within 30 days of the receipt of the request; if the attorney general does not issue a determination within 30 days of the request, the situation as presented in the request does not constitute a violation of this chapter.

WHAT IF NOT ENOUGH FACTS ?

* Sec. 5. AS 39.50.200(a)(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the

[HIS] employer <u>of the person</u> is the source of <u>the</u> [HIS] income; but if <u>the person</u> [HE] is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which <u>the person or a member of the family or of the household of the person</u> [HE OR HIS SPOUSE OR HIS CHILDREN], or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are [CONSIDERED] the source;

* Sec. 6. AS 39.50.200(a) is amended by adding new paragraphs to read:

(10) "member of the household" means

(A) a person whose permanent address is the same as the permanent address of the public official; and

(B) a person who actually resides in the household of the public official;

(11) "member of the family" means a spouse, mother, father, a mother or father of a spouse, child, and brother or sister of a public official.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

TO: Members, Special Committee on Legislative Reform

FROM: Rep. Don Clocksin

DATE: April 4, 1983

Thank you for the opportunity to testify before you on Thursday, March 31, 1983, regarding the "Speech and Debate Clause" of the Alaska Constitution. I have now received the legal opinion I requested on the immunity of a legislator from punishment for his or her activities during a legislative session.

That opinion, which is attached, appears to indicate it is difficult to hold legislators responsible for actions taken during a session, even if they are unethical. This is consistent with the recent ruling in State v. Dankworth, also attached.

I encourage you to carefully review this problem. If it is not addressed, we run the risk of passing legislation which exceeds our authority and which may be viewed by the public as a facade.

Several specific points should be addressed regarding our "speech and debate clause". That provision provides as follows:

> Legislators may not be held to answer before any tribunal for any statement made in the exercise of their legislative duties while the legislature is in session....

First, does the language "may not be held to answer" prohibit even an investigation with subpoena powers? The Dankworth opinion addresses this on page 9.

Second, does the language "before any other tribunal" allow a legislative committee to investigate a legislator? What if some members of that committee were not legislators?

Third, does the language "for any statement made in the exercise of their legislative duties" protect actions taken in committees or in the budget process? See the discussion in the Dankworth opinion at pp. 6-8.

Fourth and most important, can the Legislature waive the constitutional immunity? It would seem that a waiver may not be possible. See the Dankworth opinion, at pp. 9-13. Even if it is, substantial policy reasons exist for protecting legislators from politically motivated harassment which interferes with their ability to represent their constituents. The issue is where the line is drawn between the public's right to expect honest legislators and the voters' right to have their legislator free to act in their interests. The history of this constitutional immunity, and the federal counterpart, is replete with examples of politically motivated interference with honest legislators and illegal actions by dishonest legislators.

Good luck with your work!

enclosures:

Called Board 2-24-83

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

vs.

MILTON EDWARD DANKWORTH,

Defendant.

(C)

No. 1JU-S82-1705 CR

MEMORANDUM OF DECISION
AND ORDER RE MOTION TO
DISMISS INDICTMENT

Defendant has moved to dismiss both counts of a two count misdemeanor [1/] indictment on the grounds that neither count is supported by sufficient evidence as required by Crim. R. 6(q). Defendant's motion regarding Count II is combined with an attack on the admissibility of most if not all of the evidence presented to the grand jury in support of Count II. For the reasons set out below, [2/] the motion to dismiss as to Count I will be denied and the motion to dismiss as to Count II will be granted.

---

1. The State notes in passing that "the defendant is probably not entitled to a judicial review of the evidence presented to a grand jury which returned an indictment for misdemeanor offenses," State's Memorandum in Opposition to Motion to Dismiss Indictment [hereinafter "Opposition Memo"] 37. Nonetheless, it declines to rely on that point. Id.

2. Especially as to Count I, the reasons for the court's decision are not set out in great detail. There has been insufficient time to do so. Oral argument was held on February 4, 1983 and, at the request of counsel (who need to know whether to prepare for an estimated three-week trial with more than 50 witnesses), a decision was promised by February 11. In fact, this decision will issue on February 14. Every court day between argument and decision has been entirely consumed by other matters. Hence, review of the memoranda, authorities cited by counsel, transcript and exhibits has been relegated to other times, and the time remaining for the written decision necessarily has been quite brief.

COUNT I

Sufficiency of the Evidence

Crim. R. 6(q) provides in relevant part:

> The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

Upon a challenge to an indictment, the State must show that it has presented admissible evidence supporting each of the elements of the offense, Adams v. State, 598 P.2d 503, 508 (Alaska 1979), which is "adequate to persuade reasonable minded persons that if unexplained or uncontradicted it would warrant a conviction of the person charged." State v. Parks, 437 P.2d 642, 644 (Alaska 1968). Because there is a presumption that a grand jury "acted on sufficient evidence," State v. Shelton, 368 P.2d 817, 819 (Alaska 1962), and because a motion to dismiss tests sufficiency of evidence reviewed on a cold record, all reasonable inferences from the evidence must be drawn in favor of the non-moving party.[3/]

Count I of the indictment charges that the defendant used his official position as a State senator for the primary purpose of obtaining financial gain for himself, in several ways:

(1) by receiving information from Alyeska Pipeline Services Company that Isabel Pass Pipeline Camp was available for purchase by the State;

(2) by communicating to Alyeska that the State was most probably not interested in purchasing the camp;

(3) by promoting an interest in the purchase of the camp by the State from him for approximately $3,000,000, knowing at the time that the camp was still available for purchase by the State directly from Alyeska;

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3. Defendant conceded this standard of review at oral argument.

(4) by participating in the subsequent purchase of the camp for $900,000, knowing at the time that the camp was still available for purchase by the State directly from Alyeska; and

(5) by further promoting the sale of the camp to the State for approximately $3,000,000.

Defendant concedes that he was a public official at the time in question and that his activities concerning his purchase of and attempted sale of Isabel Camp were undertaken primarily to obtain financial gain for himself. He vigorously disputes, however, that he used his office in any way in undertaking these activities. He analyzes, in close detail, each of the allegations of use of office. The State responds with a similar analysis.

This court has reviewed the evidence. Drawing all reasonable inferences in a light most favorable to the State, the evidence would be adequate to persuade a reasonable minded person that, if unexplained or uncontradicted, it would warrant a conviction of the defendant. That of couse is not to say that there are not other, reasonable inferences which might be drawn which would be favorable to the defendant. Indeed, counsel for the defendant have drawn such inferences and presented them in their memoranda. But it is not for this court to decide which view of the evidence is correct. It can only determine if, at this stage, the evidence is sufficient to go forward. [4/] In the view of this court, it is.

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4. Specific examples of relevant and probative evidence which support this conclusion are not provided, for the reason that the trier of fact should not be potentially exposed to the court's specific drawing of inferences -- this case has received intensive pretrial publicity -- nor does the exposure of the court's weighing process to counsel serve any apparently useful purpose. Generally, the evidence and inference urged by the State (Opposition Memo 5-21, 81-84) appear sufficient to defeat the motion to dismiss.

Requirement of Consciousness of Wrongdoing

In his Reply to State's Opposition to Motion to Dismiss [hereinafter Reply Memo], defendant raises the issue whether a person, to be convicted, must be shown to have committed acts proscribed by law with some consciousness of wrongdoing. (Reply Memo 4) He argues forcefully that unless such a scienter requirement is an element of the crime of conflict of interest, the statute would be unconstitutionally void for vagueness.

The argument appears well-founded, and the State at oral argument, in arguing that the record contained much evidence from which the defendant's consciousness of guilt could be inferred, appears to have accepted the defendant's thesis that a consciousness of guilt must be shown. (Additionally, the State argues that this scienter requirement is satisfied by a showing that a conflict of interest defendant used his office for the primary purpose of realizing personal gain.) At any event, taking all reasonable inferences arising from the evidence in a light most favorable to the State, there is sufficient evidence to conclude that the defendant acted with a consciousness of wrongdoing. Again, this conclusion merely tests the sufficiency of the evidence, not its final effect on the trier of fact.

COUNT II

Defendant has moved for dismissal of Count II of the indictment on alternate grounds. He argues first that the evidence presented to the grand jury was insufficient as a matter of law to support the indictment. Alternatively, he contends that "the very allegations of Count [II] of the indictment, together with all of the evidence put forth to prove these allegations[, are barred by the speech [or] debate clause". (Defendant's Memo 58, emphasis in original) For the reasons discussed below, this court concludes that what both parties refer to as the "speech or debate clause" of the Alaska

Constitution prohibits prosecution of Count II. For this reason, Count II must be dismissed.

Legislator Immunity Under Art. II, § 6

Art. II, § 6 of the Alaska Constitution reads in relevant part as follows:

> Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session.

The parties agree that this is a case of first impression [5/] in Alaska. (Defendant's Memo 40, Opposition Memo 63) They therefore frame their arguments around federal decisions outlining the contours of the federal constitution's "speech or debate clause" -- the defendant arguing that the immunity resulting from the Alaska Constitution should be identical to the immunity provided by the federal constitution, while the state argues that the Alaska Constitution provides a much narrower grant of immunity.

The federal constitutional provision is similar but by no means identical to the Alaska provision set out above. It reads:

> [F]or any speech or debate in either house, [members of Congress] shall not be questioned in any other place.

U. S. Const., Art. I, § 7. The most striking difference between the two provisions is the activity which is protected: Alaska protects "any statement made in the exercise of . . .

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5. The term "first impression" is used in the sense that the Alaska Supreme Court has not had the application of Art. II, § 6 before it in the context of a criminal case. The only prior judicial expression on Art II, § 6 located by the parties was the set of instructions to the grand jury in State v. Hohman, No. 1JU-81-464 CR, given by Judge Thomas B. Stewart. The parties vigorously dispute the proper interpretation of those instructions and their application to this case. No appellate decision, much less a trial court decision, concerning Art. II, § 6 has been brought to this court's attention.

legislative duties," while the federal provision, textually at least, [6] covers only "speech or debate in either house."

Although the parties have not argued it, this difference appears to be important. The development of federal law under the federal speech or debate clause has largely been the process of defining the concept of "legislative acts" so as to accommodate the Supreme Court's concern that the literal statement of the immunity found in the text was too narrow to serve the great historical purposes of the framers. While that development may well support the result reached herein (see the defendant's arguments at Defendant's Memo 31-40, Reply Memo 18-19 and the analysis below at 15-19), it is not strictly necessary to the interpretation of the Alaska constitutional provision which protects "any statement made in the exercise of . . . legislative duties." It seems beyond question that the proper function of this court is to examine the acts charged in the indictment and the evidence of those acts, and determine if the defendant is, by virtue of this prosecution, being held to answer for any statement made in the exercise of his legislative duties. If the answer is in the affirmative, Count II cannot stand.

The indictment charges, in Count II, that the defendant used his position for the primary purpose of obtaining financial gain for himself "by taking action to assure that an appropriation source was enacted during the 1982 session of the Alaska State Legislature" from which a pipeline camp owned by defendant could be purchased by the State of Alaska. That is, the action which is the subject of the indictment is that of taking steps

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6. It is true that the federal cases have expanded the immunity to cover acts necessary to the legislative function. But, as the U.S. Supreme Court has noted, and as the State emphasizes, "The heart of the Clause is speech or debate in either House." Hutchinson v. Proxmire, 443 U.S. 111, 126, 61 L. Ed. 2d 411, 426 (1979), quoting Gravel v. United States, 408 U.S. 606, 625, 33 L. Ed. 2d 583, 602 (1972).

to create a legislative appropriation (for a particular, and allegedly unlawful, purpose).

The evidence of those acts largely consisted of telephone calls. One was made by the defendant to Jerry Reinwand, executive assistant to the governor, concerning language in the governor's budget. The others were with William Hudson, Commissioner of the Department of Administration, concerning language in the budget allowing for the purchase of a pipeline camp and concerning alternate sources of funding for other Department of Administration expenses (which sources might free other Department of Administration appropriations to purchase a pipeline camp).

In comparing the indictment and the evidence under it with the provisions of Art. II, § 6, the first inquiry is whether the act of assuring (or creating) a funding source is a legislative duty. The answer is yes. Art. IX, § 13 of the Alaska Constitution provides in relevant part:

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

It has been said that the power to control the expenditure of state monies is the supreme legislative power. A classic statement is found in Colbert v. State, 39 So. 65, 66 (Miss. 1905):

> Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or bridged, save by the Constitution itself, without disturbing the balance of this system and endangering the liberties of the people. The right of the Legislature to . . . determine . . . the objects upon which [public revenue] shall be expended . . . is firmly and inexpugnably established in our political system.

No one could seriously contend that activity related to the creation of the budget is not legislative activity.

Not only was the formulation of the budget clearly legislative business, but the defendant's role in the process was central: He was co-chair of the Finance Committee in the Senate. While his role as Finance co-chair is not critical to this analysis, it serves to reinforce the conclusion that his participation in putting together the budget was a part of his legislative duties.

The next inquiry is whether any statements of the defendant which were made in the performance of these duties are at issue. There is no question of this. At oral argument counsel for the State was asked what evidence would remain under Count II if the defendant's interpretation of the Alaska "speech or debate clause" were applied. In a supplemental pleading filed after the argument, the State has conceded that "if . . . evidence of the defendant's phone conversations with Jerry Reinwand and William Hudson is suppressed, there will not be sufficient evidence to uphold Count II of the indictment." (State Supplemental 3, emphasis in original)

The next inquiry is whether this prosecution is tantamount to holding legislators "to answer before any other tribunal". The answer is clearly yes. A grand jury and a court are "other tribunal[s]" as the Alaska Constitution uses that term. Every U.S. Supreme Court case construing similar language in the federal speech or debate clause, ("[members of Congress] shall not be questioned in any other place") has dealt either with a grand jury proceeding, e.g., Gravel v. United States, supra, 408 U.S. at 615, 33 L. Ed. 2d at 597, [grand jury subpoena at issue, held: Senator protected from criminal or civil liability or from questioning "elsewhere than in the Senate"], or a trial, e.g., United States v. Johnson, 383 U.S. 169, 173, 15 L. Ed. 2d 681,

684 (1966) [conviction at issue, held: certain evidence utilized at trial barred by speech or debate clause]. Likewise, it is clear that the defendant legislator is "held to answer" by the instigation of charges (and perhaps by the mere investigation by the grand jury), and that there need not literally be the putting of questions to him or her.

The final inquiry is whether the constitutional injunction against holding legislators to answer in any other tribunal may have been (or may be) waived in this case. The State offers two theories of waiver. Neither is persuasive.

The State first argues that AS 39.50.090(a) waives legislative immunity. The argument is based on a similar argument made by the government in United States v. Helstoski, 442 U.S. 477, 61 L. Ed. 2d 12 (1979). The defendant there was a congressman accused of bribery, a violation of 18 U.S.C. § 201. The Court set out, and dispatched, the government's argument as follows:

> The Government also argues that there has been a sort of institutional waiver by Congress in enacting § 201. According to the Government, § 201 represents a collective decision to enlist the aid of the Executive Branch and the courts in the exercise of Congress' powers under Art. I, § 5 to discipline its Members. This Court has twice declined to decide whether a Congressman could, consistent with the Clause, be prosecuted for a legislative act as such, provided the prosecution were "founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members." Johnson, supra, at 185, 15 L Ed 2d 681, 86 S Ct 749. United States v. Brewster, 408 US, at 529 n 18, 33 L Ed 2d 507, 92 S Ct 2531. We see no occasion to resolve that important question. We hold only that § 201 does not amount to a congressional waiver of the protection of the Clause for individual Members.

Id. at 492, 61 L. Ed. 2d at 25. Significantly, the Court noted that there was a question whether the Congress had the power at all, even if acting through a "narrowly drawn statute", to strip

members of the protection of the speech or debate clause. It quoted from Coffin v. Coffin, 4 Mass. 1, 27 (1808), to the effect that "the privilege . . . is not so much the privilege of the house . . . as of each individual member composing it, who is entitled to this privilege even against the declared will of the house." Id. The Court concluded that even "[a]ssuming [for the purpose of argument] that the Congress could constitutionally waive the protection of the Clause for individual Members, such waiver could be shown only by an explicit and unequivocal expression." Id. at 493, 61 L. Ed. 2d at 26 (emphasis added). The statute in the instant case is no stronger for the prosecution here than were the federal statues involved in Helstoski, Brewster and Johnson. AS 39.50.090(a) contains no explicit and unequivocal waiver of Art. II, § 6 of the Alaska Constitution (again assuming for the sake of argument that the Legislature had the power to do that). Indeed, it contains no waiver language whatsoever. It is clearly insufficient to accomplish the "institutional waiver" which the State urges this court to find. [7]

The State next argues that the defendant waived his protection under the Alaska speech or debate clause by voluntarily testifying before the grand jury. [8] The defendant responds

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7. The State's primary argument in regard to its theory that AS 39.50.090(a) waives speech or debate clause protection is based on its perception of what is good policy. (Opposition Memo 73-78) Thus, the State argues extensively that there are sound reasons not to apply legislative immunity to criminal cases, that at the least the level of immunity protection should be less in criminal than in civil cases, that the need for honest government requires that speech or debate immunity be limited, etc. While these arguments may have merit, this court is not free to construe the Alaska Constitution according to what it believes to be good policy. It must read and apply the words of that document in an attempt to carry out the intent of its authors.

8. The State contends that this waiver makes admissible the defendant's grand jury testimony and any other testimony concerning it, though the State concedes that the waiver would not extend to trial.

that, under the applicable law, no waiver occurred here.

The facts in this regard were as follows: The defendant voluntarily appeared before the grand jury, was given a "target warning", [9] and was represented by counsel. He was not

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9. The warning read as follows:

GRAND JURY TARGET WARNING

To: M. E. Dankworth

1. You are and have been the subject of an investigation conducted by the State of Alaska and by a grand jury sitting in Juneau, Alaska, investigating allegations of criminal misconduct in connection with the acquisition of the Isabel Pass Pipeline Camp by a business entity in which you are a principal and efforts to sell the camp to the State of Alaska. There is at this time probable cause to believe that your role in the acquisition of the camp and in efforts to sell it to the State of Alaska constituted a criminal offense and there exists the possibility at the conclusion of the Grand Jury proceedings that sufficient evidence may have been presented upon which criminal charges could be returned.

2. In addition, in accordance with prior communications made to your attorney, you should be aware that the Grand Jury may consider charges other than that included within the conflict of interest provision contained in AS 39.50.090(a). Evidence before the Grand Jury may support other criminal charges, including felony offenses.

3. You have agreed to appear and testify before the Grand Jury without a subpoena upon the conditions that you are afforded an opportunity at the conclusion of your testimony to give a brief statement to the Grand Jury and that your attorney be afforded an opportunity after the presentation of evidence to review that evidence with prosecuting attorneys and to set forth reasons why an indictment should not be returned prior to the final presentation of this matter to the Grand Jury.

4. You have the right to refuse to answer any question put to you before the grand jury that might inciminate you. (continued)

advised of his privilege under the speech or debate clause, and he did not make any statement waiving the protection of that provision. Under the e facts no waiver has been shown.

As noted by the defendant, the situation in United States v. Helstoski, supra, was muc stronger for the government, yet the court there rejected the government's claim of waiver. In Helstoski the defendant congressman had appeared voluntarily ten times before the grand jury, each time being warned of his fifth amendment privilege against self-incrimination. At his ninth appearance, the congressman for the first time mentioned his speech or debate clause privilege and declined to answer a

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9. (continued)

> 5. You have the right to be represented by an attorney before the grand jury, and while an attorney may not enter the grand jury room with you, he may be present immediately outside the grand jury room and you have the right to interrupt the proceedings at any point in time to confer with your attorney and obtain his advice.
>
> 6. If you cannot afford an attorney to represent you, you may apply to the Superior Court of the State of Alaska to request the court to appoint an attorney to represent you. If the court finds you cannot afford an attorney it will appoint an attorney for you.
>
> I have read the above Grand Jury Target Warning and understand the rights set out therein.
>
> DATED at Juneau, Alaska, this 26th day of October, 1982.
>
> /s/ M. E. Dankworth
>
> /s/ Avrum M. Gross
> Witness
> Attorney for M. E. Dankworth
> Oct. 26, 1982

question on the basis of it. The trial court found, however, that he was aware of the privilege from before his first appearance: He had recently concluded litigation in which he had relied on the speech or debate clause, and the attorney who represented him in that case was the same attorney who represented him before the grand jury. Nonetheless, the Supreme Court held that "waiver can be found only after explicit and unequivocal renunciation of the protection." [10/] 442 U.S. at 491, 61 L. Ed. 2d at 24. Finding no such renunciation, it rejected the waiver theory. In the instant case, the defendant did not even talk about his speech or debate privilege, and there is no showing that he was even aware of it. Certainly there was no "explicit and unequivocal renunciation" of it. Under these circumstances, there can be no finding that the defendant waived his protection under the Alaska Constitution.

The conclusion of this analysis of the scope and effect of Art. II, § 6 of the Alaska Constitution is that it bars prosecution of Count II of the indictment, both because the indictment itself attempts to hold the defendant to answer before a court for statements made in the exercise of his legislative duties and because the evidence presented to the grand jury in support of the indictment is barred by Art. II, § 6. Because the constitutional language seems clear on its face, it is not strictly necessary to address the following issues. However, both because the parties disputed them at length and because they serve to lend additional support to this court's conclusion,

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10. Significantly, the Court found that the standard for waiver of speech or debate clause protection is even higher than the ordinary standard for determining waiver of a constitutional right set out in Johnson v. Zerbst, 304 U.S. 458, 464, 82 L. Ed. 2d 1461, 1464 (1938): "intentional relinquishment or abandonment of a known right or privilege." 442 U.S. at 491, 61 L. Ed. 2d at 24. This is of significance because this court does not believe even the Johnson v. Zerbst standard could be satisfied on the facts of this case.

they are considered here, at least briefly. They include: (1) the significance of drafting changes made at the Constitutional Convention concerning Art. II, § 6 and comments by the convention delegates concerning that section; (2) the instructions given to the grand jury in State v. Hohman, 1JU-81-464 CR; and (3) federal case law developed under the speech or debate clause of the federal constitution.

The Alaska Constitutional Convention. The State places great significance on the fact that Art. II, § 6 originally provided that no legislator should be held to answer "for any statement made or action taken" in the exercise of his legislative functions. The underlined language was later deleted, and the State urges that this deletion suggests a narrowing of the protection. Whether such an inference is properly drawn, it is not important in the context of this case. The defendant does not seek immunity for "actions" he has taken, but for statements which he has made.

The State also argues that the Alaska provision "is narrower because its protection applies only 'while the legislature is in session.'" (Opposition Memo 62) Again, even if the inference is warranted, it is not relevant here: All of the statements of the defendant which concern Count II occurred while the legislature was in session.

The State relies on a statement made by Delegate McCutcheon, who was the chair of the Committee on the Legislative Branch. Delegate McCutcheon said:

> There is also an immunity clause which provides a legislator will not be held liable for anything he says during a session.

Alaska Constitutional Convention Proceedings 1099. The State reads this comment (and one made concerning the privilege from arrest, which is not relevant to this case) as suggesting that "the protection in Alaska was intended to apply only to the type

of conduct that the United States Supreme Court refers to as 'pure speech or debate.'" (Opposition Memo 61) This court can draw no such conclusion from the discussion referred to. "[A]nything [a legislator] says" is clearly broader than "pure speech or debate". There is simply no basis for concluding, as the State attempts to do, that the history of the Alaska Constitutional Convention supports the conclusion that the Alaska constitutional protection for legislators is as narrow as the State would find it.

Instructions Given in State v. Hohman. The State contends that the instructions given by Judge Thomas B. Stewart in State v. Hohman, supra, support its view of the proper scope and effect to be given to Art. II, § 6 of the Alaska Constitution. This court cannot agree, and adopts the analysis of the defendant concerning the Hohman instructions, which is found at Reply 22-23.

Federal Cases Interpreting the Federal Constitution. At the outset, it should be remembered that there are relatively few United States Supreme Court cases interpreting the speech or debate clause of the federal constitution. ("The Speech or Debate Clause has been directly passed on by the Court relatively few times in 190 years." Hutchinson v. Proxmire, supra n.6, 443 U.S. at 124, 61 L. Ed. 2d at 424.) There are, of course, an almost limitless number of factual situations in which the speech or debate clause could be implicated. Therefore, there is a substantial amount of extrapolation required in attempting to find guidance from the federal cases. With this caveat in mind, certain general principles can be drawn from the cases.

The first is that, contrary to the State's assertion that the clause properly has more to do with protecting legislators against civil liabilities, the great historical purpose of the speech or debate clause was to protect legislators against the executive and the judiciary:

> There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech or Debate Clause.

United States v. Johnson, 383 U.S. 169, 182, 15 L. Ed. 2d 681, 689 (1966). It is true that the Court retreated slightly from this position in United States v. Brewster, 408 U.S. 501, 508, 33 L. Ed. 2d 507, 515-16 (1972), when it noted that "the English system differs from ours in that the Parliament is the supreme authority not a coordinate branch", and suggesting that "our history does not reflect a catalog of abuses at the hand of the Executive that gave rise to the privilege in England." Nonetheless, it cannot be denied that the primary purpose of the clause was "to prevent intimidation by the executive and accountability before a possibly hostile judiciary". Johnson, supra, 383 U.S. at 181.

From the earliest decisions, the scope of the privilege has been found to be broader than speech or debate on the floor of the Congress. Kilbourn v. Thompson, 13 Otto. 168, 26 L. Ed. 377 (1881), quoted approvingly from Coffin v. Coffin, 4 Mass. 1 (1808), which it referred to as "the most authoritative case in this country on the construction of the provision". 26 L. Ed. at 391. In Coffin, Chief Justice Parsons stated:

> [T]he article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and the execution of the office. And I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular, according to the rules of the House, or irregular and against

those rules.

4 Mass. 1, 27 (emphasis added). After quoting extensively from Coffin, the Supreme Court in Kilbourn concluded that "[i]t would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forceable in its application to [various actions]. In short, to things generally done in a session of the House by one of its members in relation to the business before it." 26 L. Ed. at 391-92.

Later cases have refined the standard, but have not retreated from it. Thus, in Tenney v. Brandhove, 341 U.S. 367, 95 L. Ed. 1019 (1950) the Court said, against the argument that the state legislative committee involved was acting improperly, that "[t]he claim of an unworthy purpose does not destroy the privilege." 341 U.S. at 377, 95 L. Ed. at 1027. The Court in Tenney emphasized that a court may not "inquire into the motives of legislators", a holding which has remained unquestioned in this country from earliest times.

In United States v. Johnson, supra, the Court affirmed the reversal of a conspiracy conviction of a member of Congress, because the prosecution had inquired into the defendant's motive in making a particular speech:

> The essence of such a charge in this context is that the Congressman's conduct was improperly motivated, and as will appear that is precisely what the Speech or Debate Clause generally forecloses from executive and judicial inquiry.

Id. at 180, 15 L. Ed. 2d at 688.

In United States v. Brewster, supra, the Court denied a speech or debate clause challenge to a bribery indictment. Its reasoning, while perhaps not totally consonant with its earlier decisions, lends no support to the State's position here. The Court distinguished Johnson on the ground that it held that the privilege "protected Members from inquiry into legislative acts

or the motivation for actual performance of legislative acts", 408 U.S. at 509, 33 L. Ed. 2d at 516, whereas the taking (or agreeing to take) money for a promise to act in a certain way is not a legislative act. Moreover, since the illegal conduct is shown by proof of taking or agreeing to take money for a promise to act in a certain way, there is no need for the government to show that the defendant actually fulfilled the alleged illegal bargain. Thus, there is no need to inquire into any legislative act or the motivation for any legislative act. While the exception carved out by Brewster was vigorously disputed by the three dissenters in that case, it does not affect the analysis here. The case does, however, provide another definition for "legislative act", which is of assistance in the instant case:

> A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the house or the senate in the performance of official duties and into the motivation for those acts.

408 U.S. at 512, 33 L. Ed. 2d at 517-18.

Gravel v. United States, 408 U.S. 606, 33 L. Ed. 2d 583 (1972) was decided the same day as Brewster. It concerns primarily whether a legislative aide is protected by the speech or debate clause. However, it contains the following language describing legislative acts:

> Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

408 U.S. at 625, 33 L. Ed. at 602.

As noted above, this court views the Alaska "speech or debate

clause" as being different from and, in regard to the scope of the acts protected. broader than its federal counterpart. Nonetheless, review of the approach which the United States Supreme Court has taken to interpreting the federal speech or debate clause is instructive. Under that general approach, and under the specific definitions of "legislative acts" which the Court has established, it appears that the actions of the defendant in the instant case would be protected.

CONCLUSION

For the reasons discussed above, defendant's motion to dismiss Count I is denied, and defendant's motion to dismiss Count II is granted.

DONE at Juneau, Alaska, this 14th day of February, 1983.

Walter L. Carpeneti
Superior Court Judge

CERTIFICATE

This is to certify that on the above date I provided a copy of the above Memorandum of Decision and Order to:

Daniel W. Hickey, Esq.
Patrick J. Gullufsen, Esq.
Dean J. Guaneli, Esq.
Avrum M. Gross, Esq.
Susan A. Burke, Esq.
Clifford J. Groh, Esq.

Secretary to the Judge

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 31, 1983

SUBJECT: Waiver of rights under the Speech and Debate Clause, Article II, section 6, Alaska Constitution (Work Order No. 13-0981)

TO: Representative Don Clocksin

FROM: Richard A. Bradley
Legislative Counsel

You have requested an analysis of Judge Carpeneti's February 14, 1983, decision in State v. Dankworth. Your request suggests that Judge Carpeneti ruled that a legislator is immune from prosecution under the conflict of interest statute. You suggest that Judge Carpeneti implied that a narrowly defined waiver might be permissible.

You ask that I draft such a waiver and predict its constitutionality. A bill is enclosed that is responsive to this request.

The area of the opinion that concerns you is apparently derived from that portion of the opinion, at page 9, that addresses the question whether AS 39.50.090(a) waives legislative immunity under the state equivalent of the Speech and Debate Clause of the United States Constitution: Article II, section 6 of the Alaska Constitution:

> Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. * * *

That argument was made by the state in the Dankworth case and is based on a similar consideration argued in United States v. Helstoski, 442 U.S. 477 (1979).

In the Helstoski case, the argument was made that a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members" could

constitute a waiver by Congress of the immunity of a member of the Congress from being held to answer in any other tribunal.

The Helstoski case accordingly merits analysis. Mr. Helstoski was a member of Congress. He was investigated by a grand jury on his introduction of numerous private immigration bills, allegedly for compensation. During the investigation, he voluntarily cooperated with the grand jury, appearing before it on ten occasions. Initially, he made no claim of privilege under the Fifth Amendment but eventually claimed the privileges of it and of the Speech and Debate Clause.

Congressman Helstoski was indicted on the charge of accepting money for the performance of official acts; he sought dismissal of the indictment on the ground that it violated the Speech and Debate Clause.

The District Court denied the motion to dismiss but held that the Government was precluded from introducing "evidence of a past legislative act" in any form.

In taking its appeal to the Court of Appeals, the Government argued that the Speech and Debate Clause does not prohibit the introduction of all evidence relating to legislative acts. It conceded that, absent a waiver, it could not introduce evidence of the bills or Acts themselves. And it used several theories to rationalize its requested use of evidence of discussions and correspondence which relate or describe legislative acts if the discussions or correspondence did not themselves occur during the legislative process (none of which the court accepted).

But it is also argued that "by enacting 18 U.S.C. 201 (1966), Congress has shared its authority with the Executive and the Judiciary by express delegation authorizing the indictment and trial of Members who violate that section -- in short an institutional decision to waive the privilege of the Clause." 47 U.S.L.W. 4713.

The U. S. Court of Appeals affirmed the evidentiary holding, stating that legislative acts could not be introduced to show motive, since otherwise the protection of the Speech and Debate Clause would be negated and that Mr. Helstoski has not waived the protection of the Clause during the grand

jury proceedings. United States v. Helstoski, 576 F.2d 511 (3d Cir. 1978).

The United States Supreme Court affirmed. United States v. Helstoski, 442 U.S. 478, 47 U.S.L.W. 4710 (1979).

The Court stated that its holdings in United States v. Johnson, 383 U.S. 169 (1966) and United States v. Brewster, 408 U.S. 501 (1972) "leave no doubt that evidence of a legislative act of a Member may not be introduced by the Government in a prosecution under sec. 201." 47 U.S.L.W. 4713. It explained its decision in the Brewster case:

> Johnson thus stands as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation for legislative acts. A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech and Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts. 408 U.S., at 512.

The Government argued that the interpretation of the Court of Appeals would make the prosecution of members of Congress more difficult; the Court agreed. "Indeed, the Speech and Debate Clause was designed to preclude prosecution of Members for legislative acts." 47 U.S.L.W. 4713. But, the Court said, "Promises by a Member to perform an act in the future are not legislative acts. Brewster makes clear that the compact may be shown without impinging on the legislative function." 47 U.S.L.W. at 4713.

With this as background, it is possible to reach your question: Can a narrowly drafted statute constitute "a sort of institutional waiver" by the legislative branch of the immunity of an individual member of the legislature?

In my view, the portion of Helstoski not quoted by Judge Carpeneti forces a negative response to your question; Judge Carpeneti reaches these issues at page 10 of his opinion with intimations of a similar conclusion.

Some measurable quotes from the Helstoski opinion are necessary to make these points.

In both the Johnson and the Brewster opinions, the Court declined an invitation to decide whether "a Congressman could, consistent with the [Speech and Debate] Clause, be prosecuted for a legislative act as such, provided the prosecution were 'founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members'. * * * We see no occasion to resolve that important question. We hold only that sec. 201 does not amount to a congressional waiver of the protection of the Clause for individual members."

But the Court then went on, presumably in dicta, to suggest its views on that question.

> "We recognize that an argument can be made from precedent and history that Congress, as a body, should not be free to strip individual Members of the protection guaranteed by the Clause from being 'questioned' by the executive in the courts. The controversy over the Alien and Sedition Acts reminds us how one political party in control of both the Legislative and Executive Branches sought to use the courts to destroy political opponents.
>
> "The Supreme Judicial Court of Massachusetts noted in Coffin, 'the privilege secured . . . is not so much the privilege of the House as an organized body, as of each individual member composing it, who is entitled to this privilege, even against the declared will of the house.' 4 Mass., at 27 (emphasis added [in original]). In a similar vein in Brewster we stated:
>
> > "'The immunities of the Speech or Debate Clause were not written into the Constitution simply for the private or personal benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators.' 408 U.S., at 507 (emphasis added [in original]).
>
> "See also id., at 524. We perceive no reason to undertake, in this case, consideration of the Clause in terms of separating the Members' rights from the rights of the body.
>
> "Assuming, arguendo, that the Congress could constitutionally waive the protection of the Clause for individual members, such waiver could be shown only by an

> explicit and unequivocal expression. There is no evidence of such a waiver in the language or the legislative history of sec. 201 or any of its predecessors. [Bracketed materials added]."

As I suggested, these quotes would undoubtedly be characterized as dicta either by the Court or a commentator. But even agreeing that it is dicta and therefore not controlling in future cases before the Court, it seems that the Court has signalled adequate reasons founded in constitutional policy for concluding that such a waiver by a legislature would probably violate the privileges of an individual member of that legislature to be free from the pressures of a legislative majority or of executive pressures exerted through the courts.

I take the Court's emphasis on "explicit and unequivocal language" to mean simply that in any such statute, the statute itself must state that the legislature does not intend that the Speech and Debate Clause be a defense to a charge under the statute and, perhaps, that the legislature intends the statute to stand as a waiver by the legislature of those rights.

But, as suggested, even in such premises, I believe that the privileges of the individual members of the legislature would be protected.

You will find a bill attached to this memorandum.

Because the language of AS 39.50.090 is so awkward and also because it will need revision the next time AS 39 is printed because of the policies stated in Chapter 58, SLA 1982, I considered it appropriate to put these changes before the legislature for its ratification, particularly because the provisions of this section affect members of the legislature so intimately. Except for the change to the penalty provisions in moving to the more standard penalty style (the imprisonment possible is unchanged; the fine moves from a maximum $2,000 to a maximum $5,000), the provisions of sec. 90 are substantively unchanged. And these provisions may be deleted if you believe that they confuse the basic thrust of your bill.

The material responsive to your request appears in new sec. 39.50.091.

If I may be of further assistance, please advise.

RAB:ljb

Enclosure
12/045

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

March 30, 1983

M E M O

To: Senator Jan Faiks

From: Senator Vic Fischer

Re: Ethics Legislation

Jan, I share your obvious determination to see workable and effective ethics legislation enacted into law this session--both to protect the public interest and to meet the challenge of the Attorney General's "common law" memo.

At this point, I feel that the work of the joint special committee is being hindered by a difficult conceptual point.

On one hand, it's self-evident that all public officials should be held to the same high standards of conduct, and for all of the best public policy reasons these standards should be enumerated in one place and administered by one body.

At the same time, all of my experience and work in this area has left me convinced that this unified approach simply will not work.

To my mind there are three distinct groups of "public officials" who must be treated individually and differently. They are:

1. LEGISLATORS AND STAFF: Alaska must retain its citizen-legislature, and these people must be able to earn their livings in Alaska. Legislators also have the highest discretionary power, and should hold to the highest ethical standards. Clear disclosure and the availability of advisory opinions will keep circumstances which, from a distance may appear to be conflicts, from imposing unnecessary burdens on working legislators and allow legislators to avoid taking action where a real conflict occurs. Problems with legislative immunity may be avoided by having legislators only sitting on a purely legislative ethics committee.

2. FULL-TIME GOVERNMENT EMPLOYEES: In many ways this is the easiest group to deal with. Because they should not have to earn a living outside of their government activity, they can be held to higher, and perhaps clearer, standards. This group includes full-time elected employees such as the Governor and mayors, and also all other state employees, from commissioners to agency and university employees. The APOC may well be the best body to administer their ethics statute.

3. PART-TIME MUNICIPAL OFFICIALS AND STATE BOARD MEMBERS: This group presents the greatest difficulties. First, because of the closeness of many of these people to the issues that they are dealing with, many more real conflicts and problems occur. Second, the bodies in which they serve range from the well-staffed Board of Fisheries or Anchorage Assembly to smaller boards and city councils of remote villages, making the drafting and administration of rules which will work across the board difficult.

Jan, I'd like to suggest that we will make more progress if you would consider dealing with these three groups individually. I think that three different bills could not only effectively deal with the ethics problems at hand, but that they could reflect the unique aspects of each group. Further, separating this complex problem into its component parts will allow for better public comment and participation, as the affected groups will be able to deal directly with their own bills. At the very least, I think that the legislature must be dealt with separately.

As before, if there is anything that I, or my staff, can do to help, just ask.

cc: Senator Ray
Senator Kelly
Senator Kerttula
Representative Phillips

Alaska State Legislature

OFFICE OF THE MINORITY

POUCH V
JUNEAU, ALASKA 99811

House of Representatives

March 29, 1983

TO: All members of the Joint Committee on Legislative Reform

FROM: Rep. Mike Miller

Re: Proposed Ethics Legislation

A fundamental question before the committee is the scope of bill that is endorsed and passed out of committee. Specifically I am focusing on those officials or employees who are to be affected by legislation regulating conflicts of interest. It was my understanding that the committee had agreed to resolve this basic issue in favor of covering all public officials and employees, in all three branches of government. It is my opinion that the original conflicts opinion issued by the Attorney General on December 3, 1982 places a burden upon all public officials and employees; this is further emphasised by a later memorandum from the present A.G., dated December 28, 1982, which I have attached.

[redacted]

A decision on coverage will obviously have a great effect on later decisions regarding the substantive and procedural sections of the legislation.

Just to sum up existing versions on this issue for your reference, both the suggested bill of Senator Vic Vischer(SB 192) and Senator Josephson(SB 198), deal with only the legislature. The version submitted by the A.G. would cover all public employees in all three branches, while the version I have sponsored, HB 20, would cover all but judicial branch employees.

MEMORANDUM

State of Alaska

TO: Heads of All Departments, Boards, Commissions, and Authorities

DATE: December 28, 1982

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Implementation of Conflict of Interests Opinion

By now I hope you have had the opportunity to review the opinion issued by this office on December 3, 1982 concerning conflicts of interest. All supervisors should be aware of, and sensitive to, the concerns addressed in that opinion.

I recognize the opinion sets out principles which are, in large part, new to virtually all state officers and employees. As a practical result, therefore, persons with the kinds of conflicts addressed in the opinion may find it difficult to immediately eliminate them. Also, as recognized in the opinion, the common law rules relating to conflicts of interest may be modified or even rejected by the legislature through the enactment of general laws dealing with the subject. Obviously, the legislature has not yet had an opportunity to consider the rules set out in the opinion and determine whether, or to what extent, it may wish to alter them in Alaska.

Consequently, given the potentially harsh consequences (e.g. termination of employment, cancellation of contracts, and forced divestiture of various business and property interests), I believe it appropriate to exercise the discretion which I have by deferring, except in more serious circumstances (e.g. where an official's public duties may directly advantage his or her private business interests or where the conflict violates express civil or criminal statutes), any "enforcement" action until after the close of the upcoming legislative session. By doing so, the legislature will have the opportunity to address the common law rules set out in the opinion and make whatever changes to them it considers appropriate.

I suggest that you ask your officers and employees to examine their private business interests and dealings to determine if there are interests which might be viewed as causing divided loyalty. If there are such interests, then you should consider how, in the coming months, either their duties or their business interests might be changed to eliminate the conflict.

Additionally, I believe it would be helpful to the legislature in addressing conflicts problems if it had as complete a listing of the kinds of potential conflicts which may exist as possible. In this regard, I would appreciate it if you would advise me of any situations which you identify as potentially coming within the proscriptions of the conflicts opinion.

cc: Representative Joe Hayes
Speaker of the House

Senator Jalmar Kerttula
Senate President

TO: Joint Special Committee on Legislative Reform

FROM: Connie Halford, Concerned Citizen

SUBJECT: Make-up of proposed committee

DATE: March 28, 1983

The legislature has the opportunity to show some leadership and help to alleviate the conflict of interest problem that exists, not just for legislators themselves, but for the administration and whomever else may be affected by such conflict questions. Having everyone police their own will look like a whitewash to the public and shows that the legislature will only respond as far as it is forced to in dealing with this question. A committee made up of legislators and two commissioners will not have the public trust. Commissioners must be confirmed by the legislature, present their budgets, and are subject to conflict of interest charges themselves, as we have seen lately when the Commissioner of Commerce, the Commissioner of Natural Resources, as well as the Attorney General and the Governor themselves have come under scrutiny. Who will rule on the Governor, AG, & Commissioner of Natural Resources, who are involved in the same incident? The AG ruled on the Commissioner of Commerce--can the AG rule credibly on possible conflicts of other members of his boss' cabinet?

I see the best solution as one "Conflict of Interest Board" that would deal with everyone. It would need to draw from a wide spectrum of viewpoints in order to have maximum credibility. It is essential that the officials themselves, as well as the public, be able to have confidence in the rulings of the Board. The Board would decide whether conflicts did exist and whether conflicts would exist, the latter in response to a request from someone prior to undertaking certain action. If a determination of nonconflict was gained from the Board, the individual must be able to have confidence that he will not later be prosecuted or persecuted for following that determination. That can only be the case if the Board has the credibility that would be gained from careful structuring. If a credible Board is established, the legislation should provide that an individual following the determination of the Board can't get in trouble for it as long as no evidence was misrepresented by him before the Board.

Possible make-up of the Board might be a member from the Attorney General's office, a member from APOC, a few legislators, some members of the public (chosen some way other than appointment by legislative leadership or the Governor).

Review of SB 198 3/23/83

Ken Wonstolen, NCSL

Statement of Purpose

(a) add: Legislators and legislative staff must conduct their outside business affairs so as to minimize potential conflicts of interest with the conscientious performance of their duties and the exercise of independent judgement.
(b)(3) delete: "enforce the provisions of the law"; substitute: "administer this chapter"; add: (b)(4) supersede the common law where it conflicts with any provision of this chapter.

24.60.010: no comment

24.60.020: note coverage of former legislators; add: coverage of staff not on personal staff of legislator (e.g.-Legislative Affairs, House Research Agency, Legal Services) by using term "legislative staff person" instead of "person on staff of a legislator" throughout the bill. Define "legislative staff" in appropriate section.

24.60.030/040: no comment

24.60.050: a number of issues (appearances, loan, contract, voting) are included under the general "conflict of interest" heading. Perhaps each should receive its own heading and section, as follows (ideas suggested):

- Conflict of Interest a conflict of interest arises when a legislator has a personal interest (should be defined to include interests of family members and business associates.) in a matter which is distinct from that of a member of the public-at-large and which would tend to impair the exercise of independent judgement. Legislators and legislative staff persons must avoid activities which tend to create even the appearance of a conflict of interest, and, further, must disclose any potential conflict of interest to (ethics body) at the earliest possible opportunity. This obligation to disclose arises as soon as the (l/lsp) is, or reasonably should be, aware of a potential conflict.

- Voting - The essence of the legislative functions is to represent constituents in all legislative decisions. Therefore, a legislator must vote on all matters, unless excused by a unanimous vote of the members of his body. If the legislator feels that a conflict of interest may exist with regard to a particular matter, he/she shall disclose the relevant facts and sign a sworn statement that he will exercise independent judgement. If unable to sign such a statement, a legislator may ask the consent of the members of his body to abstain from voting.

- Appearances - SB 198 would allow appearances before "quasi-judicial" agencies and courts, even where state is party.
Substitute: Representing a constituent before a "state agency" (Department, board, commission, or instrumentality) is a traditional legislative function and is compatible with the ethical standards of this chapter, providing no compensation is solicited or received. Legislators and legislative staff persons may appear as a principal in such proceedings in order to preserve an existing business interest, but not to promote a new interest. Legislator/lawyers may represent clients before courts in matters to which the state is not a party. Legislators and legislative staff persons may not accept employment as a lobbyist or represent clients before state (agencies) for one year after the expiration of their term or employment.

- Loans - SB 198 allows loans "available to the public at large"; instead, allow all loans providing disclosure is made and loans are published. Executive should promulgate strict rules for agencies to follow when dealing with legislative applicant.

- Contract - SB 198 allows competitive contracts; add need to file statement of intent to pursue a state contract with ethics body and subject all contracts to disclosure. Also, personal interest should include business associations as employee, director/officer, as well as stock ownership

24.60.060-090: These sections of SB 198 establish the Legislative Ethics Commission and its powers. Note that it would provide for 2 current legislators, 1 former legislator and 4 citizens who have not held an elected office. It allows the commission to determine staff needs. Other details of procedures and powers are reasonably close to ideas considered by committee and working group.

24.60.900: add definitions of "legislative staff";" personal interest"; "state agency"

Introduced: 3/22/83
Referred: Special Committee on Legislative Reform and State Affairs

IN THE SENATE BY JOSEPHSON

SENATE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ethics in the legislature; and providing for an effective date."

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

* Section 1. STATEMENT OF PURPOSE. (a) The legislature declares as the public policy of the state that a public office is a public trust and shall be held for the sole benefit of the people. To enhance the faith of the people in the integrity and impartiality of public officers, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(b) The purpose of AS 24.60 as enacted in sec. 2 of this Act is to

(1) prescribe standards of conduct for state legislators and for the staff of legislators;

(2) educate the citizens of the state on ethics in the legislature; and

(3) establish an ethics commission to render advisory opinions and enforce the provisions of the law so that public confidence in the legislature will be preserved.

* Sec. 2. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. LEGISLATIVE ETHICS.

Sec. 24.60.010. CONSTRUCTION. This chapter shall be liberally construed to promote high standards of ethical conduct in the state legislature.

Sec. 24.60.020. APPLICABILITY. This chapter applies to a legislator, a former legislator, and to each person on the staff of a

legislator.

Sec. 24.60.030. GIFTS. (a) A legislator and a person on the staff of a legislator may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or in any other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the legislator in the performance of the duties of the legislator or is intended as a reward for an official action on the part of the legislator.

(b) Acceptance by a legislator and by a person on the staff of a legislator of an invitation to attend a meal or social event that does not exceed $25.00 in value received by the legislator for each meal or event and that does not exceed $125.00 in value received by the legislator cumulatively during the calendar year does not constitute a gift under this section.

Sec. 24.60.040. CONFIDENTIAL INFORMATION. A legislator and a person on the staff of a legislator may not disclose or use for personal gain or for the benefit of anyone else information that by law is not available to the public and that the legislator and a person on the staff of a legislator acquires in the course of official duties.

Sec. 24.60.050. CONFLICT OF INTEREST. (a) A legislator and a person on the staff of a legislator may not appear on behalf of a person before a state department, agency, board, commission, institution, or instrumentality in any manner for which the legislator is being compensated by the person.

(b) The provisions of (a) of this section do not apply to

(1) a judicial proceeding;

(2) an administrative hearing or proceeding

(A) which is adversary in character;

(B) on which a record is made by the agency involved; or

(C) in which the appearance is a matter of public record.

(c) A legislator may not participate in the consideration of legislation in which the legislator or the immediate family of the legislator has a substantial personal interest unless the legislator has complied with this chapter, AS 39.50.020, and with the rules of the commission. A legislator has a substantial personal interest in legislation within the meaning of this subsection if the legislator or the immediately family of the legislator has a direct personal pecuniary interest in the legislation in a manner or to a degree that is different from the interest of a member of the public.

(d) The provisions of (c) of this section do not prevent a legislator or the immediate family of a legislator from participation in state loan programs that are available to the public at large.

(e) A legislator may not be a party to or have an interest in the profits or benefits of a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract equals $1,000 or less. A legislator has an interest in the profits or benefits of a state contract under this subsection if the contract is awarded to

(1) the legislator or a member of the family of the legislator;

(2) a firm, corporation, or association in which the legislator or a member of the family of the legislator owns 10 percent of the stock of the firm, corporation, or association; or

(3) a partnership in which a legislator or a member of the family of the legislator is a partner.

Sec. 24.60.060. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members selected as follows:

(1) the president of the senate shall appoint one member to the commission from the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state who have not held an elected public office;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state who have not held an elected public office;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a member of the commission is four years from the February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group;

(3) support or oppose a candidate, proposition, or question or make a contribution in support of or in opposition to a candidate for the legislature;

(4) participate in an election campaign for a legislator or contribute to a political party; or

(5) lobby or employ a lobbyist.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(h) The commission may employ an executive director and staff as it considers necessary. A member of the commission may not serve as executive director or on the staff of the commission.

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.070. DUTIES OF THE COMMISSION. The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) adopt forms and procedures for the submission of statements of financial disclosure and maintain files of the statements of

financial disclosure; a statement of financial disclosure filed with the commission is public information;

(3) advise the attorney general and the legislature of noncompliance with the financial disclosure requirement;

(4) recommend to the legislature legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(5) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(6) shall distribute its publications without cost to the public and shall initiate programs to educate the citizens of the state, legislators, and members of the staff of a legislator on ethics in government;

(7) shall publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential;

(8) may adopt regulations to implement, clarify, and interpret this chapter.

Sec. 24.60.080. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a legislator, a former legislator, a person on the staff of a legislator, or a person formerly on the staff of a legislator as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the

particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion.

Sec. 24.60.090. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service by a legislator or a member of the staff of a legislator. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the signing of a complaint by three members of the commission.

(d) A complaint concerning a legislator or a former legislator, or a member or a former member of the staff of a legislator, must be in writing, signed by the person making the complaint and under oath. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each legislator, each former legislator, and each member or former member of a staff of a legislator against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to

have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the legislator, former legislator, member or former member of the staff of a legislator may request a formal opinion or comply with the advisory opinion. If the legislator, former legislator, member or former member of the staff of a legislator fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath and the hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. A copy of transcripts of the testimony is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person

charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the commission may assess one half of the cost of the preparation of the transcript of testimony against the person charged.

(g) A decision of the commission shall be in writing and signed by three or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period.

(i) If the four members of the commission agree to a decision that a former member of the legislature or a member or a former member of the staff of a legislator has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

(j) If a legislator is determined by the commission to have violated this chapter or if a legislator declines or refuses to cooperate with the commission, it may refer its determinations and its records to the presiding officers of the legislature for action the legislature considers appropriate.

(k) A commission member or individual who divulges information concerning the charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class

C felony.

Sec. 24.60.900. DEFINITIONS. In this chapter, "commission" means the Legislative Ethics Commission.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

OUTLINE OF MAIN FEATURES AND POLICY CONSIDERATIONS FOR PROPOSED CONFLICT OF INTEREST/ETHICS LEGISLATION

1. Prohibited Conduct
2. Disclosure
3. Ethics Agency

1. PROHIBITED CONDUCT

In general, a conflict of interest exists if a public official must take official action which would beneficially or detrimentally affect a business, property, contract, venture, or transaction in which the public official has a financial interest, or for which he acts as legal counsel, advisor, consultant, agent, or representative. Financial interests which create a conflict of interests are prohibited, unless the financial interest is so small or so removed from the impact of official action that a reasonable person's official action could not be influenced by the financial interest.

WHAT IS SPECIFICALLY PROHIBITED? (Amend AS 39.50.090)

1. Contracts with state (or local) gov't involving an agency that could be influenced by person, including sole source contracts and including contracts w/in twelve months of termination

2. Representation for compensation before gov't agencies
   Exception for representation in courts (or quasi-judicial agencies) where the opposing party is not a gov't agency

3. Assisting a person or business for compensation, within twelve months of termination, on any matter upon which the public official took action.

4. Receiving state loans
   Except land lottery, student loans, housing loans

5. Use of gov't property, equipment, or services for non-gov't purposes unless reimbursement system established (i.e. xerox copies)

6. Receipt (or solicitation) of gifts from persons who deal with the state, including discounts or other benefits which could be used to advantage by the state.

7. Substantial financial dealings between employees and supervisors, between representatives from different branches of gov't,

8. Use of confidential information for non-gov't purposes

9. Nepotism

10. Financial interest in a business or industry regulated or influenced by the public official

11. Action that may affect any investment, property or other financial matter

2. DISCLOSURE

a. DISCLOSURE OF CONFLICT

Disclosure must be made to: supervisor, legislature, court, or municipal assembly, as appropriate, and either (1) immediately eliminate the conflict (i.e. divest interest), or (2) refrain from taking any action that creates an appearance of conflict, including delegating responsibility for the decision, and immediately seek advisory opinion from ethics agency.

b. FINANCIAL DISCLOSURE

WHO DOES IT APPLY TO? (Amend AS 39.50.020 and 200)

In addition to the persons covered by AS 39.50, consideration should be given to requiring the following persons to file disclosure statements with the appropriate ethics agency:

Ethics Agency	
APOC	Executive Branch: All employees above Salary Range _____ plus other employee classifications by regulation plus all nominees for appointed positions to boards, commissions, department and division heads
APOC or Legislative Ethics Committee	Legislative Branch: Employees of an agency of the Legislature above Range _____ plus individual and committee Legislative staff above Range _____ plus other employees by regulation or rule
APOC or Supreme Court/ Judicial Council or Judicial Qual. Comm.	Judicial Branch: Administrative personnel above Range _____ plus other employees by regulation or rule
APOC or Municipal Assembly	Municipal Bodies: Lower ranking employees

HOW COMPLETE MUST FINANCIAL DISCLOSURE BE? (Amend AS 39.50.030)

In addition to the information required by AS 39.50.030, consideration should be given to requiring disclosure of the following information which is required to be disclosed in some states:

Federal Income Tax Returns
Any gift received or given greater than $100
All trusts of which person is a trustee
Transactions with employees or supervisors

3. ETHICS AGENCY

All public employees are answerable to an ethics agency, even if they were not required to file financial disclosure statements.

WHAT IS THE FUNCTION OF THE ETHICS AGENCY?

Advisory opinions - to public officials, employees and to members of the public

Handle complaints - from public officials, employees and from members of the public

Preliminary Inquiry: preliminary factual determination by staff of the agency as to whether there is any reasonable possibility to believe the facts may be true
-and- a preliminary legal determination as to whether the alleged facts, if true, would constitute a violation
-if either can be answered in the negative, the matter will remain confidential
-if both can be answered yes:

Investigation: as extensive as necessary to allow the committee to determine whether further agency action is needed.

Hearing: to determine facts, make legal conclusions and, if necessary, impose sanctions under an appropriate standard of proof, and through defined procedures.

WHAT ARE THE POWERS OF THE ETHICS AGENCY?

Investigative powers:
- subpoena
- contempt sanctions
- note: legislative immunity problems may may exists unless the ethics agency is within the legislature
- note: testimonial immunity problems exist

Sanctions available:
- contracts voidable
- private or public reprimand
- legislative censure (take away privileges)
- legislative expulsion
- termination of employment
- levy fines
- forfeiture of gifts to the state
- order restitution, enforceable in court
- suspend sanctions on certain conditions
- recommend prosecution
- recommend sanction to employer/legislature/court

4523

Jan Carpenter

Schedule for March 1, 1983

10:00	Representative Randy Phillips (R) Co-Chairman Legislative Reform Committee	C421	4949
11:15	Senator Kelly Former Rules Chairman 2 yrs. ago	B208	3822
1:00	Peggy Mulligan Senate Secretary - Outside Chambers on 2nd Floor		3701
2:15	Irene Cashen House Clerk - Outside House Chambers, 2nd Floor		3725
4:00	Representative Barbara Lacher (Locker) (R) Member, Legislative Reform Committee	C104	4894

Jan Carpenter

Schedule of Appointments for March 2, 1983

8:30	Representative Joe Flood(R) (letter)	517C	4937
10:00	Max Gifford, Tom Bergstrom Finance Committee Staff	526C	3714
11:15	Tom Jahnke - AG's Office	412C	
1:00	Senator Arliss Sturgulewski(R) Former Finance Member Former Budget & Audit Comm. Chairman	218B	3818
2:15	Senator Joe Josephson(D) Finance Committee Member Member 6th & 7th Legislature	508C	3787
3:30	Senator Don Gilman(R) cancelled	115C	4935

Bill Pound - Jan Carpenter

Schedule for Thursday, March 3, 1983

8:15	Senator Rick Halford (R) Former House Majority Leader	205B	4958
10:00	Bill Berrier Legislative Counsel	6th Floor, Court Bldg. (across street)	
12:00	Special Legislative Reform Committee Meeting	Beltz Room	
~~1:30~~ 2:30	Senator Bill Ray (D) Majority Leader, 20 yrs. exp.	103C	4922
~~3:00~~ cancelled	Representative Mike Miller (D) Member, Leg. Reform Committee	24C	4841
~~4:00~~ 1:30	Mert Charney Legislative Affairs Agency	102B	3800
4:00	Gilman after committee mtg.	115C	4935

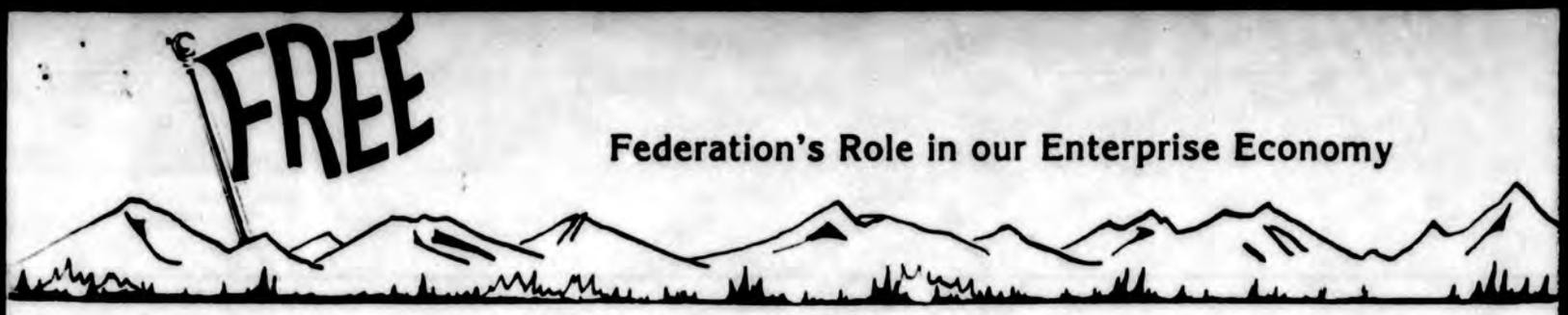
see him later

Able to see Mike Miller

NCSL Schedule for Friday, March 4, 1983

9:00	Representative Al Adams (D) Chairman, Finance Committee (Memo on Joint Finance)	507C	3706
10:00	Ralph Bennett (Bettisworth office) Former Finance Staffer	500C	4967
11:00	Senator Vic Fischer (D) Finance Committee Memo on Ethics	423C	4967
1:30	Senator Jay Kerttula (D) Senate President, Second Term	111C	3771
3:15	Representative Ramona Barnes (R) Majority Leader	216C	3718
4:15	Representative Joe Hayes (R) Speaker of the House	206C	3721
In case of cancellation - ~~Senator Gilman (R)~~ Miller		115C	4935

Didn't see him



March 1, 1983

Senator Jan Faiks
Alaska State Senate
Pouch V
Juneau, Alaska 99811

HAND DELIVERED

Dear Senator Faiks:

On February 4, 1983, your office forwarded a copy of a memorandum prepared by Richard Bradley, Legislative Counsel, which reviewed the FREE Committee recommendations for ethics legislation. Attached is our evaluation of Mr. Bradley's comments and draft.

Many of Mr. Bradley's comments are well-taken. However, some of the changes that he made are substantive and, in our opinion, create problems. We have suggested language changes to cure these problems. While his written narrative addresses a few of the changes he made in our recommended draft, it is important to note that it does not fully identify all of them.

The written evaluation is self-explanatory. If you have any questions, please contact the FREE Committee.

Sincerely,

Cheri C. Jacobus

Cheri C. Jacobus
Chairman, Legislative Study

P.O. Box 4-2955 • Anchorage, Alaska 99509
A committee of the GFWC Anchorage Woman's Club

FREE

Federation's Role in our Enterprise Economy

ETHICS LEGISLATION EVALUATION

Richard Bradley, Legislative Counsel, recently reviewed the FREE Committee proposal for changes to the current ethics and conflicts of interest law. Mr. Bradley made relatively few changes to the FREE Committee proposal and those recommendations are carefully reviewed in this document.

Generally, he comments that expanding the requirements for financial disclosure to include the finances of other members of the public official's household would be impractical and would probably result in gaps in the disclosures. While this is acknowledged, this problem already exists in the present law. This has not caused the legislature to rescind the disclosure requirement for spouses and children living within the home. While he does not state that he has changed the language the FREE Committee recommended, he has done so. In his draft, he has broken the requirements [AS 39.50.200(a) (10) -- see p. 7] into two sub-sections and has made both sections dependent upon each other. This materially alters the intent of the original language. Therefore, it is suggested that the original language be used. The "and" should be changed back to "or".

Mr. Bradley then correctly identifies a problem in the existing law that the FREE Committee recommendation does not correct. The present AS 39.50.030 (a) provides that assets or liabilities under $500 need not be identified in a financial disclosure, but AS 39.50.030 (b) requires all sources of income over $100 be disclosed. The recommendation does not correct this seeming inconsistency by changing the limits to $1000 and $500 respectively. Mr. Bradley recommends that the phrase "assets and liabilities" in section (a) be eliminated. Since the remainder of the section carefully spells out the requirements, it appears that Mr. Bradley's suggestion is well taken. The intent of the law would not be changed by this elimination and it would clear up the confusion.

In reviewing the FREE Committee's recommendations for AS 39.50.090, Mr. Bradley pointed out that in drafting legislation, broader coverage is almost always better achieved by single generic phrases than by a series of narrower particular phrases. He is correct. He, therefore, recommended that "financial gain" in AS 39.50.090 (a) alone was sufficient to cover all the possible wrong doings of a corrupt official and that the committee's recommended additions, "special privileges, exemptions, or compensation" were unnecessary. He also deleted the committee's recommended definition of financial gain. Clearly, it was not the committee's intent that only financial benefits would constitute a violation of this chapter. There are

other benefits that would cause a corrupt public official to use his or her office. Therefore, it is recommended that either the original language be used or more neutral and broader language be suggested. For example, rather than "financial gain", the public official could be prohibited from using his or her office or position for the primary purpose of obtaining any benefit for himself, his family or any member of his household. The language would then read as follows:

> The official position or office of a public official may not be used for the primary purpose of obtaining <u>any financial or other type of benefit</u> for the public official or for a member of the family or of the household or for the benefit of a business with which the public official or a member of the family or of the household of the public official is associated or owns stock.

Mr. Bradley also believes that the concern that the prohibitions not inhibit legislative activity is unfounded. Although, he has included the language in a separate section, this is one area that the FREE Committee could probably drop without materially altering the original intent.

While the committee did add language in a few of the sections to include legislative employees in the prohibitions, Mr. Bradley correctly notes that their activities are already covered by other statutes. Therefore, their inclusion is unnecessary.

The FREE Committee's revolving door prohibitions were criticized by Mr. Bradley for being too lenient. Mr. Bradley also did not accurately copy the language of the committee's recommendation. By dropping out the language allowing the state to hire the public official to <u>represent the state</u> only, the door was left open to allow former officials to be hired for any purpose. This was not the committee's intent. With that in mind, the following language is offered:

> A former public official may not assist any person or act in a representative capacity for a fee or other consideration on a matter in which the former public official personally participated as a public official, nor may the former public official within twelve months after termination of office or employment act in a representative capacity for a fee or other consideration before any state agency. This subsection does not prohibit any agency from contracting with a former public official on a matter on behalf of the state and does not prevent the former public official from appearing before any agency with relation to such employment.

The changes to the sections dealing with loans and with state contracts appear to be appropriate and basically cosmetic.

The section dealing with campaign contributions was also changed and the change seems to create some confusion. It does not clearly indicate who is liable for violation of this section. In addition, by using "and" throughout the section it appears that only when the parties are acting together that liability attaches. Therefore, it is recommended that the following language be used:

> No member of the legislature, person acting on behalf of a member of the legislature, or member of the legislator's family or household may solicit or accept funds for political contributions to the campaign treasury of the member of the legislature during a legislative session. Both the legislator and the person soliciting the contribution are liable and subject to penalty for any violation of this subsection.

While Mr. Bradley indicates tnat he included the section recommended by the committee addressing the need for an Attorney General's opinion, he clearly altered the intent of that provision, although unintentionally. The language now states that if the AG does not respond within the 30 day requirement, the requester cannot be held accountable for a violation of this chapter. This could really be subject to abuse. The AG could avoid committing himself on the legality of an activity, but by inaction allow a corrupt official to go free. The corrupt official would only need to lean on the AG or be friendly to avoid the effects of this law. Therefore, it is recommended that the original language be used. The original language would not reward a public official for the AG's inaction and would only protect him if the AG specifically stated that the activity was legal. In addition, it is never appropriate to bind the state by an agency's inaction.

This concludes the discussion of the ethics legislation itself. Mr. Bradley has also commented on the appropriateness of some of the committee's other suggestions. He does not believe that language needs to be added to the bribery statute to address promises of future employment. This is probably correct.

Finally, he correctly suggests that the committee's recommendations regarding expulsion of legislators convicted of felonies be addressed in a Constitutional amendment. There are such amendments being proposed now by Rep. Phillips. Since these proposals would not accomplish the goals of the FREE Committee, it is recommended that the FREE Committee carefully study them and comment.

In summary, many of the changes are cosmetic only. Some of the changes appear to inadvertently change the substance of the

committee recommendations. Others are more material. A few of these are acceptable. Those which are not acceptable, have been addressed in this memorandum.

Bondy Phillips
42 B

REPRESENTATIVE
JOE FLOOD
3423 WEST 79TH
ANCHORAGE, ALASKA 99502
(907) 243-7511

MEMBER
FINANCE COMMITTEE

DISTRICT 9
SOUTHWEST ANCHORAGE

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4937

STAFF COUNSEL
MARK K. JOHNSON

House of Representatives

February 28, 1983

The Honorable Jan Faiks
Chairman
Special Committee on
Legislative Reform
Alaska State Legislature
Pouch V.
Juneau, Alaska 99811

Dear Senator Faiks:

Enclosed are copies of two law review articles on the subject of legislative conflicts of interest that may be of use to you and the special committee.

While both were written several years ago, I believe that they still effectively deal with some of the issues that face the Alaska Legislature today.

I hope that you are able to make use of this material.

Sincerely,

JOE FLOOD

cc: Representative Randy Phillips

Harvard Law Review

Iowa Law Review

CONFLICTS OF INTEREST OF STATE AND LOCAL LEGISLATORS

As government at all levels continues to grow and play a more important role in the economy of the country and private life of the individual citizen, concern for honesty on the part of elected government officials becomes increasingly important. This concern for the integrity of elected public officials is manifested by various codes and standards of conduct which have been adopted by state legislatures.[1] Nevertheless, the proper standard of conduct for elected public officials is not easily defined or enforced.

In public life there is a growing need for qualified men and women, especially those who are peculiarly qualified for public service because of their commercial or professional experience. But because the pay scale for most elected public officials on the state and local level is inadequate to attract many full-time employees,[2] these persons may be unwilling to divest themselves of their private business and professional interests in order to enter public life. A strict rule prohibiting persons from holding public office while retaining these private interests would be unacceptable since it would deter those qualified people from entering public service.[3] Such dual allegiances on the part of public officials, therefore, are nearly inevitable on the state and local levels of government, and raise the problem of how to cope with actual and potential conflicts of interest.

Any attempt to control conflicts of interest must balance the need for unquestionable integrity in government with the need for competent personnel. Thus, it is imperative that a system be devised so that competent people can become active in governmental affairs without jeopardizing society's interest in prohibiting the undesirable evils of representing two masters; that is, the legislator's personal interests and his constituents' interests. Unquestionably, in the public interest

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[1] *See* MONT. CONST. art. V., § 44; ARIZ. REV. STAT. ANN. § 38-446 (1966); KAN. STAT. ANN. § 46-132 (1964); MINN. STAT. §§ 3.87-.90 (1967); N.Y. PUB. OFFICERS LAW §§ 73, 74 (McKinney Supp. 1969).

[2] *See* W. Gribben, *Structures and Procedures*, COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 1968-69, at 44-45 (1968); Kaplan, Book Review, 68 HARV. L. REV. 1097, 1101 (1955). Since elected public office at this level is thus part-time, usually only those occupational classes which are flexible enough to allow part-time participation in legislative activity are usually represented. As a result most state legislatures are composed of farmers, lawyers, merchants or insurance and real estate brokers. All of these may frequently have a direct personal interest in state legislation. *See* C. AUERBACH, L. GARRISON, W. HURST & S. MERMIN, THE LEGAL PROCESS 583 (1961).

[3] *See* Kaufman and Widiss, *The California Conflict of Interest Laws*, 36 S. CAL. L. REV. 186, 203 (1963); Note, *Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation*, 107 U. PENN. L. Rev. 985, 986 (1959); Legislation Notes, 16 DEPAUL L. REV. 453, 456 (1967).

to promote integrity and public confidence in government[4] without discouraging potential public servants from entering public life.[5]

This Note will discuss the general nature of conflicting interests, the various methods that have been employed to prevent conflicts of interests from arising, and the procedures by which legislation tainted with conflicts of interest may be avoided.

I. The Nature of a Disqualifying Conflict of Interest

Generally, a conflict of interest arises when a legislator has a personal or private interest in legislative action under consideration that is not shared in common with the general community.[6] These distinct interests are deemed to endanger the proper functioning of government. In public life the spectrum of conflicts of interest may include either a direct division of loyalties or only potential conflicts which may undermine public confidence in government. In attempting to define what actions, actual or potential, constitute conflicting interests courts have articulated a general standard; namely, any actions that are irreconcilable with the public welfare.[7] These actions are usually ones that permit the public official opportunity for private gain at public expense.[8] This private benefit, however, usually must consist of a present, personal, and pecuniary interest before a conflict of interest arises.[9]

Since this general test is rather broad, it is often difficult to determine precisely what is and what is not a conflicting interest. Typically, no conflict would arise if the legislator voted upon legislation establishing tax rates, utility rates, or licensing fees. Although this type of legislation would affect the individual legislator personally, it would affect him in the same manner as the entire community and hence would not be an illegal conflict of interest.[10]

Even some interests which are distinct have been found not to be prohibited conflicts of interest. A prime example involves legislation

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[4] *See* Note, *Conflicts of Interests of State Legislators*, 76 Harv. L. Rev. 1209 (1963) [hereinafter cited as 76 Harv. L. Rev.].

> "Involved and needed, therefore, is a careful regulatory scheme that effectively restrains official conflicts of interest without generating pernicious side effects on recruitment of both regular staff, and talents or capabilities on an occasional or temporary basis, for performance of governmental functions and responsibilities." [1961-62] Nev. Op. Att'y. Gen. 112.

[5] *See* Eisenberg, *Conflicts of Interest Situations and Remedies*, 13 Rutgers L. Rev. 666, 668 (1959); 76 Harv. L. Rev. 1209.

[6] *See* Piggott v. Borough of Hopewell, 22 N.J. Super. 106, 111-12, 91 A.2d 667, 670 (1952); Erie City v. Grant, 24 Pa. Super. 109, 112-13 (1904).

[7] *See* Note, *Conflict of Interests: State Government Employees*, 47 Va. L. Rev. 1034, 1045 (1961).

[8] *See, e.g.*, People v. Elliott, 115 Cal. App. 2d 410, 417, 252 P.2d 661, 665 (1953); Watson v. New Smyrna Beach, 85 So. 2d 548, 549-50 (Fla. 1958); Note, *Conflict of Interests: State Government Employees*, 47 Va. L. Rev. 1034, 1045 (1961).

[9] *See* Note, *Conflict of Interests: State Government Employees*, 47 Va. L. Rev., 1034, 1045 (1961).

[10] *See* Piggott v. Borough of Hopewell, 22 N.J. Super. 106, 111-12, 91 A.2d 667, 670 (1952); Erie City v. Grant, 24 Pa. Super. 109, 112-13 (1904).

that will affect the legislator's or councilman's private employer. If the legislator's or councilman's personal interest in this particular legislation is only to the extent of his natural concern for the welfare of his employer's business enterprise, he is not prohibited from voting upon the legislation. On the other hand, if the legislator's or councilman's salary is based on a percentage of his employer's profits, a conflict of interest may arise if he participates in the enactment of such legislation.

A conflict of interest may also arise in cases where an elected board or city council votes on the letting of contracts, granting of variances to zoning ordinances, or granting of licenses to competitors. An example is the case of *Younkers Bus, Inc.* v. *Maltbie.*[11] There the New York court held that an alderman who was the president of a bus company had a disqualifying interest in an ordinance granting a certificate of convenience and necessity to a third party, rival bus company.

Conflicts of interest may also arise indirectly when a city councilman has vested interests in social or community organizations. It appears that an interest in the general welfare of the community is not a disqualifying interest, but an interest in the improvement of a civic organization of which the councilman is a member may be disqualifying. For example, in the case of *Batchelor* v. *Avon-by-the-Sea,*[12] the New Jersey court held that the signing of a petition addressed to the city council seeking improvements of certain streets did not disqualify petitioner from acting as commissioner of assessment, since this was an interest which applied to the entire community affected by the assessment. In *Wiesmenthal* v. *Atlantic City,*[13] however, the court held that a councilman who was a member of the volunteer fire department could not vote on the purchase by the city of property from the fire department. These cases indicate that the general, imprecise test articulated by the courts makes it extremely difficult to determine what is a conflicting interest. This in itself breeds uncertainty and may discourage qualified persons from becoming active in public service. It is thus desirable for communities to attempt to further clarify what activities present prohibited conflicts of interest and to develop devices designed to control such activities.

II. Devices Designed To Prevent Conflicts of Interests

Many devices have been employed to prevent conflicts of interest from arising and resolve them once they do arise. Although practical solutions have as yet to be developed, several statutory and non-statutory approaches have been attempted. Such devices have been either in the form of checks on the individual legislator or sanctions upon legislation tainted with conflicting interests.

A. *Checks Upon the Individual Legislator*

1. *Nonstatutory Devices*

At least four non-statutory approaches can be used to prevent individual legislators from participating in potentially harmful conflicts

[11] 23 N.Y.S.2d 87 (1940), *aff'd* 260 App. Div. 893, 23 N.Y.S.2d 91 (1940).

[12] 78 N.J.L. 503, 74 A. 561 (1909).

[13] 73 N.J.L. 245, 63 A. 759 (1906).

of interest situations. Generally, all four are incomplete if not totally ineffective.

a. *Legislative Rules of Ethics*

In many states, legislative bodies have adopted codes of conduct that serve as internal checks to deter improper conduct on the part of their members.[14] These checks generally take the form of promulgated standards by which the legislator should abide.[15] If a conflict of interest is discovered before legislation is enacted the code may disqualify the legislator from participation in pending legislation.[16] If the improper conduct is discovered after the legislation is enacted, censure or expulsion for conduct unbecoming a member of the legislative body may be employed.[17] There are, however, several defects in these legislative codes. Since the standards in these codes are usually phrased in rather general terms, an individual legislator is often uncertain as to what specific action constitutes improper conduct. In such a system, even though bi-partisan political motives of individual legislators should serve to expose any conflict of interest issue, there is also an inherent and ever-present temptation to exploit such checks for political gain by fellow legislators. Moreover, independent and objective judgment is easily ignored when the standards are enforced by fellow members.[18] Most important, unless there is a persistent external stimulus for reform from the press or the electorate, enforcement of internal checks or codes may be only sporadic.[19] Thus, legislative codes of conduct and self-policing activity, though partially remedial to the extent that they may prevent blatant abuses, are ineffective in coping with most conflicts of interest problems.

b. *Sanctions From the Mayor's or Governor's Office*

Conflict of interest problems may also be controlled by sanctions from the executive department. Nearly every governor, and many mayors, have sources of political power that will enable them to attack a legislator's conflict of interest. One such power is that of the governor or mayor to withdraw political support from any legislator of his party who fails to meet acceptable standards.[20] Another power is the governor's ability to suggest that the executive department withhold lucrative government contracts from certain legislators or their firms until they comply with acceptable standards.[21] Moreover, investiga-

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[14] *See* MONT. CONST. art. V., § 44; ARIZ. REV. STAT. ANN. § 38-446 (1966); KAN. STAT. ANN. § 46-132 (1964); MINN. STAT. §§ 3.87-.90 (1967); N.Y. PUB. OFFICERS LAW §§ 73, 74 (McKinney Supp. 1969).

[15] *See, e.g.*, MASS. GEN. LAWS ANN. ch. 268A, § 23 (Supp. 1969); MINN. STAT. ANN. §§ 3.87-.90 (1967); TEX. REV. CIV. STAT. ANN. art. 6252-9 (1962).

[16] *See* N.Y. PUB. OFFICERS LAW § 74 (McKinney Supp. 1969); TEX. REV. CIV. STAT. art. 6252-9 (1962); 76 HARV. L. REV. 1211-12.

[17] *See* N.Y. PUB. OFFICERS LAW § 74 (McKinney Supp. 1969); TEX. REV. CIV. STAT. art. 6252-9 (1962); 76 HARV. L. REV. 1211-12.

[18] *See* 76 HARV. L. REV. 1230-31.

[19] *Id.* at 1231.

[20] *Id.* at 1218.

[21] *Id.* at 1219.

tions of a legislator's appearances before state agencies or involvement with the allocating of government contracts may be instituted by an executive committee,[22] or more specifically, the comptroller general.[23] The fear of the possible public exposure connected with such an investigation alone may deter any further questionable activity.

Political considerations, however, may limit the use of these executive attacks on unethical practices.[24] Furthermore, these checks of the executive branch lack uniform standards because they may be invoked only at the discretion of the individual executive officer. It is quite possible, therefore, that use of these devices may readily vary from individual to individual and situation to situation. As such, they are ineffective checks because they may not be imposed in an equal manner in all cases.

Despite some of its shortcomings, the executive branch can, nevertheless, play an ancillary role in defining harmful conflicts of interest by rendering advisory opinions from the attorney general's office. Upon request from a legislator, the propriety of future action may be decided by the attorney general's office.[25] Such an approach has the advantage of taking the promulgation of standards from the legislative body. However, enforcement under this approach may be sporadic because this device is not implemented until the respective legislator requests an opinion. Moreover, every legislator may not be aware that there may be problems of questionable ethics involved in some of his actions, and even if he is aware of such problems, he may decline to request an advisory opinion on the problems. Hence, this approach may not be an effective device for preventing harmful conflicts of interest.

Finally, on the state level, the chief executive may employ the veto power[26] if members of a legislative body fail to comply with minimal standards of ethical conduct. This sanction may be extremely instrumental in directing public attention to the problem of improper lobbying[27] or vested private interests of particular legislators. However, in effect, the veto power is an "over-kill" approach because it not only deters the undesired conduct, but also nullifies the entire legislative bill.

c. *Exposure in Election Campaigns*

The fact that legislators must periodically submit their records to the voting public so as to be re-elected may serve as another check on legislative misconduct. Theoretically, the voting public will receive complete information concerning past violations of a legislator's public

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[22] *See* LA. REV. STAT. § 42:1119 (1965); N.Y. EXEC. LAW § 63 (McKinney Supp. 1969).

[23] *See* N.Y. EXEC. LAW § 63 (McKinney Supp. 1969).

[24] *See* 76 HARV. L. REV. 1219.

[25] *See* 26 ORE. ATT'Y GEN. BIENNIAL REP. AND OP. 114 (1952-1954).

[26] IOWA CONST. art III, § 16. In 1956 President Eisenhower vetoed a bill because of improper lobbying. *See* PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, Dwight D. Eisenhower 1956, at 256.

[27] *See* PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, Dwight D. Eisenhower 1956, at 256.

trust through the self-motivated revelations of each candidate's opponents. By means of the ballot the ethical standards of the electorate will then be imposed upon its legislative representatives.[28] As a practical matter, however, the electorate may be an ineffective check. Local legislative races are seldom hard fought and in such races party affiliation may be highly determinative of the outcome.[29] Moreover, subtle ethical problems inherent in the conflict of interest area may be all but impossible to communicate to the voting public in a campaign where issues must be simple and easily understood.[30] Indeed, an opposing candidate may be reluctant to raise a subtle conflict of interest charge because he may be misunderstood or politically embarrassed by false charges of his own misconduct.[31]

Although it might be urged that the need for popularity before an election will deter improper conduct by an incumbent, political realities may dictate a different result. The financial realities of a campaign may force an incumbent to become dependent upon funds raised through private contributions.[32] This may create distinct personal obligations which conflict with his public duties as a legislator. It is also possible that a self-interested legislator could realize the benefit of his actions before the next elected legislative body would be able to enact corrective measures.[33] Moreover, such corrective measures might be ineffective against citizens who relied upon the prior action or extremely detrimental for those who had.[34] Even if the power of the electorate could operate efficiently, it is an unpredictable sanction lacking uniform standards by which legislators can determine what constitutes acceptable conduct.

d. *The Federal Government*

The growth of the federal government's involvement in nearly every aspect of state and local government enables it to serve as another source of control on conflicts of interest problems. The multiplying use of federal funds for state and local government projects in education, road construction, urban renewal, and other public works provides the federal government with a lever by which a code of ethical conduct can be imposed upon officials of governmental bodies receiving and dispensing such aid.[35] For example, federal grants-in-aid to state and local governments may be conditioned on requirements prescribing standards of conduct as a prerequisite to receiving this

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[28] THE ASS'N OF THE BAR OF THE CITY OF NEW YORK, CONFLICT OF INTEREST AND FEDERAL SERVICE 15 (1960) [hereinafter cited as ASS'N OF THE N.Y. BAR]; 76 HARV. L. REV. 1213.

[29] *See* W. ANDERSON, AMERICAN CITY GOVERNMENT 207 (1925).

[30] 76 HARV. L. REV. 1213.

[31] *See id.*

[32] *See* Eisenberg, *supra* note 5, at 667.

[33] *See* 57 MICH. L. REV. 423, 425 (1959). *Cf.* A. MCQUILLIN, MUNICIPAL CORPORATIONS § 25.181, at 12 (3d ed. 1957).

[34] *See* 57 MICH. L. REV. 423, 425 (1959).

[35] *See* 76 HARV. L. REV. 1220. *See generally* 23 U.S.C.A. §§ 105, 140, 141 (Supp. 1969).

aid.[36] Dispersal of federal funds also raises the possibility of employing Congressional investigations to expose legislative misconduct where federal money is being used.[37] Adverse publicity engendered by these investigations may serve as an additional deterrent to misconduct in the handling of federal funds.[38] This publicity, however, may produce undesired results because the effect of such publicity may be to destroy the political careers of a few while accomplishing little in solving the problem in the future.[39] Furthermore, attention given to blatant criminal aspects of misconduct exposed by Congressional investigations may gloss over the more subtle problems of conflict of interests.

The self-imposed rules of legislative bodies, the public eye of the electorate, the chief executive's position of influence, and the power of the purse and investigation that the federal government possesses can all be employed to prevent conflicts of interest from tainting state and local legislation. Their utility in coping with the problem is, however, limited because in many instances they are only a partial and sporadic solution to the problem. Moreover, the employment of several of these devices can result in a situation in which the remedy is more deleterious than the problem being resolved. For these reasons some commentators believe that stringent statutory devices are needed to cope with the conflicts of interest problems.[40]

2. *Statutory Devices*

Some states have attempted to control conflicts of interest by statute.[41] Statutory controls usually resemble a code of ethics either with or without criminal sanctions.[42] Those without criminal sanctions attempt to define certain conflicts of interest and prohibit such in specific situations where the distinction between proper and improper activity is not clear.

Where the conflict can be specifically and objectively defined and determined, statutes with criminal sanctions are most appropriate. Where it is usually difficult to objectively define what conflicts of

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[36] *See* 23 U.S.C. § 112(c) (1964).

[37] *Cf. Hearings Before the Special Subcomm. on Federal-Aid Highway Programs of the House Comm. on Public Works*, 87th Cong., 2d Sess. pts. 1 & 2 (1962); *Hearings Before the Subcomm. to Study Senate Concurrent Resolution 21 of the Senate Comm. on Labor and Public Welfare*, 82d Cong., 1st Sess. (1951). *See generally* ASS'N OF THE N.Y. BAR. 123-30.

[38] 76 HARV. L. REV. 1221.

[39] *Id.*

[40] *See* Note, *State Conflict of Interest Laws: A Panacea for Better Government?*, 16 DEPAUL L. REV. 453, 464 (1967); Note, *Conflict of Interests: State Government Employees*, 47 VA. L. REV. 1034, 1076 (1961); Comment, *Criminal Law—Official Misconduct—The Need for Legislative Reform*, 57 KY. L.J. 598, 604-05 (1969).

[41] *See, e.g.*, ARIZ. REV. STAT. ANN. § 38-446 (1966); ILL. REV. STAT. ch. 102, § 3 (Supp. 1969); IND. ANN. STAT. § 10-3713 (1956); KAN. STAT. ANN. § 46-132 (1964); KY. REV. STAT. §§ 61.092-.096 (1969); MINN. STAT. §§ 3.87-.90 (1967); N.M. STAT. ANN. §§ 2-1-4 to 1-7 (1954); N.Y. PUB. OFFICERS LAW §§ 73, 74 (McKinney Supp. 1969); N.D. CENT. CODE § 54-03-21 (1960).

[42] *See, e.g.*, KY. REV. STAT. §§ 61.092-.096 (1969); MASS. GEN. LAWS ANN. ch. 268A § 23 (Supp. (1969); MINN. STAT. § 3.88 (1967).

interest are or should be illegal, criminal sanctions may have an undesirable effect because the fear of being accused of criminal misconduct may discourage competent men and women from seeking public office.

The most common statutory provisions are those which prohibit some or all public contracts with public officers.[43] Some states forbid the awarding of state government contracts to members of the legislature unless the contract is procured through public notice and competitive bidding.[44] Others categorically forbid such contracts.[45] Most states, however, have a de minimis exception allowing a limited fractional interest in the contract.[46]

When such contracts are permitted, the statutes usually require that the public officer's conflicting interest be disclosed. In New York the requirement is that the disclosure be accessible to the public.[47] Texas[48] and Washington[49] require that a report of the officer's interest be filed with the Secretary of State and be accessible only to those officials awarding the contract. Other statutes provide that disclosure be made to the body of which the officer is a member.[50] The Texas and Washington plans seem to be most desirable because their disclosure provisions safeguard the public from undesirable conduct without indiscriminately invading the legislator's privacy.

Another statutory approach to the conflicts of interest problem is the establishment of a committee, independent of the legislative body, which could promulgate and administer a code of ethics.[51] Upon request, this committee could conduct administrative hearings and make official determinations on the propriety of a specific legislator's activities. In order to protect the legislator, a private preliminary hearing could be conducted to determine whether there is merit to charges against the legislator. If the charges have sufficient merit, the committee could then conduct a formal public hearing. The findings of the committee in this hearing could be publicized and referred to the appropriate agency for further action. Upon its own initiative or upon request of any interested party the committee could also render advisory opinions which would be made public. These opinions would form a collection of the ethical principles applicable to specific cases.

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[43] *See, e.g.*, ILL. REV. STAT. ch. 102, § 3 (Supp. 1969); NEV. REV. STAT. § 218.580 (1967); N.D. CENT. CODE § 54-03-21 (1960).

[44] *See, e.g.*, KY. REV. STAT. § 61.096(6) (1969); N.Y. PUB. OFFICERS LAW § 73(4) (McKinney Supp. 1969); OHIO REV. CODE ANN. § 2919.09 (Page 1954).

[45] *See, e.g.*, ARIZ. REV. STAT. ANN. § 38-446 (1966); ILL. REV. STAT. ch. 102, § 3 (Supp. 1969); KY. REV. STAT. § 61.096 (1969).

[46] *See, e.g.*, KY. REV. STAT. § 61.096(6) (1969) (limited to contracts exceeding $25); N.Y. PUB. OFFICERS LAW § 73(4) (McKinney Supp. 1969) (limited to contracts exceeding $25); OHIO REV. CODE ANN. § 2919.09 (Page 1954) (limited to contracts exceeding $50).

[47] *See* N.Y. PUB. OFFICERS LAWS § 74 (4).

[48] *See* TEX. REV. CIV. STAT. ANN. art. 6252-9, § 3(b) (1962).

[49] *See* WASH. REV. CODE ANN. § 42.22.050 (1961).

[50] *See* CAL. GOV'T. CODE § 1091 (West 1966); IOWA CODE ANN. § 403.16 (Supp. 1969); NEV. REV. STAT. § 315.400(1) (1967).

[51] *See* LA. REV. STAT. §§ 42:1144, 42:1145 (1965).

This plan has several advantages over the traditional statutory and non-statutory approaches. Since rulings would develop as a result of specific cases, this system could deal with the more subtle conflicts of interest problems that cannot be dealt with by drafters of legislative criminal codes. Because the committee would be independent of the legislature, this plan would also be unfettered by the inherent defects of political considerations or legislative inertia which thwart most constructive action in this area.[52] Furthermore, if the committee commanded sufficient prestige, publication of its rulings without further action might serve as an adequate deterrence to undesirable conduct.[53]

These various statutory devices that have been employed may effectively deter certain conflicts of interest from arising. These devices do not, however, completely resolve many conflict of interest problems. In many situations the subtle and subjective characteristics of these problems can seldom be sufficiently defined so as to be effectively prohibited by statute without creating considerable confusion as to what is prohibited and what is not. More importantly, these various statutory devices do not solve the problem of what to do with legislation which may have been affected by a conflict of interest.

B. *Sanctions upon Legislation Tainted with Conflicts of Interest*

1. Judicial Invalidation

Despite present attempts to curb conflicts of interests, certain conflicts of interest will almost inevitably arise in the legislative process. When this happens, most courts not only disqualify the interested legislator from participating, but hold that legislative action tainted by participation of a member having a conflicting interest is invalid.[54] However, the courts' intervention in the conflicts of interest area has been so sporadic and unpredictable that it is difficult to determine exactly what action will be invalidated by the courts.[55] For this reason alone courts are ineffective in controlling conflicts of interest.

On the state level most courts are reluctant to review actions involving conflicting interests of state legislative officials.[56] There may be two explanations for judicial restraint in this area: It is difficult if not altogether impossible for the court to consider rights of innocent third parties not before the court;[57] and it is nearly impossible for a court to ascertain and describe legislative misconduct.[58] This attitude of judicial restraint is reinforced by provisions in many state constitutions which contain ambiguous clauses limiting judicial intervention in legislative matters. The most common provision is a clause which

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[52] *See* text accompanying note 18 *supra*.

[53] *See* 76 HARV. L. REV. 1232.

[54] *See, e.g.*, Wilson v. City of Iowa City, 165 N.W.2d 813, 825 (Iowa 1969); Baker v. Marley, 8 N.Y.2d 365, 367, 170 N.E.2d 900, 901 (1960); Piggott v. Borough of Hopewell, 22 N.J. Super. 106, 113, 91 A.2d 667, 670 (1952).

[55] *Compare* Piggott v. Borough of Hopewell, 22 N.J.Super. 106, 91 A.2d 667 (1952) *with* Gardner v. City of Bluffton, 173 Ind. 454, 460, 89 N.E. 852, 855 (1909).

[56] *See* 76 HARV. L. REV. 1214.

[57] *See* Fletcher v. Peck, 10 U.S. 87, 130 (1810).

[58] *Id.*

establishes a separation of powers between the executive and judicial branches without defining the extent to which the legislative and judicial branches should interact.[59] Hence, judicial restaint and the court's role as interpreter of the constitution are apparently partially responsible for judicial inaction in this area.

At the state level of government, however, the need for intensive checks is perhaps less urgent than on the municipal level because the problem is less likely to arise. In state government the need to acquire a majority in the legislative process produces concessions and compromises among colliding interests to such an extent that it is highly improbable that any single interest will acquire everything it desires,[60] especially in a body as large as most bi-cameral state legislatures. Further, since a disqualifying interest is usually defined as one that is unique to the official, most state legislation will enlarge the benefited group to the extent that such a distinct personal interest will seldom arise.[61] This is the case, for example, when a farmer-legislator votes for an increase in the level of parity.

Thus, at the state level of government, statutes embodying criminal sanctions for gross misconduct that can readily be determined by applying objective standards, and the promulgation and interpretation of a code of conduct by an independent body are needed to clarify the problems and questions in the conflict of interest area. In the less easily defined area where objective standards cannot be readily applied, strict rules and judicial intervention should be prohibited. Here the tribunal of the electorate, not the courts, is the most qualified body to judge whether their representatives have violated these standards. For it is consistent with the agency position which a legislator holds that his constituents, the electorate, rather than an independent and unrelated court, determine whether he has gone beyond the discretionary duties his constituents have entrusted in him.

On the local level courts avoid these problems by characterizing the activity as being judicial or quasi-judicial rather than legislative.[62] The rationale underlying this distinction is probably based upon the reasoning that if the prohibited activity can be characterized as legislative, the courts lack power to review the problem because it may encompass elements of discretion on the part of the individual councilman that are exclusively his as a legislative member. A recent example of such judicial intervention on the local level occurred in the case of *Wilson* v. *City of Iowa City*.[63] There the Iowa Supreme Court invalidated a resolution of the city council defining the boundaries of a proposed urban renewal district because certain members of the city council either owned property within the proposed district or were officials of an institution that owned property within that district. The

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[59] *See, e.g.*, CALIF. CONST. art. III, § 1; ILL. CONST. art. III; OKLA. CONST. art. IV, § 1.

[60] 75 HARV. L. REV. 423, 424 (1961).

[61] *Id.*

[62] *See*, e.g., City of Miami Beach v. Schauer, 104 So.2d 129, 131 (Fla. 1958); Gardner v. City of Bluffton, 173 Ind. 454, 460, 89 N.E. 853, 855 (1909); Piggott v. Borough of Hopewell, 22 N.J. Super. 106, 110, 91 A.2d 667, 669 (1952).

[63] 165 N.W.2d 813 (Iowa 1969).

Iowa court indicated that not only an actual but also a potential conflict of interest on the part of any councilman would result in invalidation of the specific legislation even though the disqualified councilman's vote would not alter the result.

The ramifications of such a strict ruling are devasting. In invalidating the city council's resolution because of certain councilmen's conflicting interests the Iowa court very effectively prevented the city of Iowa City from initiating an urban renewal program. Such a decision may also deprive a municipality of the services of highly qualified and duly elected or appointed officials.[64] Therefore, because of the consequences of such a rule, it is imperative that the voters choose to represent them a man or woman who possesses neither an actual nor potential conflict of interest. Otherwise, if a conflict does arise, important municipal improvements such as improvements of utility service, street maintenance, or slum clearance may be abrogated or at least impeded until a subsequent election. Even then a disinterested minority may deliberately re-elect a disqualified member so as to effectively thwart the legitimate will of the majority. Moreover, a candidate for public office may intentionally declare no conflicts of interest with proposed municipal improvements only to acquire a conflicting interest before the proposal is enacted as an ordinance or to reveal a conflict after the ordinance is enacted.

2. *Alternatives to Complete Judicial Invalidation*

Some courts, cognizant of the ramifications of complete invalidation, have upheld the legislative action and simply disqualified the legislator where the result would have been the same despite his disqualification.[65] This approach is advantageous because it deters improper conduct on the part of individual councilmen by nullifying their votes without preventing city government from enacting measures clearly within its defined powers.

In approval of this approach, the Iowa General Assembly recently enacted a law which sharply limits the occasions for invalidating a council resolution or ordinance.[66] Under the new Iowa law a city council's ordinance or resolution is valid unless the vote of the councilman with the conflicting interest was decisive in the passage or re-

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[64] *See* Van Italie v. Borough of Franklin Lakes, 28 N.J. 258, 269, 146 A.2d 111, 116 (1958).

> Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. *Id.*

[65] *See* Singewald v. Minneapolis Gas Co., 274 Minn. 556, 558, 142 N.W.2d 739, 740 (1960).

[66] *See* ACTS OF 63RD IOWA GEN. ASSEMBLY, House File 733 (1969 IOWA LEGISLATIVE SERVICE 42).

jection of the measure.[67] This law recognizes that, except in the area where his personal interest alone is the subject of proposed legislation, it is extremely difficult, if not impossible, to determine when a legislator's discretionary action is beyond the scope of his agency as a representative of his constituents. As such, this law reflects the view that a representative's constituents are more qualified than the courts to determine whether a legislator has violated the public trust invested in him.

Even with the Iowa statute in force important city ordinances might be unnecessarily invalidated. Situations may arise where disqualification of a legislator's vote will change the outcome because the council would then be without a quorum. In such situations provisions should be made whereby the instruments of direct participation of the voters could be employed as an alternative to invalidation of the proceedings.[68] These direct participatory devices enable voters to vote a representative out of office at times other than the regular scheduled elections and directly enact certain legislative proposals without operating through the orthodox channels of the city council. Therefore, instruments of direct participation such as the recall, initiative or referendum should be used as an alternative to invalidating ordinances.

Recall is the power of a given percentage of the voters to require the holding of a special election upon the question of whether a city councilman should be removed from office before the end of his term.[69] If a councilman who has a conflicting interest casts the decisive vote, refuses to disqualify himself, and thereby subjects the council's entire action to invalidation, the councilman could be recalled. The recall is premised upon the assumption that an incumbent is unfit to continue to hold his official position.[70] The petitioners for recall promulgate a statement of their objections to the officer's continuance in his post and then proceed to elicit the requisite number of signers for the petition demanding an election for recall.[71] If enough signatures are valid, the petition goes to the city council which is then required to call a special election within a period of time specified by law.[72] To effectuate the recall a majority of those voting must affirmatively request recall of

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[67] *Id.*

[68] Recall is the legal power of a given percentage of the voters to call an election upon the question of removing some public official, usually an elected official, from office before the end of his term. The initiative is essentially a device whereby a given percentage of the electorate is given the legal power to draft and submit measures for adoption as ordinances requiring a public referendum thereon in case the council fails to or is not empowered to enact them.

The referendum is basically a device whereby voters specifically voice their opinions on a particular item of legislation in an election by voting approval of or disagreement with a specific item of proposed legislation. In certain forms it is merely a consensus measuring device; in others it is a device whereby the lawmaking power is placed in the hands of the electorate.

[69] *See* W. ANDERSON, AMERICAN CITY GOVERNMENT 268 (1925); W. MUNRO, THE GOVERNMENT OF AMERICAN CITIES 350-51 (1912); J. PATE, LOCAL GOVERNMENT AND ADMINISTRATION 148-49 (1954).

[70] *See* authorities cited note 69 *supra*.

[71] *See* authorities cited note 69 *supra*.

the elected official.[73] In addition, threat of a recall may be used to indicate citizen disapproval of a councilman's conduct and, thus, persuade him to refrain from participating in municipal action in which he may have a conflicting interest. This can be employed to force a councilman who intends to invalidate municipal action by deliberately voting to either disqualify himself or be subject to removal from office.

Although it is an alternative to complete invalidation of proceedings tainted with conflicting interests, there are many reasons why use of the recall is an inappropriate substitute to judicial invalidation. The recall is often expensive, time consuming, confusing, and ineffective.[74] In situations where it is important that an ordinance be enacted as rapidly as feasible, postponement of action on the proposed legislation because of the time consumed in implementing the recall may effectively block this legislation in the critical period in which it may be vitally needed. Furthermore, the fear of having to account for every public act at the expense of early removal from office may inhibit legitimate conduct or deter qualified persons from entering public life.

Another alternative to avoid invalidation of proposed ordinances is the use of the initiative. This is a device whereby a given percentage of the electorate is given the legal power to draft and submit measures for adoption as ordinances. A public referendum is required on them if the council fails to or is not empowered to enact them.[75] With the initiative as the enacting device, the ordinance enacted and the elected councilman are totally unrelated. Hence, this device allows voters to elect whomever they desire and still enact desired ordinances untainted with conflicts of interest.

A third alternative to judicial invalidation of proposed legislation is the use of the referendum. Although found in several different forms, in its most fundamental form a referendum is a method by which important legislation is submitted to a direct vote of all the people.[76] It may be employed to obtain the opinion of the voting public on important ordinances that determine general policies of a municipality. Hence, the decision whether to initiate urban reedvelopment in a proposed district would be a good example of what would be the proper subject of a referendum.[77]

The required number of signers is usually high, generally at least 25 percent of the number of electors who cast ballots in the previous general election. When the required number of signers is attained, a city clerk or other appointed official verifies the validity of the signatures. W. ANDERSON, AMERICAN CITY GOVERNMENT 268 (1925).

[73] W. ANDERSON, AMERICAN CITY GOVERNMENT 268 (1925).

[74] *See* id. at 270.

[75] *See* W. ANDERSON, AMERICAN CITY GOVERNMENT 265 (1925); W. MUNRO, THE GOVERNMENT OF AMERICAN CITIES 321 (1912); J. PATE, LOCAL GOVERNMENT AND ADMINISTRATION 148 (1954).

[76] *See* W. ANDERSON, AMERICAN CITY GOVERNMENT 265 (1925).

[77] *See generally* W. ANDERSON, AMERICAN CITY GOVERNMENT 266-68 (1952); MUNRO, THE GOVERNMENT OF AMERICAN CITIES 321-50 (1912).

[77] At the present time use of the referendum to approve urban renewal projects would be limited, since some states provide that it can only be approved by a resolution by the city council. *See* IOWA CODE ANN § 403.5 (Supp. 1969).

Generally, there are three types of referenda. In the first type, certain categories of legislative matters such as charters, charter amendments, and bond issues are required to be submitted to the vote of the electorate.[78] A referendum of this nature is intended to give the voters a check upon municipal government in matters concerning important public interests. The second form of referendum is similar to a consensus measuring device. It is used when a municipal charter confers exclusive ordinance-making power upon the city council, and the council, in order to determine the opinion of the people on a specific question, submits the question to a vote of the people.[79] This type of referendum confers no lawmaking power upon the electorate,[80] and, therefore, is ineffective in avoiding invalidation of conflict of interest legislation. The third and most common form of referendum is a device by which a given percentage of the voters are given the legal power to prevent the enforcement of a newly enacted ordinance and to require a public referendum on the question of whether it shall become law.[81] If an ordinance is suspended by the petition, the city council may call a special election to decide the question. However, the expense of a special election will usually forestall any action until the next general election.

Under the third type of referendum a councilman could be re-elected without jeopardizing the enactment of an ordinance that is in the public interest. Such a plan would not force the electorate to choose between a proposed ordinance and an incumbent who may be especially qualified in all respects except for a specific disqualifying interest. If an ordinance which was voted upon by a councilman with an apparent conflict of interest is later approved by the referendum that ordinance would be valid despite the disqualifying interest of a specific councilman. The referendum would indicate that the apparent self-interest of the disqualified councilman was actually in accord with the public will. Therefore, the reason for invalidating such an ordinance would no longer exist. By referendum the electorate became the legislating body.[82]

Since it is highly impractical, because of expense and confusion, for all municipal action to be subject to referral, it is necessary to limit local referenda to items concerning only important policy considerations. However, a provision specifically requiring referral when a measure is subject to potential invalidation because of conflicting interests seems essential even though there may be some extra expense and possible delay. Such a system would allow the machinery of a democratic government to operate while deterring violations of the public trust by corrupt and indiscreet public officials.

Theoretically, at the state level, the initiative, referendum, and recall are viable checks upon legislation that is the product of official misconduct. In reality, however, because of the size of nearly every state and the remoteness of legislators from their constituents, these de-

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[78] *See* W. Anderson, American City Government 266 (1925).

[79] *Id.* at 266-67.

[80] *Id.* at 267.

[81] *Id.*

[82] 75 Harv. L. Rev. 423, 424 (1961).

vices are extremely impractical as checks upon legislative misconduct and as alternatives to judicial invalidation.

III. Conclusion

In the conflict of interest area there is a basic need to define by what standards a conflict of interest is to be determined. Once certain conflicts of interest are ascertained, attention must then be directed toward implementing devices that will, if possible, effectively prevent individual legislators from acquiring such conflicts. This may entail bringing direct sanctions against the individual concerned or simply calling it to his attention. When a conflict of interest arises in specific legislation, the crucial issue of the legislation's legitimacy arises. The traditional approach of invalidating this legislation is extremely harmful because it may effectively impede the legislative process. Hence, the Iowa rule which permits invalidation only where the conflict of interest may have been decisive in enacting the legislation is a viable solution to the problem. However, where the Iowa rule sanctions invalidation, conflicts of interest legislation could then be saved and circumvented by one of several devices of direct voter participation. Under direct participation, the voters could then, either in a subsequent election or by referendum, decide whether the legislation he voted upon is in accord with their interests. This approach recognizes the need for clarifying and controlling conflicts of interest problems while enabling the people a legislator represents, not the courts, to determine when he has violated the public trust invested in him.

CONFLICTS OF INTEREST OF STATE LEGISLATORS*

I. The Problem

State legislators continue to be governed in their choice of nonlegislative occupations primarily by their own consciences and by the occasional voice of the electorate, despite the fact that almost every state legislature has considered the general area of public servants' conflicts of interest and has attempted at least partial statutory controls.[1] Certain acts constituting a violation of the legislator's ethical responsibilities — bribery, blackmail, and dishonest election practices, for example — are easily delineated and proscribed; however, serious problems of definition arise in the more subtle area of conflicts of interest.[2] The conflict may involve actual division of loyalties as in cases in which the official acts in his public capacity on matters which affect him in his private capacity.[3] Often the conflict is only potential or the problem centers around the appearance of misconduct which itself undermines public confidence in government.[4] There is also the possibility of unfair advantage accruing to the legislator who deals with state agencies. It should be the aim of any attempt to deal with public servants' conflicts of interest to promote both the actual practice and the public appearance of impartiality and objectivity in government operations without disqualifying present and potential capable public servants through excessively stringent restrictions.[5]

To be effective, the guidelines expressing this balance must be closely tailored to the circumstances of those whose behavior is to be governed. The position of the legislator in most states is unique in that his job is customarily part-time only[6] and he receives regular compensation from

* Acknowledgement is made of the kind cooperation of the attorneys general and the legislative reference services who provided source materials and personal information otherwise unavailable. Over 65 communications were received from 38 states. Recent statutory history and other references not otherwise documented are taken from these sources.

[1] See Note, *Conflict of Interests: State Government Employees*, 47 Va. L. Rev. 1034, 1042 n.26 (1961). See generally Eisenberg, *Conflicts of Interest Situations and Remedies*, 13 Rutgers L. Rev. 666 (1959).

[2] See N.J. Legislative Comm'n on Conflicts of Interest, Report to the Senate and General Assembly 15 (1957) [hereinafter cited as N.J. Report].

[3] Similar problems arise when the legislator in another capacity acts for a party whose interests are adverse to those of the state and when, in discharging obligations of a private nature, the legislator is required to apply knowledge gained exclusively for use in his official capacity.

[4] See Special Comm'n on the Federal Conflict of Interest Laws, Ass'n of the Bar of the City of New York, Conflict of Interest and Federal Service 17 (1960) [hereinafter cited as Bar Association Report].

[5] "In the long run, the objective is a policy which neither sacrifices governmental integrity for opportunism, nor drowns practical staffing needs in a sterile moralism." [1961–1962] Nev. Ops. Att'y Gen. 112.

[6] Regular sessions are convened only biennially in all but twenty states and are subject to specific time limitations in all but sixteen. In Wyoming, for example, the biennial session is limited to forty calendar days. Council of State Governments, The Book of the States 1962–1963, at 42–43 (1962).

sources other than the state.[7] Few occupations are sufficiently flexible to permit time off for legislative participation: statistics indicate that most of the legislators are lawyers, farmers, merchants, or insurance or real estate brokers.[8] Of these, all except lawyers frequently have a direct personal interest in state legislation, while lawyers may have similar interests in a representative capacity.[9] The prevalence of these outside occupations with a natural proclivity toward government involvement militates toward stringent regulation of legislators' outside activities; yet it would seem undesirable for the imposition of such restrictions to result in a further narrowing of the occupational classes from which legislators will be drawn. Furthermore, in all states there is hardly an item of concern to any state employee or officer which does not fall under the aegis of the legislature. Included are many subjects perennially under its scrutiny which affect every legislator no matter what his occupation, such as tax rates, auto license fees, and utility rates; [10] other concerns such as "blue sky" laws, teachers' qualifications, or barbers' licenses are likely to affect certain lawmakers in their chosen fields.

The fact that the legislator holds office by virtue of public election may variously affect his susceptibility to conflicts of interest. On the one hand, the importance of popularity may deter conduct which is potentially unpalatable to the public; [11] conversely, the need for campaign funds raised through private contribution may create personal obligations generative of conflicts. In acting as representative of a particular geographical group, the legislator may be faced frequently with situations in which his personal judgment would lead him to action contrary to the interests of his electors. While such a conflict is inherent in the structure of representative democracy,[12] a resolution in favor of his electors may raise ethical issues when the particular constituents concerned are major campaign contributors, employers, clients, or associates.[13]

In many states there has persisted in this area a reluctance to legislate, which is variously explained by constitutional limitations,[14] the notion

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[7] See Kaplan, Book Review, 68 HARV. L. REV. 1097, 1101 (1955). The same is true of the British Parliament, some of whose members are supported by outside organizations, particularly trade unions. N.J. LAW REVISION AND LEGISLATIVE SERVICES COMM'N, MEMORANDUM: IN RE: CONFLICTS OF INTEREST AMONG GOVERNMENT OFFICERS AND EMPLOYEES IN GREAT BRITAIN 2–3 (1957). For current levels of legislative salaries, see COUNCIL OF STATE GOVERNMENTS, *op. cit. supra* note 6, at 44–45.

[8] See AUERBACH, GARRISON, HURST & MERMIN, THE LEGAL PROCESS 583 (1961); COMM. ON AMERICAN LEGISLATURES, AMERICAN POLITICAL SCIENCE ASS'N, AMERICAN STATE LEGISLATURES 70–73 (1954).

[9] See State v. Foord, 142 Conn. 285, 113 A.2d 591 (1955) (bribery conviction of legislator who had accepted "legal services" fee upon award of monopoly to client). Compare Stilwell, *Texas: Owned by Oil and Interlocking Directorates*, in OUR SOVEREIGN STATE 330–31 (Allen ed. 1949) [hereinafter cited as ALLEN].

[10] See Reilly v. Ozzard, 33 N.J. 529, 549–50, 166 A.2d 360, 370 (1960).

[11] *But see* note 31 *infra*.

[12] BAR ASSOCIATION REPORT, *op. cit. supra* note 4, at 14–15.

[13] "When a member of the General Assembly fails to vote his honest convictions for fear of losing a client, then the cause of democracy suffers." Special Message on Conflict of Interest by Governor DiSalle to the 104th General Assembly of Ohio, Jan. 30, 1961, at 6.

[14] See pp. 1214–15 & note 163 *infra*.

"morality cannot be legislated," [15]
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that "morality cannot be legislated," [15] and denials that the problem is of importance.[16] In reconsidering these arguments this Note, after reviewing the effectiveness of the existing nonstatutory tools, will proceed to discuss the form, scope, and content of possible enactments in the light of experience with existing legislation. It must be emphasized at the outset that the preliminary inclusion of any class of behavior within the area to be controlled does not mean that such behavior is improper. The classification imports only an awareness that conduct within the area is — or may appear to be — peculiarly susceptible to corrupting pressures and that ethical guidelines may be necessary to instruct the legislator in protecting himself from such forces and from an unsavory public appearance.

II. Nonstatutory Solutions to the Problem

A. The Legislators

To the extent that an individual legislator is able to perceive the threat of a conflict of interest and his personal sense of responsibility compels him to take remedial or precautionary measures, no external stimulus is necessary. In practice, however, the effectiveness of internal checks may depend on the likelihood of an external challenge; moreover, there will undoubtedly be areas in which individual perception is incomplete.[17] The existence of a formal or informal system of checks within the legislature itself would provide both the threat of external challenge and the advantage of pooled perception. If the challenge were personal, informal, and before the fact, the legislator could accede to the challenger's standards by a private decision to eliminate the cause of the conflict or, alternatively, submit his problem to his fellow legislators. If the conflict were publicly imminent or already existed, however, the challenge would take overt institutionalized form: compulsory disqualification, by ruling [18] or resolution,[19] from participation in a pend-

[15] See, *e.g.*, Mass. Legislative Research Council, Report Relative to Conflict of Interest 11 (1961) [hereinafter cited as Mass. Report].

[16] Correspondents in two states have characterized the problem as "little" or nonexistent. Letter From S.D. Director of Legislative Research to the *Harvard Law Review*, Feb. 2, 1962; Letter From an Assistant Attorney General of Va. to the *Harvard Law Review*, March 15, 1962.

[17] Mont. Const. art. V, § 44 provides that "a member who has a professional or private interest in any measure or bill . . . shall disclose the fact to the house of which he is a member, and shall not vote thereon."

"In the two sessions that I have observed, no legislator to my knowledge has ever passed a vote because of a conflict of interest; yet it is quite obvious that real conflicts exist in some instances. The problem, of course, lies in definition and the broad language in the constitutional provision has never been narrowed by statute or court interpretation." Letter From Executive Director of Mont. Legislative Council to the *Harvard Law Review*, Feb. 6, 1962.

[18] See Rule 22(7), Official Rules of Procedure Adopted by the House of Representatives, State of Hawaii, First State Legislature, General Session, 1961, providing for disclosure of interests by the legislator and a ruling on the disqualifying effect of such interests by the speaker of the house. *But see* Conn. State Journal, Nov. 1960, p. 10: "Any outward testing . . . in this connection usually ends up with the presiding officer . . . and the ruling of the chair usually leaves it to the conscience of the individual legislator."

[19] Compare the now unusual approach of Kan. Senate Rule 19: "Any Senator, who is directly interested in a question, may be excused from voting . . . . [after

ing legislative matter;[20] censure by his house for past improprieties based on existing rules or on an *ad hoc* majority determination;[21] or, finally, expulsion for conduct unbecoming a member.

That a challenge to interested voting made before the fact, even on the floor, normally can be handled amicably and without any invidious implications may be illustrated by the following excerpt from the *Wisconsin Senate Journal for 1937*:

> Senator Callan rose to the point of order that Senator Leverich . . . was not entitled to vote on the bill as it contains appropriations to [the Agricultural Authority, of which he is an incorporator] . . . .
>
> The president held that as a matter of propriety and to remove the possibility that this bill might on this ground be invalidated if enacted into law [the senator] . . . should refrain from voting . . . .[22]

Even this mild sanction may be resisted if pressed, however:

> Senator Duel rose to the point of order that . . . Senator Leverich might be the beneficiary of lucrative offices or appointments [in the Authority] . . . and under the rule of Jefferson's Manual . . . should retire when the bill is under consideration.
>
> The president held the point of order not well taken and . . . [since the] Authority was a . . . non-profit corporation [and] no profits could accrue to any of the incorporators thereof [he] . . . therefore reversed his ruling on the [earlier] point of order . . . .[23]

The most serious limitations on the efficacy of after-the-fact checks in the legislature stem from considerations of political reality — especially where egregious defalcations are suspected. Two recent examples, almost simultaneous but unconnected, demonstrated this fact. In both cases, individual legislators made public charges of improper activities by fellow legislators.[24] The merits of the two allegations are less relevant than the animus with which the two legislatures received them. In New York the Assembly Committee on Ethics and Guidance devoted a significant portion of its report on conflict charges against the Speaker of the Assembly to biting innuendo and outright accusations of bad faith and misrepresentation on the part of the accuser.[25] Said a leading editorial, "within the terms of its title of Committee on Ethics and Guidance it is incomprehensible to us that this bipartisan body could find no single word of unfavorable comment to utter on . . . [the accused's] judgment, taste or candor as to his relationships . . . ."[26] Nevertheless the Assembly accepted

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stating his reasons, by] a two-thirds majority of those voting . . . ." Letter From Fiscal Analyst of Kan. Legislative Research Council to Director, N.M. Legislative Council, Dec. 28, 1961.

[20] See, *e.g.*, MASS. REPORT, *op. cit. supra* note 15, at 16: "Any member . . . has the right to demand disqualification of another member for violation of . . . rules [forbidding members to act on matters concerning their private interests]. And this procedure has been exercised, though rarely."

[21] See, *e.g.*, p. 1213 & articles cited note 28 *infra*.

[22] P. 137, quoted in Letter From Chief of Wis. Legislative Reference Library to the *Harvard Law Review*, Feb. 2, 1962.

[23] *Id.* at 138.

[24] See N.Y. Times, Feb. 22, 1962, p. 1, col. 5; Boston Herald, Feb. 21, 1962, p. 1, col. 1.

[25] *E.g.*, COMM. ON ETHICS AND GUIDANCE, N.Y. STATE ASSEMBLY, REPORT 26-28 (1962) [hereinafter cited as ETHICS COMM. REPORT].

[26] N.Y. Times, Feb. 22, 1962, p. 24, col. 1. The paper did admit that the accuser "in his zeal had overstated the case." *Ibid.*

[27] N.Y. Times, Feb. 22, 19

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less the Assembly accepted that report by a vote of 143 to 1, since the entire affair had been converted into a political test of confidence in the Speaker.[27] In Massachusetts the rebuke was even more direct: the committee was called not to investigate the charges made but specifically to challenge the accuser to substantiate them or face a recommendation of censure. The report recommending censure was described as "one of the most vitriolic condemnations ever handed a legislator by a body of his fellows." [28]

Such evidence suggests that reliance on internal *ad hoc* sanctions after the fact is unrewarding. The effective role for the legislators themselves is that of establishing in advance and without reference to any particular case a general set of ground rules and an external mechanism to implement them. Before a legislature could be persuaded to delegate such powers, however, there probably would have to be a showing that existing institutions are inadequate for the task of guiding and policing members' conflicts of interests.

B. The Electorate

A stock answer to the demands for controls on legislators' ethics is that lawmakers must periodically subject their records to voter scrutiny.[29] The public, it is said, will receive complete information through the self-interested revelations of each candidate's opponents, and by means of the ballot the ethical standards of the voter will be imposed on his legislative representative.[30] However accurate this description may be as applied to national and statewide elections, it is unlikely to be meaningful in local legislative races, where the campaigns seldom are hard-fought and the results may depend more upon party affiliation than upon substantive issues.[31] Moreover, the conflict-of-interest area encompasses subtle ethical problems — situations in which the behavioral norms are not self-evident; campaign issues are, by contrast, normally gross and easily understood. Indeed, the candidate who raises a narrow charge based on conflicts of interest without clear statutory support runs the risk of being misunderstood or perhaps being politically embarrassed through revelations of some facet of his own connections, possibly innocent, which would provide material for a return attack vitiating the utility of the original charges. And success in a campaign

[27] N.Y. Times, Feb. 22, 1962, p. 1, col. 5. The absence of support from even the accuser's own party may have been due to the "club" atmosphere of most legislatures which causes any attack on an individual legislator to be viewed as an attack on the entire body. In Congress this attitude is reflected in a "rule of congressional courtesy" that no member may make a personal criticism of another on the floor of either House. See Time, March 8, 1963, p. 26.

[28] Boston Herald, Feb. 21, 1962, p. 5, col. 3. See also *id.*, p. 28, col. 8.

[29] See, *e.g.*, ETHICS COMM. REPORT, *op. cit. supra* note 25, at 34: "The legislator goes back to his constituency every two years where his work is reviewed by his constituency and subjected to criticism and attack by the opposition."

[30] "Self-discipline and the voters must be the ultimate reliance for discouraging or correcting . . . abuses." Tenney v. Brandhove, 341 U.S. 367, 378 (1951); *cf.* Election and Election Privileges Comm., Report to the 58th General Assembly of Iowa 39 (1958): [T]he chief hope . . . is based on . . . the power of the voter to defeat any party or candidate who does not live up to the highest standards."

[31] Even in the face of active opposition and his own inability to campaign, a Massachusetts legislator was elected easily while serving a jail sentence for defrauding the state. See Boston Herald, Dec. 2, 1962, p. 42, col. 4.

despite the establishment of conflicts charges may be interpreted as public approval of the suspect connections.[32] The primary objection, however, to relying upon the voters to police conflicts of interest is that such control — even if it operates efficiently — provides an inconsistent and sporadic sanction without any rational set of primary standards by which legislators can measure a projected action before the fact.

C. The Courts

The state judiciary, as the traditional arbiter of legislative actions and as the constitutional articulator of the public conscience, would seem to be the most appropriate branch of the government to provide an independent check on legislators' ethics. Yet the courts have in fact taken little responsibility. Judicial hesitancy to enter the field appears unwarranted in light of analysis of state constitutions and judicial precedents which reveals that neither necessarily prohibits the judiciary from exercising some degree of supervision.

1. Constitutional Aspects. — The typical state constitution contains three provisions relevant to judicial supervision of legislative ethics. The first establishes a separation of powers but does not define the extent to which the legislative and judicial departments should interact.[33] Some explicit guidance is provided in the second typical provision: "Each House shall . . . be the judge of the elections, returns and qualifications of its own members."[34] Cases under the identical portion of the federal constitution, which may be of assistance by analogy, establish that such language does not strip the judiciary of power to act in this area,[35] and some state courts have taken a stronger view.[36] The most formidable obstacle to judicial initiative is the third type of provision, asserting the power of each house to "determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member . . . ."[37] The narrow language of such articles would not seem to preclude courts from considering aspects of legislators' ethics manifested by activities off the floor of the legislature.[38] The Supreme Court, construing the equivalent clause in the

[32] See BAR ASSOCIATION REPORT, *op. cit. supra* note 4, at 15: "[I]f the constituency continues to elect a man in spite of improprieties, some leeway must be left for the principle that the people get the kind of government they deserve."

[33] *E.g.*, OKLA. CONST. art. IV, § 1; see Kilbourn v. Thompson, 103 U.S. 168, 190–91 (1881).

[34] *E.g.*, N.Y. CONST. art. III, § 9.

[35] See Burton v. United States, 202 U.S. 344, 366–67 (1906) (construing statute to proscribe receipt of compensation for services rendered by a congressman before a department).

[36] See State *ex rel.* Jones v. Lockhart, 76 Ariz. 390, 265 P.2d 447 (1953) (applying quo warranto to a state legislator); State *ex rel.* Benton v. Elder, 31 Neb. 169, 47 N.W. 710 (1891) (ordering house speaker to open returns despite contrary resolution of both houses); People *ex rel.* Myers v. Haas, 145 Ill. App. 283 (1908) (ordering clerk to notify governor of legislator's improper dual office holding); People *ex rel.* Sherwood v. State Bd. of Canvassers, 129 N.Y. 360, 29 N.E. 345 (1891) (refusing to order certification of dual-office-holding senator).

[37] *E.g.*, TEX. CONST. art. 3, § 11.

[38] The notion of legislative privilege may provide separate protection for actions directly connected with legislative functions. See Tenney v. Brandhove, 341 U.S. 367, 372–75 (1951). But improper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator. See Burton v. United States, 202 U.S. 344, 366–67 (1906); Reilly v. Ozzard, 33 N.J. 529, 545, 166 A.2d 360, 368 (1960).

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[40] See Tool Co. v. Norris, 69 U.S. (

[41] *Cf.* United States v. Smith, 286
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[42] Note, 100 U. PA. L. REV. 1217 (

[43] PA. CONST. art. 3, § 33. See also,
art. 3, § 22.

[44] See Note, *supra* note 42, at 1219.

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[46] See, *e.g.*, Briggs v. Neville, 103 N
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and stockholder of the company).

[47] 10 U.S. (6 Cranch) 87 (1810).

[48] *Id.* at 131.

federal constitution, has indicated that the legislature's freedom to control even intramural affairs may be limited.[39] If the right to be governed by representatives whose judgments are untrammelled by the temptations of personal gain may be considered fundamental,[40] even the constitutional establishment of exclusive jurisdiction in the legislature over matters of legislative procedure should not absolutely bar the judiciary from taking a hand.[41]

A number of state constitutions contain provisions which may tend to facilitate rather than impede judicial control. The Pennsylvania constitution, noted for its "inherent distrust of the legislature," [42] is one of several which require legislators with personal interests in proposed bills to disclose that fact and refrain from voting.[43] No cases in Pennsylvania, however, appear to have asserted duties under this clause. Since Pennsylvania courts have construed related constitutional provisions as matters of internal procedure which the legislature could waive at will,[44] the disclosure and disqualification rule might be similarly devitalized. Explicit constitutional limitations upon legislators' contracts with the state have proved more successful.[45] In Nebraska, for example, both the courts and the attorney general have enforced this and related prohibitions strictly without supportive legislation.[46]

2. Judicial Abstention. — The frequent statement that a court will not inquire into the motives of a legislative body or assume them to be wrongful is traceable to the landmark case of *Fletcher v. Peck*.[47] However, examination of Chief Justice Marshall's opinion reveals that it does not support such a broad statement of the rule. The plaintiff alleged breach of title covenants by his vendor, claiming that the original grant of the land in question was defective because of the flagrant corruption of the legislature which had made it as part of a sale of thirty-five million acres of state land to speculators for half a million dollars. In holding that an attack on the grant could not be grounded on the supposedly improper interests of the legislators, Marshall specifically noted that grave questions of ethical impropriety should not be forced upon the Court in the attenuated and collateral form of a suit between two private litigants far removed from the original enactment.[48] Where the remoteness element is absent, Marshall indicated in dictum two ad-

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[39] United States v. Ballin, 144 U.S. 1, 5 (1892). Nor could the Nebraska legislature vote a member compensation for his services to a legislative investigating committee in the face of a constitutional provision that members receive no pay other than salary. Wilkins v. State, 116 Neb. 748, 219 N.W. 9 (1928).

[40] See Tool Co. v. Norris, 69 U.S. (2 Wall.) 45, 54–55 (1865).

[41] *Cf.* United States v. Smith, 286 U.S. 6 (1932) (court may interpret Senate rule).

[42] Note, 100 U. PA. L. REV. 1217 (1952).

[43] PA. CONST. art. 3, § 33. See also, *e.g.*, OKLA. CONST. art. V, § 24; TEX. CONST. art. 3, § 22.

[44] See Note, *supra* note 42, at 1219.

[45] *E.g.*, NEB. CONST. art. III, § 9; OKLA. CONST. art. V, § 23.

[46] See, *e.g.*, Briggs v. Neville, 103 Neb. 1, 3, 170 N.W. 188, 189 (1918); [1951–1952] NEB. ATT'Y GEN. REP. 378; [1949–1950] *id.* at 220. See also Norbeck & Nicholson Co. v. State, 32 S.D. 189, 142 N.W. 847 (1913) (state contract with corporation void because legislator voting for the authorizing act was president and stockholder of the company).

[47] 10 U.S. (6 Cranch) 87 (1810).

[48] *Id.* at 131.

ditional qualifications on judicial intervention: consideration of the rights of innocent third parties not before the courts, and the practical difficulties of defining legislative misconduct.[49]

The cases in which courts have asserted a wide rule of presumptive judicial nonintervention typically involve situations within one or more of Marshall's three reservations. The exceptional situation occurs in the context of small sublegislative bodies like municipal councils and zoning boards, where the attacks are direct and immediate and the practical difficulties of clearly identifying a conflict of interest are removed by the directness of effect of the body's action on a small group. Courts that have recognized the need for judicial intervention in such cases have achieved the result not by creating rational and workable exceptions to the rule, but by describing the action of the sublegislative body as "quasi-judicial" and therefore outside the protection assumedly afforded "legislative" actions.[50] In two recent New Jersey cases,[51] for example, the "quasi-judicial" nature of the local council was found in the fact that it took testimony and weighed "conflicting public considerations" as to zoning ordinances. The classification appears arbitrary; the decisions could equally have been made by a "purely legislative" body.[52] Perhaps the judiciary should admit that the classification is artificial and conclusory, and look instead to the clarity of the conflict and the effect of a judicial remedy.[53] Such pragmatic criteria — similar to those set up by Marshall for the state bodies — tend to be met more frequently in the local body cases, where the scope of the actions is narrow, the number of votes small, and the identification of improper interests less difficult.[54]

3. Political Questions. — Another potential impediment to judicial remedy in the area of legislative conflicts of interest is the "political question" doctrine.[55] Mr. Justice Brennan, writing for the majority in *Baker v. Carr*,[56] has provided a useful list of conditions for invoking the doctrine, any one of which is sufficient. Relevant to the current problem are:

> a lack of judicially discoverable and manageable standards for resolving . . . [an issue]; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government . . . .[57]

[49] *Id.* at 130.

[50] See, *e.g.*, Low v. Town of Madison, 135 Conn. 1, 60 A.2d 774 (1948).

[51] McNamara v. Borough of Saddle River, 64 N.J. Super. 426, 166 A.2d 391 (App. Div. 1960); Aldom v. Borough of Roseland, 42 N.J. Super. 495, 127 A.2d 190 (App. Div. 1956).

[52] Compare City of Miami Beach v. Schauer, 104 So. 2d 129 (Fla. Dist. Ct. App. 1958), classifying amendatory zoning ordinance as a "legislative act" and upholding ordinance resulting in half a million dollars benefit to board member.

[53] See 57 MICH. L. REV. 423 (1959); *cf.* Zell v. Borough of Roseland, 42 N.J. Super. 75, 125 A.2d 890 (App. Div. 1956) (dictum) (literal reading of statute precludes classification of function).

[54] Compare Wilkins v. State, 116 Neb. 748, 219 N.W. 9 (1928); Norbeck & Nicholson Co. v. State, 32 S.D. 189, 142 N.W. 847 (1913).

[55] See generally Finkelstein, *Judicial Self-Limitation*, 37 HARV. L. REV. 338 (1924); Weston, *Political Questions*, 38 HARV. L. REV. 296 (1925); Finkelstein, *Further Notes on Judicial Self-Limitation*, 39 HARV. L. REV. 221 (1925).

[56] 369 U.S. 186 (1962).

[57] *Id.* at 217.

Admittedly the courts have had little experience discovering and applying standards in the specific context of legislators' conflicts of interest,[58] but criteria of improper conduct may be drawn from such analogous areas as conflicts of interest of fiduciaries,[59] corporate officers, judges, local legislators,[60] and nonlegislative public servants.[61] Courts have transplanted remedies from the nongovernmental to the governmental sphere for other public servants but not for the legislator.[62] Justice Brennan's "discretion" condition is merely a variant of Marshall's concern for clarity of the ethical issue. As for the third condition, the meaning of the "respect due" the legislature is not clear. It might assume the nature of an intragovernmental "comity," aimed at assuring the smooth functioning of each branch in the areas in which it is most competent, without unnecessary intervention from other branches.[63] This principle should not apply where a court realizes that the legislature is unlikely to fulfill its obligations in the area of its primary competence.

Perhaps another type of respect may be contemplated: deference to a superior power. A court should be wary of taking any action which threatens its independent capacity to deal with its normal judicial business. State judges generally do not have the protected tenure provided their federal counterparts,[64] and legislators may be in a position to nullify judicial reforms in a variety of ways.[65] The harm done by any such legislative reaction might outweigh the benefit accruing from the exercise of control over a single case of conflicts. Thus state judges would have to consider matters of practical politics and the state of public opinion to be certain their decisions would not cause adverse repercussions. Even if such factors were proper for judicial consideration, they seldom could be assessed with certainty. Courts would be likely to run the risk of legislative retaliation only in the most important cases. State courts have on occasion confidently approached related matters of legislative behavior, indicating that the scales can balance toward

[58] *But see, e.g.*, cases cited note 54 *supra*.

[59] See generally Haggerty, *Conflicting Interests of Estate Fiduciaries in New York and the "No Further Inquiry" Rule*, 18 FORDHAM L. REV. 1 (1949).

[60] See, *e.g.*, Griggs v. Borough of Princeton, 33 N.J. 207, 162 A.2d 862 (1960).

[61] See, *e.g.*, Clarke v. Town of Russia, 283 N.Y. 272, 28 N.E.2d 833 (1940) (town board member could not have contract with town).

[62] For a suggested reform, see Lenhoff, *The Constructive Trust as a Remedy for Corruption in Public Office*, 54 COLUM. L. REV. 214 (1954).

[63] It is true, however, that the disposition of a case on the voluntary basis of "comity" implies an affirmation of power to decide the merits and, as such, may stimulate the legislature to act. *Cf.* Gomillion v. Lightfoot, 364 U.S. 339, 346 n.7 (1960).

[64] See, *e.g.*, ALA. CONST. art. 6, § 155 (judges elected every six years).

[65] Recent developments in two states emphasize this possibility. In Oregon the attorney general ruled that common law principles prohibited contracts between legislators and the state. [1952–1954] 26 ORE. ATT'Y GEN. BIENNIAL REP. AND OPS. 114. In response the legislature enacted provisions prohibiting only self-dealing and "own-body" contracts, casting one section in the form "an officer . . . may contract with the state . . . if . . . ." ORE. REV. STAT. §§ 279.360, 279.362 (1961). In Washington, the 1959 code of ethics for public officers, violations of which were a misdemeanor, did not include legislators as such, but the term "other public official" could be so construed. WASH. REV. CODE § 42.22.030 (1959). See MASS. REPORT, *op. cit. supra* note 15, at 27, listing Washington among states whose codes cover legislators. See also State *ex rel.* Jones v. Lockhart, 76 Ariz. 390, 394–95, 265 P.2d 447, 450 (1953). In 1961 the statute was amended to delete the ambiguous term. WASH. REV. CODE ANN. § 42.22.030 (1961). A similar term remains, however, in other parts of the code, *e.g.*, WASH. REV. CODE § 42.22.040 (1959).

action.[66] Moreover, when legislators attempt to use the courts affirmatively to enforce improperly secured rights, judicial inaction may produce a desirable result.[67] In general, however, judicial control supplies only a random check on legislators' improprieties in a limited class of cases.

D. The Executive Department

In dealing with legislators' conflicts of interests, the executive department of each state has several tools of amelioration available to it, but only in a few states have any of them been utilized. Almost every governor has some degree of political power providing him a unique opportunity for direct action; he may withdraw political support from any legislator of his party found deficient in meeting the standards of the office and campaign for more honorable candidates and incumbents. Except in extreme cases, however, such direct action would seem less productive than measures which set advance standards and secure adherence by incumbent legislators. At two points individual legislators may personally come into contact with the executive department and thus provide a basis for assertion of executive initiative: appearances by members of the legislature before administrative agencies or offices representatively or individually, and awards of state contracts to firms with which they are connected. Investigations with regard to these matters, informational or accusatory, may be instituted by a governor's committee,[68] the comptroller general,[69] or others. When investigation reveals patent abuses, such as easing of licensing or bidding requirements, sanctions may be invoked against the executive personnel who facilitate such abuses and proceedings initiated to revoke the license or invalidate the contract. Often, however, no obvious wrongdoing will appear. A statistical study might show, for example, that on certain road projects the difference between the original offer made by the state and the ultimate award in land condemnations was invariably greater for the clients of legislators than for those of private lawyers.[70] For

[66] See, *e.g.*, cases cited note 36 *supra*; Hall v. Blan, 227 Ala. 64, 148 So. 601 (1933) (statute granting legislators expense allowance contravenes constitutional fixing of remuneration).

[67] See, *e.g.*, Wilkins v. State, 116 Neb. 748, 219 N.W. 9 (1928) (legislator suing for additional compensation); People *ex rel.* Sherwood v. State Bd. of Canvassers, 129 N.Y. 360, 29 N.E. 345 (1891) (legislator seeking to compel board to grant certificate of election); Norbeck & Nicholson Co. v. State, 32 S.D. 189, 142 N.W. 847 (1913) (legislator's corporation suing on state contract); *cf.* Tenney v. Brandhove, 341 U.S. 367, 378 (1951), differentiating cases of privilege "in which the defendants are members of a legislature" from those in which "the legislature seeks the affirmative aid of the courts to assert a privilege."

The Board of Tax Appeals applied an imaginative means of controlling legislative ethics when it disallowed deductions claimed by a gravel company for commissions paid to a state senator on sales of sand and gravel to the state, although the sales were by competitive bid and no state law prohibited such a relationship. Alexandria Gravel Co. v. Commissioner, 35 B.T.A. 323 (1937). The Fifth Circuit reversed, stating that the "revenue laws of the United States are not oversqueamish." 95 F.2d 615, 616 (1938).

[68] See, *e.g.*, MINN. GOVERNOR'S COMM. ON ETHICS IN GOVERNMENT, ETHICS IN GOVERNMENT (1959).

[69] The New York State Comptroller, for example, conducted "Conferences on Competitive Bidding and Conflicts of Interest" throughout the state in January and February 1962.

[70] Compare the information developed as to appraisers in *Right-of-Way Acquisition Practices in Massachusetts, H*
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Cong., 2d Sess., pts. 1 & 2 (1962).

[71] *Compare* 17 C.F.R. § 201.2(e)(
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[75] See Davis, *The Federal Conflic*
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such cases, it may be sufficient to put the investigation on a continuing basis and periodically publicize relevant findings. Perhaps an executive order to appropriate department members could provide guidelines in the form of limitations on ex parte contacts, procedural rules governing legislators' appearances before certain decision-making groups and officials,[71] and, where there is executive discretion, orders requiring the maximum permissible formalities in letting state contracts when legislators are in any way involved.[72] Finally, both the governor and the attorney general may provide objectively considered suggestions for statutory enactments.[73]

Political considerations may dictate circumspection in executive attacks on allegedly unethical legislative practices;[74] the advisability of any specific type or range of action ultimately depends on the particularities of the local situation. There is, however, one context in which the executive department can exercise a certain amount of inventiveness without risking political conflict. A legislator who is honestly concerned with the propriety of some proposed action may frequently seek guidance from the attorney general's office.[75] In the past such offices have generally written opinions construing the relevant constitutional and statutory provisions narrowly, assuming the bounds which the typically conservative state courts would set on the legislator to be controlling.[76] It seems desirable, however, that attorneys general

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quisition Practices in Massachusetts, Hearings Before the Special Subcommittee on Federal-Aid Highway Programs of the House Committee on Public Works, 87th Cong., 2d Sess., pts. 1 & 2 (1962).

[71] *Compare* 17 C.F.R. § 201.2(e)(2) (1962) (SEC rules controlling the ethical standards of those appearing before it) *with* [1947–1949] CONN. ATT'Y GEN. BIENNIAL REP. 70 (ruling that legislators could, in absence of statute, practice before agencies whose personnel was chosen by legislature). See also Letter From Nev. Attorney General's Office to the *Harvard Law Review*, Feb. 21, 1962:

> The problem of legislators' openly attacking public agencies and officials or withholding legislative and financial support thereof, when the functions of public agencies and officials adversely impinge upon their personal or political interests, is also a quite common and general matter. Manifestly, there is involved a delicate balancing of interests . . . : discharge by agencies of official public responsibilities impartially and in conscientious fashion *versus* support of required legislation and finances through legislative appropriations effectively to carry on present official functions or to establish and implement desired . . . new . . . functions, in the public interest.

[72] See Code of Ethics Proposal, quoted in Letter From La. Reorganizational Study Commission to the *Harvard Law Review*, Feb. 12, 1962: "[I]f a legislator tried to gain an improper advantage in a transaction with, say the highway department, this act would come under scrutiny of the Commission since all highway department employees are covered. In other words, it takes two to collude and at least one is covered by this proposal."

[73] See, *e.g.*, Special Message by Governor DiSalle to the 104th General Assembly of Ohio, Jan. 30, 1961, at 5–6; TEX. LEGISLATIVE COUNCIL, A CODE OF ETHICS FOR STATE OFFICERS AND EMPLOYEES 2, 53 (1956) (attorney general's proposal).

[74] "After some rather heated discussion among the members of the committee, a majority . . . felt that it would not be politic for this office to recommend to the legislature that they adopt a code of ethics covering members of the state legislature." Letter From Wash. Attorney General's Office to the *Harvard Law Review*, April 12, 1962, quoting report of attorney general's legislative committee.

[75] See Davis, *The Federal Conflict of Interest Laws*, 54 COLUM. L. REV. 893, 896 & nn.15, 16 (1954). *But see* TEX. REV. CIV. STAT. art. 4399 (1948), enumerating those who may apply for opinions of the attorney general but omitting legislators other than committee chairmen.

[76] See, *e.g.*, [1956–1958] 28 ORE. ATT'Y GEN. BIENNIAL REP. AND OPS. 163, ruling that the constitutional provision barring legislators from acting as attorneys in

take a wider view of their function. Once the legislator has shown the initiative and conscientiousness to seek an opinion, the opinion writer could consider "whether, aside from strict legal minima, the . . . activity . . . is such that it would, even though it is not a breach of the law, lessen the confidence of the general public in . . . or otherwise tend to reflect unfavorably on all government services." [77] Such opinions could serve to set new standards, the effectiveness of which is governed more by consensual validation of their logic over time than by the deterrent effect of threatened sanctions.[78] In fact, since they would be the result of an accretion of careful thought on discrete factual situations, such standards might well be found more realistic and acceptable than an ethical code drawn in the abstract at a fixed point in time.[79]

Finally, the executive possesses the extraordinary tool of the veto to impel the legislature towards the adoption or observation of ethical standards. This sanction might be useful at least in calling attention to the problem where the governor feels that a particular piece of legislation reflects the initiative and support of lawmakers with too great a private interest in its outcome.[80]

E. Other Institutions

1. The Federal Government. — The increasing use of federal funds for state-run projects in education, road building, hospitals, urban redevelopment, and other public works provides not only a broad field for potential contacts between legislators and state agencies, but also supplies a linkage through which the federal government might impose its standards of ethical conduct upon those who are dispensing and receiving its funds. It would be preferable for these standards to be imposed before the fact, carefully outlining the permissible and impermissible procedures in such areas as condemnation, construction bidding, supply contracts, and staffing. But such programs generally operate through the normal state channels once the long-range plans and technical criteria of the federal program have been met.[81] Thus in

prosecution of any claim against the state did not prevent a legislator from representing a "defendant" in a condemnation proceeding. Note the earlier attitude of the same office on the occasion cited in note 65 *supra*.

[77] Honolulu Corporation Counsel, Opinion No. 61-117, Aug. 10, 1961. Compare the Massachusetts attorney general's opinion construing the legal disclosure rule narrowly but adding:

> [W]hile not legally required, it is desirable that a public servant supply such information as is necessary to indicate whether or not a conflict of interest exists . . . .

Letter From Mass. Attorney General to Mass. Secretary of State, Nov. 20, 1961. For an opportunity missed, see opinion cited note 71 *supra*.

[78] The attorney general does have certain sanctions available: threat of prosecution (see attorney general's ruling on illegality of testimonial dinner for appointed official, resulting in its cancellation two days before scheduled, Boston Herald, Jan. 20, 1963, p. 1, col. 7); prevention of routine processing of claims against the state (see Ariz. Attorney General, Opinion No. 53-20, Feb. 2, 1953); rejection of proposed contracts or leases as illegal (see [1952-1954] 26 ORE. ATT'Y GEN. BIENNIAL REP. AND OPS. 114).

[79] See pp. 1230-32 *infra*, attempting to combine the advantages of definite standards with continuing, flexible enforcement.

[80] *Cf.* President Eisenhower's veto of a bill because of improper lobbying. PUBLIC PAPERS OF THE PRESIDENT 1956, at 256 (Natural Gas Bill).

[81] See, *e.g.*, 23 U.S.C. §§ 106, 112, 114(a) (1958).

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[83] ABA, CANONS OF PROFESS
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[85] ABA, *op. cit. supra* note

practice it is only after the fact that the federal authorities take cognizance of the problems. These authorities may discover deficiencies in construction or supplies, shortages of funds, overpayments, bribery, collusion, or criminal fraud which involve state officials or state legislators, but it is only in passing that the question arises of the propriety of legislators' contracts with or appearances before the state. Perhaps the conflict-of-interest problems might be most effectively exposed to public discussion through the congressional investigation.[82] The range of subject matter open to analysis, the opportunity to investigate past occurrences in detail with a power of subpoena, and the duty to consider proposals for future ameliorative measures allow a committee both to capture the public eye with exposure of the blatant abuses and to provoke consideration of the subtleties of setting standards for the legislator who would be willing to comply with sufficiently definitive rules. The value of committee investigation as a solution to the problem is limited, however; the blatant criminal aspects may be so shocking that more subtle ethical points are obscured. On the other hand, publicity concerning the innocent involvement of a few may be so exaggerated as to ruin them politically while doing little to solve the problem which they faced originally in deciding upon the propriety of their activities.

2. *Professional and Other Private Associations.* — The lawyer-legislator, although subject only to sporadic guidance from governmental sources, comes under the constant scrutiny of his bar association. Canon 26 of the American Bar Association Canons of Professional Ethics provides that a lawyer appearing

> before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government [must do so] upon the same principles of ethics which justify his appearance before the Courts . . . [and must not] employ secret personal solicitations, or . . . use means other than those addressed to the reason and understanding, to influence action.[83]

One commentator has observed that "the Canon is either so strict as to be impossible, or so vague as to be useless." [84] Canon 32 proscribes "disloyalty to the law whose ministers we are" and "corruption of any person . . . exercising a public office or private trust, or deception or betrayal of the public." [85] On the basis of these two canons, the Committee on Professional Ethics of the ABA has ruled that

> a law firm could not accept employment to appear before a legislative committee while a member of the firm is serving in the Legislature, ... [and that] a full disclosure before the committee would not alter

[82] *Cf., e.g., Right-of-Way Acquisition Practices in Massachusetts, Hearings Before the Special Subcommittee on Federal-Aid Highway Programs of the House Committee on Public Works*, 87th Cong., 2d Sess., pts. 1 & 2 (1962); *Hearings Before a Subcommittee to Study Senate Concurrent Resolution 21 of the Senate Committee on Labor and Public Welfare*, 82d Cong., 1st Sess. (1951).

[83] ABA, CANONS OF PROFESSIONAL ETHICS 22 (1957). See also *id.* at 11 (Canon 6); Sharpless, *The Lawyer-Legislator and the Canons of Ethics*, Hawaii B.J., Jan. 1959, p. 11.

[84] HORSKY, THE WASHINGTON LAWYER 56 (1952).

[85] ABA, *op. cit. supra* note 83, at 27.

this ruling nor would it be changed by the fact that the member of the Legislature would not share in the fee received thereby.[86]

The advantage of such rulings, particularly those of local units,[87] is that to a large extent they can be promulgated without reference to any specific parties and can be tailored by the local group to its special circumstances, while carrying the ultimate force of professional sanctions.[88]

Additionally, the bar associations and other private groups may be able to undertake studies of the situation from the public's viewpoint, publicizing significant findings and marshalling public opinion in favor of reforms. For instance, the Association of the Bar of the City of New York, recognizing the need for information and reform in federal conflict-of-interest control, undertook to study the problem and published its analysis and proposals.[89] The Committee on American Legislatures of the American Political Science Association conducted a four-year study of state legislatures,[90] finding serious structural and procedural defects in the existing bodies. The latter study's chapter on the nature of the legislative membership[91] could be a starting point for a more thorough analysis of the conflict-of-interest problem from the political scientists' point of view.

Finally, there are myriad possibilities for direct local action. A network television program documenting bookmaking operations in Massachusetts shocked the citizenry into violent dispute over a subtle conflict problem — lawyer-legislators' representation of criminal defendants — when one legislator appearing on the show charged "that some legislators are 'actively involved' with bookies."[92] Less spectacular would be nonpartisan preelection reports on the outside interests of all candidates by such service groups as the League of Women Voters and the Citizens Union, as well as efforts by journalists to promote public attitudes which might induce candidates and incumbents to sever conflict-prone connections — at least where great sacrifice is not involved.

[86] Opinion 296, Aug. 1, 1959, 45 A.B.A.J. 1272 (1959). See also ABA, *op. cit. supra* note 83, at 30 (Canon 36 relating to retired public officials). *But see* N.Y. PUB. OFFICERS LAW § 73(6), allowing legislator's firm to appear before agencies if he does not share in the fee.

[87] See, *e.g.*, the Hawaii Bar Association ruling that legislators and their associates could not appear before legislative committees, nor, in the case of senators, before agency personnel whose appointments are subject to senate confirmation, quoted in Sharpless, *supra* note 83, at 16.

[88] Here exists an additional mode of judicial control through each court's supervisory powers over the legal profession. See *In re* Becker, 16 Ill. 2d 488, 158 N.E.2d 753 (1959). Compare Honolulu Corporation Counsel, Opinion No. 61-82, June 13, 1961, ruling on the basis of *Becker* that a councilman could not appear as a lawyer before the zoning board.

[89] BAR ASSOCIATION REPORT, *op. cit. supra* note 4. The recent federal legislation relies heavily on the report's suggestions. See Perkins, *The New Federal Conflict-of-Interest Law*, 76 HARV. L. REV. 1116–17 (1963).

[90] *Op. cit. supra* note 8.

[91] *Id.* at 61–88.

[92] See Boston Herald, Feb. 21, 1962, p. 1, col. 1. Ultimately the code of ethics commission decided not to recommend specific legislation on the particular problem. Mass. Special Comm'n on Code of Ethics, Report to the General Court 11–12, March 31, 1962 [hereinafter cited as Mass. Comm'n]. In Tennessee it was recommended that legislators be enjoined from appearing before the parole board for any inmate whom they had not represented in the committing court. [1959–1960] LEGISLATIVE COUNCIL COMM., 81ST GENERAL ASSEMBLY OF TENN., FINAL REPORT 48. The legislature did not pass the proposed provision. Letter From the Committee to the *Harvard Law Review*, Feb. 1, 1962.

III. Statutory Controls

A. Types of Statutes and Means of Instigation

Although the nonlegislative approaches suggested thus far present considerable potential for some control of legislative ethics, it seems clear that they cannot provide the necessary guidance and deterrence. The remaining solution — statutory control — appears more promising. In terms of their attempts to control their members' conflicts of interest by statute, state legislatures may be classified as follows: (1) those which have no legislation on the subject; [93] (2) those with recent and comprehensive conflicts enactments which exempt legislators; [94] (3) those with old unenforced or rarely enforced miscellaneous provisions; [95] (4) those with fairly recent comprehensive legislation with inadequately designed or enforced provisions as to legislators; [96] and (5) those which have seriously considered the problem of legislators' conflicts but have failed to enact suggested legislation.[97] The overall record of the states does not encourage optimism; the limited progress in a few, however, indicates a recognition of and willingness to consider the problem despite its political sensitivity and a concerted and thoughtful attack based on particular local needs.

The impetus for legislative action may come from varied sources. In New York, it was the executive that took the lead. Governor Dewey delineated the nature of the general conflicts problem to the state legislature in 1954 and included recommendations specifically concerning the lawmakers themselves.[98] By the end of 1954 a comprehensive landmark statute [99] had been enacted, with the reservation that it was just a beginning from which refinements would be made.[100] There have, however, been no amendments or additions since 1954. The impetus to action in Massachusetts came from aroused public opinion after startling revelations of "widespread improprieties and defalcations" in one state body.[101] The Legislative Research Council presented a comprehensive report on strong bills filed by the governor and the senate president late in the 1961 legislative session, but as it was impractical to attempt to draft

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[93] *E.g.*, Iowa and Virginia.

[94] See, *e.g.*, the situation in Washington described in note 65 *supra*.

[95] Some cover a wide range of public servants. *E.g.*, Ill. Rev. Stat. ch. 102, § 3 (1961); Ind. Ann. Stat. § 10-3713 (1956); Ohio Rev. Code Ann. § 2919.09 (Page 1954). Others cover legislators specifically. *E.g.*, Ariz. Rev. Stat. Ann. § 38-446 (1956); Kan. Gen. Stat. Ann. § 46-132 (Supp. 1961); N.M. Stat. Ann. §§ 4-1-4 to 1-7 (1953); N.D. Cent. Code § 54-03-21 (1960).

[96] Criminal provisions but no code of ethics: Ky. Rev. Stat. §§ 61.092-.096 (1962). Code of ethics but enforced by legislative committee: Minn. Stat. § 3.87-.90 (1961); N.Y. Pub. Officers Law §§ 73, 74; N.Y. Sen. Res. No. 131, March 20, 1954.

[97] See, *e.g.*, Fla. House Bill No. 737 (1961) (criminal provisions); Hawaii H.B. No. 1005, 1st Legislature (1961) (code of ethics); N.H. House Bill No. 316 (1957), N.H. House Bill No. 316 (New Draft) (1957), N.H. House Bill No. 15 (1959) (progressively weaker versions); Ohio Sub. H.B. No. 279, 104th Gen. Assembly, Reg. Sess. (1961-1962) (code of ethics and criminal provisions); New Jersey bills discussed *infra* p. 1224.

[98] See N.Y. Special Legislative Comm. Report on Integrity and Ethical Standards in Government 11-14 (1954) [hereinafter cited as N.Y. Report].

[99] N.Y. Pub. Officers Law §§ 73, 74; N.Y. Pen. Law § 1878.

[100] See N.Y. Report, *op. cit. supra* note 98, at 31-33.

[101] See Mass. Report, *op. cit. supra* note 15, at 7, 14.

and pass adequate penal legislation at the time, the political necessity for some legislation in the area was satisfied by a perfunctory adaptation of the nonpenal New York code of ethics.[102] Nevertheless, the legislature reaffirmed its intentions to produce more than merely token legislation by providing for an unpaid special commission to study the problem further and recommend amendments to the next session.[103] In March 1962 the commission proposed a draft of stringent penal legislation based largely on pending federal legislation,[104] explicitly covering legislators, but with subtle limitations so as not to cut too deeply into their legitimate outside sources of income.[105] After minor changes in committee the bill was passed to take effect on May 1, 1963.[106]

In New Jersey, despite continuous pressure from the state bar association,[107] progress has been slow. The legislature created a commission in 1956 "to make a study of the subject of conflicts in the performance of public duties by persons holding public office, position or employment, with their personal, business or professional interests."[108] The commission spent a major part of its four public hearings considering a bill aimed directly at legislators,[109] and developed a remarkably useful published record detailing the views of capable witnesses as to the pragmatic difficulties of designing legislation in the field.[110] In subsequent sessions of the legislature three bills — the commission bill,[111] a slightly less stringent bill,[112] and one significantly less so[113] — have been repeatedly introduced, but none has been enacted.[114] A similar situation has prevailed in Rhode Island since 1955.[115]

B. *Criminal Provisions*

Most attempts at comprehensive conflict-of-interest legislation have borrowed heavily from the New York statute of 1954,[116] although the provisions of that act were designed as a mere starting point and they have not produced satisfactory results.[117] The New York formulation

[102] Mass. Acts and Resolves 1961, ch. 610. There was a criminal penalty for noncompliance with the disclosure provision. § 1(4)(j).

[103] § 2.

[104] 18 U.S.C. §§ 201–18 (Supp. IV, 1963).

[105] See pp. 1225–30 *infra*.

[106] MASS. GEN. LAWS ANN. ch. 268A (Supp. 1962).

[107] See 80 N.J.L.J. 227, 561 (1957); 81 *id.* 254, 562 (1958); 82 *id.* 243, 573 (1959); 83 *id.* 265 (1960); 84 *id.* 260 (1961).

[108] See N.J. REPORT, *op. cit. supra* note 2, at 37.

[109] See 80 N.J.L.J. 227 (1957).

[110] See *Hearings Before the Commission To Study the Subject of Conflicts in the Performance of Public Duties by Persons Holding Public Office, Position or Employment, With Their Personal, Business or Professional Interests*, N.J. Legislature (1957) (4 vols. and app.).

[111] See N.J. REPORT, *op. cit. supra* note 2, at 24–33; N.J. Senate No. 35, N.J. Assembly No. 72 (1961).

[112] N.J. Assembly No. 24 (1962); N.J. Assembly No. 1 (1961).

[113] N.J. Senate No. 140 (1962); N.J. Senate No. 78 (1961).

[114] The assembly adopted a code of ethics on the last day of the 1958 session applying only to that one day. Letter From Head of Bureau of Law and Legislative Reference, N.J. Department of Education to the *Harvard Law Review*, Feb. 2, 1962, quoting Assembly Minutes 1958, at 1090.

[115] See, *e.g.*, H. 1157 (1959); H. 1435 (1960).

[116] N.Y. PUB. OFFICERS LAW §§ 73, 74; N.Y. PEN. LAW § 1878.

[117] See the incident described pp. 1212–13 *supra*, and the characterization of the legislature's ethics committee as "dormant" since its establishment. N.Y. Times, Feb. 7, 1962, p. 28, col. 4.

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[119] *E.g.*, ILL. REV. STAT. ch. 10
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[120] *E.g.*, ARIZ. REV. STAT. ANN
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[121] *E.g.*, KY. REV. STAT. § 61.0
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[122] *E.g.*, N.Y. PUB. OFFICERS L
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[123] See Note, 47 VA. L. REV.
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[124] Compare NEV. REV. STAT.
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[125] MASS. GEN. LAWS ANN. ch

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did suggest a valid design, however. To the extent that a standard proscribing specific, objectively defined conduct is desired, criminal sanctions are appropriate. More subjective standards must be contained in a "code of ethics" with initial guidance supplied by a nonjudicial definitional body.[118]

1. Contracts. — Constitutional or statutory provisions prohibiting some or all state contracts with state officers, including legislators, rank among the oldest and most common efforts in the conflict-of-interest field.[119] The designs of these provisions vary in several respects, however. Some states prohibit only contracts with the legislative department itself, no matter how procured.[120] Others prohibit contracts with any state agency unless procured through public notice and competitive bidding,[121] a procedure thought to leave minimum discretion among the contracting officers who might otherwise be subject to pressure from the legislator-contractor. But most states have a *de minimis* exception,[122] and even after a competitively awarded contract, there is normally a considerable area of discretion entrusted to the state contract-enforcing personnel regarding routine maintenance of time schedules, quality standards, and contract quantities, as well as initiatives in preventing payment, withholding penalities, or instituting suit in case of breach.[123]

The new Massachusetts statute presents a useful illustration of the key provisions at work in the field. The act allows the legislator a bare minimum: [124] he may hold a contract, other than with the legislature, "if his direct and indirect interests and those of his immediate family in the corporation . . . with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein, *and* the contract is made through competitive bidding *and* he files with the state secretary a statement making full disclosure of his interest . . . ." [125] Possession of any financial interest other than under these conditions subjects the legislator to a three thousand dollar fine or two years imprisonment or both.[126] Additional remedies available are cancellation of the contract if actual influence is shown, recovery by the state of contract profits or five hundred dollars, whichever is greater, and

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[118] Unfortunately New York picked an intramural entity to provide this guidance for legislators. Sen. Res. No. 131, March 20, 1954.

[119] *E.g.*, ILL. REV. STAT. ch. 102, § 3 (1961); NEV. REV. STAT. § 218.580 (Supp. 1961); N.D. CENT. CODE § 54-03-21 (1960).

[120] *E.g.*, ARIZ. REV. STAT. ANN. § 38-446 (1956). The statute also prohibits in terms contracts made by the legislator in his official capacity. Some states also proscribe contracts on which the legislator may merely be called upon to vote or act. *E.g.*, KY. REV. STAT. § 61.096(2) (1962). The underlying policy assumption of these acts is that the legislator's influence is most easily felt in his own body and as to contracts over which he has some official control.

[121] *E.g.*, KY. REV. STAT. § 61.096(6) (1962); N.Y. PUB. OFFICERS LAW § 73(3); OHIO REV. CODE ANN. § 2919.09 (Page 1954).

[122] *E.g.*, N.Y. PUB. OFFICERS LAW § 73(3) ($25 contract; 10% ownership); N.D. CENT. CODE § 54-03-21 (1960) (5% ownership; $10,000 annual limit on contracts with state); OHIO REV. CODE ANN. § 2919.09 (Page 1954) ($50 contract); § 2919.11 (5% or $500 ownership, unless officer or director or conspiracy to defraud).

[123] See Note, 47 VA. L. REV. 1034, 1055 (1961), pointing out the discretion available under a "lowest responsible bidder" system.

[124] Compare NEV. REV. STAT. § 281.220 (Supp. 1960), prohibiting all contracts with the state for all officers, defined to include legislators in § 281.010 (Supp. 1960).

[125] MASS. GEN. LAWS ANN. ch. 268A, § 7(c) (Supp. 1962). (Emphasis added.)

[126] § 7. A stock interest of less than one per cent is exempted.

additional civil damages up to twice the profit if there has been no final conviction or acquittal in the criminal action.[127] The stringency of the penalties is relieved somewhat by the requirement of knowledge or reason to know of the financial interests and by provision for exculpating disclosure and divestiture.[128] The attorney general is charged with institution of suit for civil damages and penalties,[129] and is aided by the act's provision for a general prohibition of any financial interest and placing of the burden on the defendant to prove himself within one of the specified exceptions.[130]

The Massachusetts rule may be a surprisingly harsh reaction to past abuses, but in states where passage is politically feasible, where the ineligibility of a number of business firms would not hinder the state's procurement processes, and where the elimination of a number of prospective legislative candidates would not cause a serious shortage, the disqualification of legislators as state contractors seems a desirable prophylactic measure and in some states may be a necessary step to the elimination of present or apparent conflicts.[131] The Massachusetts statute is weaker than it might be in one aspect: the end of the legislator's term end[s] the contract prohibition, although other parts of that act extend their prohibitions beyond the cessation of duties.[132] Moreover, violative contracts are voidable, at the state's option, only if actual influence is shown. The prophylactic effect might have been increased by declaring voidable any contract made by a party who knew of the legislator's prohibited interest at the time of the contract, regardless of the legislator's knowledge or later disclosure and disposal.[133] In addition, the Massachusetts sanctions are more limited than those in several states, where conviction under the conflict-of-interest prohibitions carries with it disqualification from office.[134] It is conceivable that removal from office might be made an independent sanction invoked without regard to criminal proceedings, but there has been little disposition so to utilize the tool of judicial removal.[135]

The Massachusetts statute also seems deficient in that it leaves un-

[127] § 9. The additional damage verdict bars criminal prosecution.

[128] § 7.

[129] § 9.

[130] See Mass. Comm'n, *op. cit. supra* note 92, at 13.

[131] Some regard should of course be shown for established interests. *Compare* N.Y. Unconsol. Laws § 8052(4) (McKinney 1961), excepting interests held at a given date if disposed of within one year of effective date of the act, *with* § 8052(7), excepting any racing license if the licensee was qualified to hold it on a certain date.

[132] Mass. Gen. Laws Ann. ch. 268A, § 5 (Supp. 1962). Legislators may also hold contracts with counties, § 14(b), and municipalities, see § 26.

[133] Compare Cal. Gov't Code § 1091(d). Provisions rendering violative contracts void *ab initio* would seem to give the contracting party an undeserved option to esca[pe], *e.g.*, Ky. Rev. Stat. § 61.096(2) (1962).

[134] Compare Ariz. Rev. Stat. Ann. § 38-447 (1956) (fine or imprisonment and permanent disqualification from office); Cal. Gov't Code § 1097 (same); Ind. Ann. Stat. § 10-3713 (1956) (fine, imprisonment, and temporary disenfranchisement and ineligibility for office).

[135] Some statutes might be read to permit such an independent remedy: Ill. Rev. Stat. ch. 102, § 4 (1961) (contracts: "may be" imprisoned or fined and also "any office . . . held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of the court."); Nev. Rev. Stat. § 281.220(4) (Supp. 1960) (contracts: "any person violating . . . this section, directly or indirectly, shall forfeit his office" and be subject to fine and imprisonment); N.Y. Unconsol. Laws § 8052(2) (McKinney 1961) (interests in parimutuel racing: "a

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[138] Should the entity's intere
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pp. 1229-30 *infra*.

[139] Cal. Gov't Code § 1091.
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[140] Compare Nev. Rev. Stat.
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clear the meanings of "financial interests" and "directly or indirectly." [136] Is there a financial interest in a contract with the state when a legislator agrees to a valuation of his land in a condemnation proceeding, or applies for emergency state loans or crop aid, or when his son receives a state scholarship? Perhaps a listing of general description of desirable exceptions,[137] or a procedure for exempting them, is necessary to assure that narrow judicial interpretation of the general terms will not dilute the prohibition. Even where the financial interest of a business entity is clear, there is a serious question as to the degree of association necessary to impute such interest to the individual legislator.[138] California attempts to provide a limited exception, after disclosure and ratification, for a "remote interest," [139] unless actual influence is shown. It is arguable that a process which would allow a legislator's tenant, client, or customer to receive a state contract without restrictions lacks sufficient deterrent effect; although the legislator may have had no power over the letting of the contract, the recipient may well think he did, and may feel obligated to the legislator on its account.[140] Yet extending the harsh prohibitions to this level might interfere with the professional capacity of the legislator or with the state's ease of procurement. Perhaps a satisfactory solution lies in a mechanism which would except those cases where alternative sources of supply are not readily available and where the legislator's indirect interest is not easily severed or is clearly significant in relation to his livelihood though remote as to the contract.

2. Representation of Interests Adverse to State or Before State Agencies. — The same dangers inherent in permitting legislators to contract with the state — influence-peddling by the legislator or at least a competitive advantage due to imagined influences and partiality on the

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knowing and wilful violation . . . shall be cause for removal . . . by appropriate authority having the power . . . or at the suit of the attorney-general").

Because of the supposedly exclusive control of each house over members, some courts have been reluctant to assert similar powers, which may constitute the sole sanction, under incompatible-office statutes, but other courts have not withheld such relief. See, *e.g.*, People *ex rel.* Myers v. Haas, 145 Ill. App. 283 (1908).

If a dependent sanction of removal is within judicial competence, there would seem to be no constitutional or logical reason why the mere omission of additional criminal sanctions should destroy that competence. *But see* TEX. LEGISLATIVE COUNCIL, *op. cit. supra* note 73, at 48.

[136] For a discussion of these terms in related contexts see BAR ASSOCIATION REPORT, *op. cit. supra* note 4, at 200–02; Kaplan & Lillich, *Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions*, 58 COLUM. L. REV. 157, 174–81 (1958); Note, *supra* note 123, at 1042–44, 1048–56.

[137] Compare CAL. GOV'T CODE § 1091.5(c); MASS. GEN. LAWS ANN. ch. 268A, § 4 (Supp. 1962). The New York statute is limited to the sale of goods or services to the state. N.Y. PUB. OFFICERS LAW § 73(3).

[138] Should the entity's interest be imputed to its salaried and nonsalaried officers and directors, employees, landlord, tenant, attorney, accountant, insurance broker, subcontractor, supplier, partners, members or relations of any of these or of the owners? Compare N.Y. UNCONSOL. LAWS § 8052(2) (McKinney 1961), noted pp. 1229–30 *infra*.

[139] CAL. GOV'T CODE § 1091. Note that MASS. GEN. LAWS ANN. ch. 268A, § 7 (Supp. 1962), implies that there is no violation if the legislator's brother owns 100% of a contracting corporation, but there is if the brother owns 9% and the legislator 1½%.

[140] Compare NEV. REV. STAT. § 281.230(1) (Supp. 1960):

> no state . . . officer . . . shall in any manner, directly or indirectly receive any commission, personal profit, or compensation of any kind or nature, inconsistent with loyal service to the people, resulting from any contract or other transaction in which the state . . . is in any way interested or affected.

part of the agency personnel — also appear when legislators represent parties before state agencies. Since historically a legitimate function of the legislator has been assistance to his constituents in their dealings with the state government,[141] use of influence may be impossible to prevent in these informal administrative contacts. Thus the lines generally have been drawn on the basis of the type of agency involved, the type of state interest, and whether the legislator receives compensation. In New York, for example, the legislator may not receive for services before a state agency compensation which is contingent on any action by that agency.[142] However, the statute permits fees based on the reasonable value of the service rendered. New York supplements its rule by requiring a number of regulatory agencies to maintain a public record of all compensated appearances before them.[143] In Massachusetts the proscription is against receipt of or request for compensation "in relation to a particular matter [a defined term] in which the commonwealth or a state agency has a direct and substantial financial interest other than collection of taxes, criminal fines or penalties, and fees or charges for permits or licenses, and corporation fees." [144] Nor may the legislator act even without compensation as agent or attorney in connection with any such matter, nor for anyone prosecuting any claim against the commonwealth.[145] Thus the legislator appears barred from receiving any fees for assistance in procurement of a contract, for advice on any negotiation or claim, for appearing as a character or expert witness,[146] or from appearing *at all* as official representative of a party unless the state's interest is slight, except that the legislator-lawyer's tax and criminal practice remain intact, as well as his routine processing of license applications.[147] Such exceptions, especially when valuable interests are involved and abuses likely — for example, in procurement of racing and liquor licenses [148] — would seem to dilute seriously the purpose of the general rule, both because of the adverse positions of the legislator and the state government and because of the opportunity for or appearance of influence or partiality in the course of prosecution or settlement.

Massachusetts complements the penalties against legislators with sanctions directed at would-be clients to deter them from hiring legislators with a view to using their supposed influence. The statute penalizes one

[141] See BAR ASSOCIATION REPORT, *op. cit. supra* note 4, at 16. A legislator opposed to the new Massachusetts act reportedly objected that legislators "with a heart" would no longer be able to convince department heads and the "administration and finance people" to give constituents 30-day jobs in state agencies, or to intercede with the motor vehicle registry for a father of five who faces license suspension but needs his car for work. Boston Herald, Jan. 30, 1963, p. 29, cols. 5–6.

[142] N.Y. PUB. OFFICERS LAW § 73(2).

[143] N.Y. EXECUTIVE LAW § 166. Texas, which does not prohibit appearances of any kind, requires full public disclosure of compensated appearances before or contacts with all agencies, unless solely to obtain information with no attempt to influence action. TEX. PEN. CODE art. 183–2 (Supp. 1962).

[144] MASS. GEN. LAWS ANN. ch. 268A, § 4 (Supp. 1962).

[145] § 4(c). Compare 18 U.S.C. § 205 (Supp. IV, 1963).

[146] Unless testifying under oath. MASS. GEN. LAWS ANN. ch. 268A, § 4 (Supp. 1962). KY. REV. STAT. § 61.096(3) (1962) specifically covers expert witness appearances.

[147] See Mass. Comm'n, *supra* note 92, at 16–17. Other exceptions are set out in § 4.

[148] See N.J. REPORT, *op. cit. supra* note 121, at 18.

who knowingly directly or indirectly gives, promises, or offers compensation in cases in which the legislator cannot legally receive it,[149] but it does not punish a client whose legislative agent or attorney is acting gratuitously.

Few clear generalizations can be made about the legislator's agency-appearance problem. Probably in some of the smaller states in which state agency practice is a significant part of the legislator-lawyer's practice, a major readjustment would be necessary in the legislative personnel or in their professional practices to secure the desired prophylaxis. In a few of these states such an upheaval might in fact be desirable, not only as a prophylactic but as a curative measure.

In delineating the "particular matters" concerning which the legislator may not act as agent or receive compensation, the Massachusetts act specifically excludes any legislative enactment.[150] Thus a legislator may act as consultant or adviser to a person or firm seeking legislative action, or even to a lobbyist, so long as he could not be proved to have been influenced in his own action as legislator by the fee received.[151] In addition, if the state has no "substantial financial interest" in a matter before a legislative committee or if the committee is concerned with "general legislation," a legislator may appear as attorney for a witness called before that committee. These two types of activity are disapproved by most "codes of ethics" applicable to legislators,[152] but they are sufficiently well defined for application of criminal penalties, and there appear to be no strong reasons for excluding them from general prophylactic measures.

In controlling noncontractual legislator-state contacts, it must be noted that the legislator may be involved as a principal in any activity subject to state regulation. Appearances as principal before an agency or against the state would present at least as much appearance, temptation, and risk of undue influence and unfair advantage as do representative appearances. Yet a total prohibition on legislators' appearances would seem unwarranted. Although legislators might be prohibited from seeking licenses or franchises for new businesses, especially when these are scarce and therefore valuable, they probably should be permitted to appear as principals to maintain their *status quo*. All land condemnations involving legislators could be preceded by full court proceedings with the burden on the legislator to show value over the assessment. As for legislators' personal injury or other claims, either a full litigation requirement or a provision suspending the running of the statute of limitations until the end of the legislator's term might provide a just solution.

Two other devices for coping with problems of legislators' interests should be considered. Where egregious misbehavior is likely, whole areas of activity might be precluded to legislators. In New York, for example, legislators may not hold licenses from the racing commission or have any interest in, be an employee or officer of, or sell any goods or services to parimutuel racing licensees, firms licensed to do business at

[149] MASS. GEN. LAWS ANN. ch. 268A, § 4(b) (Supp. 1962).
[150] § 2(k).
[151] See § 3(b).
[152] See p. 1230 *infra*.

racetracks, or lessors of tracks.[153] California prohibits legislators from accepting "any commission for the placement of insurance on behalf of the State."[154] Another mode of attack has been to require general disclosure. New York and Texas require, as formerly did Massachusetts, filing with the secretary of state of a statement of interest in regulated activities. The New York and Massachusetts formulations cover only financial interests exceeding ten thousand dollars in value, and explicitly make these disclosures public.[155] The scope of the Texas reports is wider; it includes officers, agents, members, and controlling owners of any corporation, firm, partnership, or other business entity, but public access or release is not specifically required.[156] The Massachusetts Special Commission on Code of Ethics[157] rejected general disclosure as "unnecessary" and recommended that it be required only where "it is meaningful and essential." However, the information developed from general mandatory disclosure would be a useful tool in the enforcement of many of the conflict-of-interest rules and would, especially under the former Massachusetts version which included "any business entity which does business with the commonwealth," provide contracting agencies with a list of possibly ineligible firms.

C. Enforcement of a "Code of Ethics"

There exist other serious violations of conflict-of-interest standards[158] which might lend themselves to criminal sanctions, but which no state has seen fit to outlaw.[159] In this area foreknowledge, intent, and appearances may be determinative, and may in turn depend on the existence of some warning or on the public's rising ethical expectations. Thus the reaction of several states has been to provide a nonjudicial, nonpenal mechanism for communicating such warnings and reflecting such varying expectations, usually in the form of a "code of ethics."[160] The codes of ethics set forth general rules proscribing "substantial conflicts" and enumerate standards in more specific areas of concern such as independence of judgment, use of confidential information, favoritism, unwarranted privileges and exemptions, actions creating public suspicion of violations of trust, gifts, interested voting, and receipt of compensation for official services.

The task of interpreting, applying and expanding this groundwork for legislative ethics is difficult and politically sensitive; independence

[153] N.Y. UNCONSOL. LAWS § 8052(2) (McKinney 1961).

[154] CAL. GOV'T CODE § 1090.1.

[155] N.Y. PUB. OFFICERS LAW § 74(j); Mass. Acts and Resolves 1961, ch. 610, § 1(4)(j). The latter was greatly weakened even before its repeal in 1962 when the attorney general found the following statement sufficient:

> In compliance with [this section] . . . I herewith file my name with you, being subject to jurisdiction by state regulatory agencies.

Letter From Mass. Attorney General to Mass. Secretary of State, Nov. 20, 1961.

[156] TEX. REV. CIV. STAT. art. 6252-9, § 3(b) (Supp. 1958).

[157] Mass. Comm'n, *op. cit. supra* note 92, at 11.

[158] For example, voting when there is a direct, substantial financial interest in the outcome. Sanctions here may present constitutional questions of privilege.

[159] Except perhaps NEV. REV. STAT. § 281.230(1) (Supp. 1960), quoted note 140 *supra*, which might be construed to cover a wide range of ethical improprieties.

[160] *E.g.*, MASS. GEN. LAWS ANN. ch. 268A, § 23 (Supp. 1962); MINN. STAT. §§ 3.87-.90 (1961); N.Y. PUB. OFFICERS LAW § 74; TEX. REV. CIV. STAT. art. 6252-9 (Supp. 1958).

and objectivity are the prime requisites of the agency responsible for this task. Therefore the choice by many states of legislative committees to perform these functions [161] could hardly have been expected to produce satisfactory results.[162] Regularized intramural enforcement of statutory restrictions would suffer from the same inadequacies as do intramural sanctions on an *ad hoc* basis. Just as the criminal provisions to check the legislature place the initiative in the hands of the executive and the remedy in those of the judiciary, the implementing mechanism of the code of ethics should be located outside the legislature. No existing institution seems satisfactory, however, for executing the subtle mandates of such a code. Perhaps a special government agency, such as a Legislative Ethics Commission, should be established by the legislature and then severed from further control.[163] Appointment of members should be on a nonpartisan, nonrepresentative basis, but it would seem desirable that the attorney general be a member ex officio and that the governor have an appointee. Other appointing parties might include the legislative majority and minority leaders, the state bar association, the judicial conference, deans of law schools, presidents of universities, the labor council, and the chamber of commerce. Insofar as possible the appointees should be persons with sufficient independence and prestige in the community to make decisions without regard to the identity or power of those affected.[164] In addition the attorney general might institute the practice of giving formal opinions at the request of a legislator applying the code standards to actual or hypothetical facts. While the contents of such opinions should be made public, the identity of the addressee could be kept confidential on request. The Commission then could undertake promulgation of a general regulation or of a specific opinion based on its investigation of the topic to supplement or modify the opinion of the attorney general. It might also institute a

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[161] *E.g.*, MINN. STAT. § 3.89 (1961); N.Y. Sen. Res. 131, March 20, 1954.

[162] Compare the results in Massachusetts and New York, both states with legislature-enforced codes, pp. 1212–13 *supra*.

[163] It follows from the discussion of the absence of restraints on judicial powers, pp. 1214–15 *supra*, that there is no insuperable constitutional objection to the legislature's investing power in nonlegislative agencies to control the relationship between each member's official and private activities. The legislative committee which considered the problem in New York assumed that "disciplinary action or even review or referring would necessarily involve the question of 'qualification.'" N.Y. REPORT, *op. cit. supra* note 98, at 16. The Texas attorney general was of the opposite opinion, suggesting an independent agency to receive complaints, hold hearings, and refer conclusions to the legislature for final action to be taken within thirty days, after which the complaint and evaluation would be made public. TEX. LEGISLATIVE COUNCIL, *op. cit. supra* note 73, at 53. The Legislative Council's report, while noting the New York position at length, concluded only that "the possibility that the validity of such an agency might be questioned on constitutional grounds does exist." *Id.* at 54. It is noteworthy that a comprehensive statute with an independent agency has been introduced in Minnesota, which has had a legislative ethics committee since 1961. A Bill for an Act Relating to Public Service Ethics, in Letter From Minn. Assistant Attorney General to the *Harvard Law Review*, March 9, 1962. Moreover, in New Jersey a bill with an independent agency has passed the assembly at least twice. Assembly No. 2 (1960), Assembly No. 1 (1961).

[164] Compare Massachusetts special commission (Mass. Acts and Resolves 1961, ch. 610, § 2); proposed Louisiana commission (La. Legislative Council, Joint Resolution to Amend Article XIX, at 11–15, in Letter From La. Reorganizational Study Commission to the *Harvard Law Review*, Feb. 12, 1962); proposed Minnesota commission (*supra* note 163).

general study of a range of problems and publish general regulations when needed. The final duty of the Commission would be to assess asserted violations of the code and to invoke sanctions against violators. If the Commission had sufficient prestige, if its pronouncements were adequately publicized, and if its decisions did not adopt unrealistic standards, then the mere publication of a finding that a particular legislator had committed, or continued to commit, a violation might be enough of a sanction to deter offenders. An additional sanction would lie in the Commission's implied power to make recommendations of suitable action in the legislature — disqualification, censure, or removal. In some cases it might be necessary or desirable to give the Commission the power to issue orders enforceable by injunction in the courts. In cases of particularly pernicious conflicts — not susceptible of remedy by publicity or injunction — a more potent sanction might be necessary. By analogy to the device employed by certain other governmental agencies [165] the Commission might be empowered to promulgate specific regulations which would become assimilated into the criminal provisions of the act. The criminal sanctions could be designed to take effect after a specified time absent disapproving action by a two-thirds vote of the legislature.[166] Thus, for example, if the Commission found that the sale by legislators of insurance to contractors on state highway projects was not otherwise proscribed but that such sales invariably tended to invite serious abuses and to produce an unsavory public appearance then it might prohibit such sales generally by placing them in the special category. After the failure of the legislature to veto the criminality recommendation, any violator would be subject to the statutory penalties for any such sale.

The suggested commission is merely one possible method of formally placing the initiative and responsibility for policing legislative ethics outside the legislature. It would take advantage of a temporary peak in the legislature's reforming spirit by permanently entrusting this spirit to a body less likely to let it die. It would allow the legislators themselves to set out the basic topics of concern, and the nonlegislators to apply them flexibly and usefully, providing a clearer guide to behavior and a deterrent to misbehavior. It may be that no legislature would institute such a system without provocation, but such provocation in state politics is not unknown.[167]

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[165] See Securities Act of 1933, 48 Stat. 85 (1933), as amended, 15 U.S.C. § 77a (1958); 48 Stat. 87 (1933), as amended, 15 U.S.C. § 77 yyy (1958).

[166] Compare 28 U.S.C. § 2072 (1958) (method of adopting rules of procedure in federal courts).

[167] For example, passage of the Massachusetts conflict-of-interest law, covering both state and local legislators, was attributed to "a clamor in the towns for a cleanup of corruption and conflict of interest." Boston Herald, Feb. 1, 1963, p. 7, col. 7.

SCOMM

#35:7

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM February 23, 1983

TO: THE SENATE SPECIAL COMMITTEE ON LEGISLATIVE REFORM, FELLOW SENATORS, AND OTHERS

FROM: SENATOR VIC FISCHER

RE: LEGISLATIVE ETHICS PROPOSAL

Transmitted with this memo is an outline for a legislative ethics bill. I believe it is an important step toward enacting a code of ethical conduct which will assure the public and the legislature that elected officials live up to the highest standards of conduct.

This proposal is the product of several years' work. Two years ago, I introduced a comprehensive ethics bill that was designed to cover all elected and appointed public officials. By the end of last session, it became clear that a more focused approach would be required, with standards and procedures more clearly set out.

A basic change deemed necessary was to establish the legislature as the judge of its members' conduct, just as the state constitution provides with respect to their qualifications. [redacted].

Separate legislation is being completed to establish an ethics code for the other state employees and officials. I hope to have a draft ready in March.

Action to establish standards of conduct for all public officials is critical, and it's timely. Over recent years, the legislature has had the painful task of dealing with distrust, accusations, and the criminal process. The public is distrustful, and the attorney general has indicated that he intends to meet his obligation to enforce ethical conduct under the common law unless the legislature acts this session to establish alternate guidelines.

Establishment of the joint committee specifically charged with developing a code of ethics for legislators demonstrates a commitment to action this session. I sincerely hope that this draft outline will assist in establishing a clear set of standards and procedures to deal with the complex ethical questions that we confront.

This outline is not a bill. Rather it a working draft that sets out the policies, processes, criteria, definitions, and other elements needed to draft a bill. I hope this format will facilitate initial review. In developing this proposal, we have been in touch with the Congress and a number of state legislatures, and this draft reflects what we have learned from their legislation and their actual experiences. Instead of making decisions about what should and should not be included in an ethics bill for Alaska's legislature, we have included a number of alternative possibilities.

The major provisions of the proposed legislative ethics bill are:

* The policy section states that legislators are trustees of the public interest, which is best served by a citizen legislature whose members are involved with all elements and aspects of Alaska life.

* The legislative ethics system will apply to all present and former legislators, and to those employees of the legislative branch who work as staff for legislators or committees.

* Three general ethics rules prohibit: (1) the receipt of benefits for improper influence exerted from an official position; (2) outside business or professional opportunities which conflict with the conscientious performance of official duties; and (3) misuse of state property.

* Legislative conflicts of interest are defined to exist when "a personal interest tends to impair the legislator's or staff person's independence of judgement." This situation is presumed to occur in a set of circumstances where the legislator or staff person has a direct interest, distinct from that of the general public, in an enterprise or interest that would be affected by a vote on proposed legislation.

* If a legislator or staff person is in a position that is presumed to be or appears to be a conflict of interest, he or she may participate in action affecting that legislation by signing a statement that describes the circumstances of the apparent conflict and asserts that he or she is able to vote and otherwise participate in the legislative action concerning that interest.

* A standing ethics committee will be established in each house, with five members and staff; formal rules of procedure will be adopted.

* If a legislator or staff person is in doubt about the propriety of any action, either taken or proposed, they may request an advisory opinion from the ethics committee.

* No person covered by this statute may:

--Be a party to a contract with the state or a municipal government that is not let by competitive bid;
--Represent, for compensation, any person or business before any element of the state or a local government;
--Lawyer-Legislators, however, may represent clients before state or federal courts, where the state is not a party to the action;
--Use information that by law, regulation, ordinance, or practice is not available to the general public for personal gain;
--Use state material, equipment, or telephones for personal or campaign purposes;
--Supervise a close relative who is on the state payroll;
--Apply for or accept any discretionary state benefits such as loans or land disposals, for which the decision making process is discretionary. (For example, student and home loans and lottery land disposals are allowed; commercial loans (e.g., tourism loans) that require discretionary decisions are not allowed.)

* The following are specifically allowed:
--Outside employment and business opportunities for legislators are not discouraged, but any relationship with the state or local governments that may be colored by the legislator's position should be disclosed to the committee for an advisory opinion;
--Former members of the legislature may lobby or work for or with state agencies immediately after leaving the legislature, but they may not use confidential information except for the benefit of the state. This does not alter the constitutional ban on legislators accepting positions on which they voted to raise the salary for one year.

* Transferrable promotional benefits and discounts (e.g., Amigo Fares) are the property of the state.

* Punitive or retaliatory action against a person who has assisted or initiated an ethics action is prohibited.

* People covered under this statute must make certain additional disclosures:

  --Staff people covered will make the same APOC disclosure as legislators;

  --All gifts and fees and honorariums over $100 must be reported within three days during the session and 30 days in the interim;

  --All financial transactions between people covered by this statute with a value over $1,000 must be reported.

* Sworn complaints may come from the public, any legislator, or the committee.

* The committee will issue advisory opinions concerning the ethical propriety of any matter in which a legislator or staff person is involved. These opinions may be requested be any person covered by the bill or the public at the discretion of the committee.

* A person who follows the advice of an advisory opinion after disclosing all of the facts is presumed not to be in violation of this statute. The committee will publish ethical guidelines and policies that may be relied on unless changed.

* The committee will investigate complaints. It will have subpoena power and the power to take sworn testimony. People being investigated will be given notice ard have the right to counsel. If there is a hearing, persons under investigation

will also have the right to cross examine witnesses and present evidence on their own behalf.

* If the committee finds evidence of an ethical violation, it will make their findings public. The committee may issue a private reprimand or it may recommend to the whole body that a legislator be censured or expelled. Conviction of a felony is grounds for expulsion. Termination of employment may be recommended for staff.

* The ethics committee will make weekly public reports during the session , plus interim and annual reports.

* Confidentiality will be protected throughout this process, with private information made public only if an ethical violation is found. All allowed disclosures and ethics policy decisions will be made public through the Journal.

* This bill will supersede the common law standards referred to in the Attorney General's memo of December 3, 1982.

I would appreciate your comments on the policies and specific elements of this draft, what sections might be omitted, and, perhaps more difficult, your suggestions concerning what has been left out. Please contact me or Lewis Schnaper of my staff at 465-4954.

....WORK DRAFT...WORK DRAFT...WORK DRAFT...WORK DRAFT....

VF/LS 2/24/82 [leth] DRAFT nine

DRAFT OUTLINE FOR LEGISLATIVE ETHICS BILL

T A B L E O F C O N T E N T S:

P O L I C Y:

The Alaska Constitution, in Article II, Section 12, grants each house of the legislature the power to judge the qualifications of its members. Perhaps the most important qualification for membership in the legislature is the maintenance of the highest standards of ethical conduct.

It is essential to the proper conduct and operation of the legislature that legislators be independent and impartial, and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law defines standards of ethical conduct, protects against conflict of interest, and establishes procedures for the conduct of elected officials and legislative employees in situations where conflicts may exist.

It is also essential that the legislature attract those citizens best qualified to serve. Thus, the law against conflict of interest must be designed not to unreasonably impede recruiting and retaining in government accomplished citizens of diverse backgrounds. Legislators and legislative staff should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests--except where conflicts with the public responsibility of those officials cannot be avoided.

It is declared to be the policy of the legislature that no member or employee shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity, or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of Alaska in their legislature, there is enacted a code of ethics setting forth standards of conduct required of legislators and staff in the performance of their official duties. It is the intent of the legislature that this code shall serve not only as a guide for the official conduct of public servants, but also as a basis for the discipline of those who violate the provisions of this chapter.

A P P L I C A B I L I T Y:

To apply to all members of both houses of the Alaska legislature. Also applies to members-elect, former members, and the permanent and temporary staff of the legislative branch who work directly for legislators or committees. [ALTERNATIVE: limit applicability to legislators only, or legislators and all legislative branch employees.]

A P P L I C A B I L I T Y O F O T H E R L A W:

This chapter will specifically supersedes the common law of conflicts of interest in the areas that it covers. Nothing in this chapter is intended to preclude investigation or action under other statutes.

E T H I C S R U L E S:

To provide guidance to those affected by this section, the following rules articulate the standards of conduct expected by the public of legislators and legislative staff:

GENERAL STANDARDS:

(a) Legislators or members of the legislative staff shall not receive any benefit directly or indirectly, from any source, by virtue of influence improperly exerted from their public position.

(b) Legislators or members of the legislative staff shall not engage in any outside business or professional activity or employment which is inconsistent or in

conflict with the conscientious performance of official duties.

(c) Legislators or members of the legislative staff shall not misuse state property or funds entrusted to them.

SPECIFIC RULES:

NOTE: The absence of a rule prohibiting a specific activity will not bar the committee from making a determination of its ethical acceptability under either the standards above or below, or additional standards as they evolve. No penalties may be imposed unless the affected party had, or should have had, sufficient notice of the ethical standard involved.

CONFLICTS OF INTEREST--POLICY: Broadly, a conflict of interest is a situation where the exercise of one's official position or powers may affect one's personal financial interests.

In discussing conflicts of interests, personal financial interests must be defined to include all direct or indirect financial interests of the legislator or staff person which may influence his or her judgement.

Alaska's part-time legislature derives much of its strength from the involvement of its members and staff in all aspects of life in the state, and it is neither possible or desirable to restrict members or staff from dealing with those issues that they know best.

In this context, it is not desirable to bar legislators and staff from any contact with activities which may appear to be conflicts. Instead, the public interest will be protected by requiring legislators and staff to disclose all of their financial interests, and to make

special disclosures during the legislative session of certain types of financial dealings of particular sensitivity because of their potential for abuse.

In situations where actual conflicts of interest occur, to the point where the legislator or staff person's personal interest may tend to impair their independence of judgement, then the public interest requires that the legislator or staff person either state that he or she is able to fairly and objectively deal with the issue or disqualify themselves from exercising their official prerogative to affect that situation.

CONFLICT OF INTEREST--PROCEDURE: For the purposes of this chapter there is neither a conflict of interest, nor a duty to disclose a conflict if the only benefit received by a legislator or staff, or member of their household is the same as that received generally by all Alaskans or all members of a large group or class of citizens.

If the class of persons who will be affected by the legislative action is small, and the legislator or staff person will directly or indirectly receive a benefit from the official action, then a conflict may exist. The test for an actual conflict of interest is if the personal interest tends to impair [ALTERNATIVE: replace "impair with "influence"] the person's independence of judgement.

When a legislator or staff person acts on a legislative matter as to which they have an economic interest, they will consider whether their judgement will be substantially impaired by the interest. If it is concluded that an actual conflict of interest does exist a legislator will declare that interest on the floor and request to be disqualified and to abstain from voting. [Uniform Rule 34(b), but consideration should be given to changing this rule to require more than a single no vote

to block a member abstaining from a vote on ethics grounds.] If a conflict is concluded to exist a written statement of the conflict must be delivered to the committee within 24-hours and neither a legislator nor a staff person will take further legislative action on the legislation involved.

It is presumed that personal interest tends to impair a legislator or staff person's independence of judgement in any of the following circumstances:

(1) Having or acquiring a direct interest, distinct from that of the general public, in an enterprise which would be affected by a vote on proposed legislation;

(2) Benefiting financially from a close economic association with a person whom the legislator knows, or from the facts is presumed to know, has a direct interest in an enterprise or interest which would be affected by a vote on proposed legislation, differently from other like enterprises or interests;

(3) Benefitting financially from a close economic association with a person who is lobbying or who has employed a lobbyist to propose legislation or to influence legislator's votes.

"Close economic association" includes and refers to the legislator or staff person's employer (other than the state), employees, and partners in business and professional enterprises; corporations in which the legislator owns capital stock beyond the value of $1,000; and corporations in which the legislator is an officer, director, or agent; or

(4) Soliciting, accepting, or agreeing to accept any gift, loan, or payment of in an aggregate amount of $100 or more from a person who would be affected by or has an interest in an enterprise

which would be affected by a vote on proposed legislation.

The disqualification arising under this section is suspended if a legislator with an apparent conflict of interest or an apparent impairment of judgement files with the committee a sworn statement which describes the circumstances of the apparent conflict and the specific legislation to which it relates and asserts that he or she is able to vote and otherwise participate in legislative action relating thereto fairly, objectively, and in the public interest. Whenever a legislator files a statement for the suspension of the disqualification, the committee on its own motion may issue a statement concerning the propriety of the legislator's participation in the particular legislative action, with reference to the applicable ethical standards of this matter

If the legislator or staff person is in doubt as to the propriety of any action taken or proposed to be taken by them, or is in a situation which is presumed to impair independence of judgement and does not accept the presumption, they should request an advisory opinion from the ethics committee.

Fulfilling requirements to make a disclosure to the Alaska Public Offices Commission does not excuse the requirement to disclose the same information concerning potential conflicts to the committee.

For reference, the current criminal statute on conflicts of interests, AS 39.50.090, provides:

> No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father or business with which he is associated or owns stock.

PROHIBITED ACTS:

CONTRACTS: Legislators and staff may not be a party to or have any interest in a contract with, or in the investment of money with or for, the state or any municipal government which is not awarded through the public competitive bid process. Permission to engage in non-bid contracts may be granted at the discretion of the committee following a finding that no influence was improperly exerted to secure the contract and that the performance of the contract does not conflict with the conscientious performance of official duties. All contracts with the state or local governments must be disclosed to the ethics committee. Permanent employees may not be a party to a contract with the state or a local government under any circumstances. [ALTERNATE: bar all contracts with the state or local government, or limit legislators and temporary staff to contracts where a judgement of the quality of performance is not likely to occur.]

REPRESENTATION: With the exception for lawyer-legislators noted below, no legislator or staff may, for compensation, represent any person or entity to or before any state entity or any entity of local government.

LAWYER-LEGISLATORS: Legislators or staff who are members of the Alaska Bar may represent their clients in actions before state or federal courts. [ALTERNATIVE add: and quasi-judicial commissions, e.g., Workers Compensation or Limited Entry Commissions.] but they may not represent any person on business, for compensation, before any state entity or any portion of any local government.

CONFIDENTIAL INFORMATION: Information that by law, regulation, ordinance, or practice is not available to the general public may not be used for personal gain if it was obtained in the course of official duties. [See AS 11.56.860]

STATE PROPERTY AND FUNDS: Legislators or legislative staff may not use state material, equipment, long-distance telephones, or postage for personal or campaign purposes. The state will be promptly reimbursed for any material used and non-business long-distance calls.

STATE LOANS AND LAND DISPOSALS: Legislators and staff may not apply for or accept any discretionary state benefits not available generally to the public, including loans and land disposals, unless the decision making process leading to the approval of these benefits is on the record as being sufficiently clear and "automatic" as to preclude the appearance that improper influence may have been used to secure these benefits. Examples of acceptable activities include land disposals by lottery, student loans or state housing loans where the requirements are on record and minimal discretionary action by the granting agency is required.

NEPOTISM: Employment by the legislature of persons related within the second degree to other employees is not allowed if the relative is under the direct supervision of the legislator or staff member to whom they are related. An exception is made if the relative is not working for state-paid compensation. [c.f., HB 49]

PROMOTIONAL BENEFITS: Transferrable promotional benefits that result from activities undertaken on official business and paid for by the state, e.g.,

airline discount tickets and reduced fare programs, hotel discounts, etc, become the property of the state. These discounts should to be used to reduce state costs, but if state use of these discounts is not possible, they may be sold or otherwise used by the state.

PROBLEMS WITH DIVESTING: In situations where it becomes necessary for a legislator or staff person to divest of a property or contract to meet the requirements of this or any other statute, and circumstances prevent the divestiture, this problem must be disclosed and an advisory opinion requested and followed in good faith.

PROTECTIONS FOR REPORTING A VIOLATION: It will be a violation of legislative ethics for any person subject to this chapter to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an alleged ethics violation. Violation of this section is punishable by any of the remedies specified above.

ACTS ALLOWED:

OUTSIDE EMPLOYMENT AND BUSINESS OPPORTUNITIES: Are not discouraged, but any relationship with the state or local governments in the course of these business transactions which may be colored by the legislator's position should either be precluded or placed under the purview of the ethics committee by requesting and following an advisory opinion.

FORMER MEMBERS OF THE LEGISLATURE: It is acceptable for former legislators or staff members to lobby or work for or with state agencies immediately after leaving employment with the legislature, subject to the

constitutional ban against an ex-legislator taking a job where the legislature has raised the salary. Former legislators and staff should not use confidential information obtained in the course of their official legislative activity for the benefit of any party except the State of Alaska.

ADDITIONAL REPORTING REQUIREMENTS:

STAFF REPORTING AND PUBLICATION: Legislative staff subject to this chapter will make the same disclosures required of legislators in AS 39.50.030. The latest APOC disclosure forms of both legislators and staff will be published as a special edition of the Journal during the first week of each session.

GIFTS: no gifts or special privileges (anything of value not available to the general public), with an aggregate value of more than $100, may be accepted by legislators or staff without disclosure to the committee within three days after receipt during the session and 30 days after receipt in the interim. An exception is made for meals, drinks and entertainment not associated with overnight accommodation. If legislators or staff accept transportation on non-public aircraft or vessels, and the travel is done in the course of official business, it must be reported to the ethics committee for publication in the Journal within three days of the start of travel during the session and 30 days in the interim.

FEES AND HONORARIUMS: Legislators will report to the Ethics Committee, within 3 days of receipt during the session and 30 days after receipt in the interim, any compensation or reimbursement for travel or expenses in excess of $100 received for attending a meeting,

presenting a paper, or giving a talk or demonstration. The report must include the amount of the compensation or reimbursement, together with a brief statement describing the circumstances under which the payment was received.

FINANCIAL TRANSACTION WITH LEGISLATORS OR STAFF: Financial transactions over the actual value of $1,000 between parties subject to this chapter are banned, unless the transaction is disclosed. Campaign contributions disclosed to the Public Offices Commission are exempted from this provision.

P R O C E D U R E S:

COMMITTEE:

The purpose of establishing the ethics committee[s] is to institutionalize a body which will provide consistent guidance on ethical matters through advisory opinions and statements of policy and investigate complaints of violations of this chapter. If a violation is found to have occurred, the committee may issue a private reprimand or recommend any of the other remedies provided below for action by the body as a whole. If disciplinary action is recommended, the matter may be referred to the committee for hearing.

Uniform Rule 20 will be amended to establish a standing ethics committee in each house with five members appointed per Uniform Rule 1(e). [ALTERNATIVE: establish a joint standing ethics committee with seven members: three members of each house and one former member of either house selected by agreement of 2/3 of the

committee members from each house.] Provide for staff and legal support, either by staff counsel, contract, or through the Division or Legal Services, and the appointment of a special investigator if required. The committee will establish formal rules of procedure [an good example of which is the U.S. Senate's rules for its Select Committee on Ethics] that will be put before both bodies for their approval.

A quorum of the committee will be a simple majority. The committee will meet weekly during the session and at least monthly during the interim unless there is no business before it. Special meetings may called by the chairman or at the request of three members.

Meetings of the ethics committee are covered by the provisions of the open meeting law but any meeting at which "subjects that tend to prejudice the reputation and character of any person..." [AS 44.62.310(c)(2)] may be closed.

COMPLAINTS:

Must be sworn, and may come from the public, from a member of either house, staff member, or the committee may initiate an investigation on its own volition.

ADVISORY OPINIONS:

Upon a written request from any member, the Committee will issue written advice concerning the propriety of any matter to which the legislator or staff person is or may become a party. An advisory opinion concerning the application of this chapter may be issued upon the written request of any other person as deemed appropriate by the Committee. Advisory opinions will be issued within 15 days of receipt of a request while the legislature is

in session; 45 days if not in session. If the requested opinion is not issued within this time period, or a written extension of time not filed by the Committee (by delivery to the person requesting the opinion and publication in the Journal), the person requesting the opinion will consider the facts and circumstances stated as being in violation of this chapter.

Following the adjournment of each Legislature, all of the advisory opinions issued during that Legislature will be made public after deleting, to the fullest extent possible, all references to particular individuals and identifying situations. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion. The privacy of anyone mentioned in the opinion who has not agreed to its publication will be protected. This will facilitate the establishment of guidelines for conduct. [ALTERNATIVE: All advisory opinions are confidential without the permission of all parties to make the opinion public.]

Any member or employee of the Ethics Committee making public the identity of the person requesting an advisory opinion or of persons mentioned in the opinion, or any other information held in confidence by the committee, beyond such public disclosure as is provided by the committee, is guilty of a misdemeanor, is subject to the penalties provided in this chapter, and a civil action for damages may be brought by any person who is damaged by this disclosure.

RELIANCE ON ADVISORY OPINIONS:

It is prima facie evidence of an intent to comply with this Chapter when a person refers a particular matter to the Ethics Committee, discloses all of the

material facts, and abides in objective good faith by the Committee's advisory opinion.

An advisory opinion may be relied upon, unless cancelled or superseded with notice by the committee, by any person involved in the specific transaction or activity considered by the advisory opinion if the request for the advisory opinion included a complete and accurate statement of the specific factual situation.

PRECEDENT AND POLICY:

Except as provided in Reliance on Advisory Opinions, above, no decision of the committee will be held to be binding on or as precedent for the committee in future decisions.

In the interest of providing notice and guidance to persons bound by this chapter, the committee will publish and identify those opinions or statements of policy which it intends to follow, and these may be relied upon by any person unless revoked with notice.

INVESTIGATIONS:

Upon receipt of a complaint, the committee may initiate an investigation after finding that there is sufficient evidence for the committee to conclude that a violation within its jurisdiction has occurred. [ALTERNATIVE: omit or change threshold standard.] The decision whether or not to undertake an investigation will be made by a recorded vote of a majority of the committee. The investigation will be completed in the shortest possible time commensurate with protecting the interests of the public and the rights of all parties to the investigation, [ALTERNATIVE: add a set time limit for investigations] and the scope of the investigation will be

sufficiently broad to protect the public interest. The committee will have power to subpoena witnesses and documents per AS 24.25.010 [ALTERNATIVE: modify this statute to remove the necessity that the committee get the concurrence of the speaker or president before each subpoena is issued], and to take testimony under oath with penalties provided for perjury [per AS 24.25.060.] The Committee must preserve evidence and testimony under the same rules as the state courts. [See: Administrative Rules 35-37.5]

The committee will give written notice to any person who becomes the subject of an investigation of the fact of the investigation and the charges. The notice will be sent no later than three working days after the committee has voted to conduct an investigation, or has identified a person as an additional subject of investigation. All persons who are subjects of a committee investigation have the right to be represented by counsel. The test for the sufficiency of evidence for recommending any sanction under this chapter will be the preponderance of the evidence.

FOLLOWING AN INVESTIGATION:

In as short a time as reasonably possible, the committee will produce comprehensive findings of facts and conclusions of law. In cases where the alleged violation is found to have occurred, this document and all evidence will be made public. If it is concluded that the allegation does not constitute a violation of this chapter or any other Alaska statute a report of this conclusion will be made as provided below, but the identity of parties and the facts of the situation will be held in confidence, and the evidence may be sealed at he discretion of the committee unless the accused party

requests that the committee's conclusions and/or the evidence be made public.

REMEDIES FOR VIOLATIONS:

If a finding is made by the committee that an ethical violation has occurred, the remedies available will be:

Private Reprimand: The committee may issue a private written reprimand to a legislator or staff member by a majority vote.

Or, the committee may recommend any of the following actions to the body:

Censure: by 2/3 [Alternative: majority] vote of house involved; penalty action may include but is not limited to stripping of committee assignments.

Expulsion: a member may be expelled by a 2/3 vote of the house involved. [Uniform Rule 49(a)(2)] A legislator may not be suspended. Conviction in any state or federal court of a crime that would be a felony under the laws of Alaska is grounds for expulsion. For the purposes of this chapter, conviction occurs upon sentencing by a court equivalent to the Alaska Superior Court.

Termination of Employment Upon a finding by the committee that an employee of the legislature has committed an ethical violation, or upon conviction of a felony, as defined above, the employment of that employee may be terminated. Any employee recommended for termination under this chapter will be entitled to a hearing before the Rules Committee with the rights specified below.

[ALTERNATIVE: provide a remedy for the expelled member or terminated employee if the conviction is later overturned on appeal. One possibility is back pay for an expelled legislator or back pay and reinstatement for a terminated employee.]

Recovery: Upon a determination of the Ethics Committee that an ethical violation has occurred, the Attorney General may bring civil action to recover the compensation, gift, or profit received by a member or staff person as a result of a violation of this chapter.

Contracts Voidable: In addition to any other remedy, any contract entered into by the state in violation of this Chapter is voidable. In deciding whether to bring an action to void a contract under this section, the Attorney General will consider the interests of innocent parties who may be damaged by the action. Any action to void a contract under this section must be brought within 60 days of the finding of a violation by the committee.

Recommendation for Prosecution: following a finding that an ethical violation has occurred, or if the committee finds evidence of other statutory violations, the committee may recommend that the Attorney General consider prosecution under any applicable criminal statute.

H E A R I N G:

The Committee may hold public hearings following referral of a recommended sanction to the committee or, on other topics with the concurrence of a majority of the body.

If a hearing results from the action of the committee, any person accused of a violation of this chapter will have the right to adequate notice, the right to

counsel, and the right to confront and cross-examine witnesses, and the right to present evidence.

All testimony and evidence will be recorded and preserved, the rules of evidence will be those used in APA hearings (AS 44.62.460) and the burden of proof will be met by a preponderance of the evidence.

REPORTS TO THE LEGISLATURE:

During session, the Ethics Committee will make a weekly report for inclusion in the Journal containing, at minimum, summaries of all information then available to the public, and summaries of all other committee activity, with privacy protected. Examples of the information presented are: disclosures of conflicts, gifts, contracts, etc; reports (with names deleted) of complaints filed and the progress or conclusions of investigations. Monthly reports will be made in the interim and each Committee will make an annual report to the Legislature and the public by February 1 of each year.

DEFINITIONS:

All definitions used in this chapter must be carefully drafted to be as specific and clear as possible. Examples will be given where useful. Please add definitions, examples and categories which you feel need to be included.

Some of the definitions which will need close attention are:

HOUSEHOLD: This term should be very tightly defined to include the family of a legislator, their immediate relatives, live-in lovers, etc.

BUSINESS ASSOCIATES: This also needs a careful definition to cover businesses in which the legislator or his "household" has any direct, indirect or contingent interest;

COMPENSATION: Again, a careful definition needed. Should include offers of jobs or benefits in the future, grants of confidential information, opportunities or permits; also, of course, any present payments or benefits, in whatever form.

PLEASE NOTE THAT THIS IS A WORK DRAFT FOR DISCUSSION ONLY.

PLEASE CONTACT VIC FISCHER OR LEWIS SCHNAPER AT 4954 WITH YOUR COMMENTS OR SUGGESTIONS.

REPRESENTATIVE RANDY

phillips

HOUSE DISTRICT 15

TO: NCSL STAFF

FROM: REP. RANDY PHILLIPS
CO-CHAIRMAN
JOINT SPECIAL COMMITTEE ON
LEGISLATIVE REFORM

RE: REFORM

DATE: FEB. 28, 1983

Attached is a copy of my seventh annual legislative questionnaire and a copy of the comments section for the questions concerning the Twelfth Legislature and Code of Ethics. I thought you might like to know what the voters of my district feel on these matters.

REPRESENTATIVE
JOE FLOOD
3423 WEST 79TH
ANCHORAGE, ALASKA 99502
(907) 243-7511

MEMBER
FINANCE COMMITTEE

DISTRICT 9
SOUTHWEST ANCHORAGE

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4937

STAFF COUNSEL
MARK K. JOHNSON

House of Representatives

February 25, 1983

The Honorable Jan Faiks, Chairman
Special Committee for Legislative Reform
C-101

Dear Senator Faiks:

"The effectiveness of a Legislature depends largely on the effectiveness of its standing (and a few special) committees. Consequently, one thrust of legislative reformers has been the improvement of the standing committee systems throughout the United States", that's according to Alan Rosenthal of the Eagleton Institute of Politics at Rutgers University, along with staff from the American Institute of Applied Politics in Salt Lake City, Utah.

The orthodoxy of committee reform is customarily as follows: reduce the number of standing committees; reduce the number of committee assignments for legislators; increase professional staff support for committees; make committee procedures more democratic and more efficient; and provide adequate facilities for committee members, committee meetings and hearings.

A contemporary textbook on the legislative process correctly observes: "The factors which affect the capacity of committees to maintain themselves and to achieve influence in the legislative system are not fully known." (William J. Keefe, The American Legislative Process)

So it seems to me, that one of the objectives of the Special Committee on Legislative Reform, is to identify factors that affect legislative committees, determine their influence, and shape their performance. The committee should examine what standing committees are expected to do for their legislatures, what they in fact do for their legislatures, and what helps and hinders them in accomplishing the tasks they set for themselves and the job expected of them. All this will require careful inquiry into our standing committee systems and our legislative performance.

The committee system is the best method that legislators have been able to devise to provide careful and discriminating scrutiny of proposed legislation and legislative oversight of executive agencies. Yet, few state legislatures have really heeded it. Hardly any of us have developed our committee systems to a considerable degree; hardly any of us have standing committees at all comparable to those of the U.S. Congress. But maybe that's the direction we should head.

Sincerely,

Joe Flood
State Representative

JF/tl

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

M E M O R A N D U M

February 25, 1983

TO: Special Committee on Legislative Reform
Senator Jan Faiks, Co-Chair
Representative Randy Phillips, Co-Chair

Senator Tim Kelly — Representative Barbara Lacher
Senator Bill Ray — Representative M.M. Miller

FROM: Senator Arliss Sturgulewski
Senate District F, Seat A

RE: Legislative Reform

You have asked for suggestions regarding areas of possible legislative reform. I am responding to that request by outlining areas of needed reform that I see as being of the utmost critical nature.

1. Letter of intent. A joint rule is needed to clarify the apparent problem as to the appropriate time to adopt a letter of intent. Both the attorney general and legislative legal council have issued advisory opinions on this subject.

2. Conflict of interest. On December 3, 1982, Wilson Condon, then Attorney General, issued an opinion on conflict of interest. The potential impacts of that opinion are sweeping. Mr. Condon made a point of saying that even where Alaska Statutes are not explicit, common law traditions can and should be enforced when conflicts of interest appear to exist. This sweeping opinion has serious potential impact on many public officials. Clarification of standards as to common law application seems imperative.

3. Clarification of the term "minority". The present situation that exists in the State Senate is, apart from being patently in violation of the Rules, ludicrous. When eight members of a twenty member body state themselves to be a minority, elect leadership to represent the minority and further hold frequent caucus meetings as a minority, it is amazing that recognition is not made of that minority. Lack of proportional, and in one glaring case, lack of any, representation on a major committee does a disservice to the people of Alaska who have a right to representation of all voices

on committees dealing with items of vital public concern. Access to unbiased research and information as well as adequate staffing and other basic accommodations are basic requirements.

4. Establishment of the Senate Advisory Council by a concurrent resolution. I find it incredible that major amounts of public funds are being expended for a Senate Advisory Council which has not been established under any official action except the appropriation process. No minority representation is reflected on the Senate Advisory Council's governing board of Senators. There is no clear set of rules outlining procedures and processes to be utilized by the Council. There is no evidence that all members of the body have equal access to the resources of the Council. Although I strongly support a joint legislative research agency, I feel as a minimum that the current Senate Advisory Council must be established by resolution.

5. Legislative office space. Attached for your review is a memorandum I wrote to Representative Hugh Malone during his chairmanship of the Legislative Council, indicating the need for clarification of authority between the Legislative Council and the Rules Committee as to allocation of space. I feel the issues raised in the memo merit attention.

6. Legislative Council control of expenditures. The current practice of handling "leadership funds" outside of the control and action of the Legislative Council seems clearly illegal and is to the total detriment of an open process. I see nothing in AS 24.05.200 Administrative Services and AS 24.05.210 Legislative Operating Expenses, or AS 25.20.130 dealing with Legislative Council Budgets and AS 24.21.40 dealing with Legislative Council Appropriations which in any way point to the ability to delegate to the "leadership" the handling of funds assigned to the Legislative Council. Clarification of this issue is needed.

7. Unified salary schedules. There should be clearly defined personnel standards for all employees of the various divisions of the legislature as well as legislative staff employees. At the present time, this is not the case.

In the event you plan to deal with budget reform, I would appreciate the opportunity to share with you a number of positive ideas for change.

Thank you for the opportunity to give suggestions to your committee. I would hope that my comments are of some value in your consideration.

Enclosure

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

ROOM 503
CAPITOL BUILDING
POUCH V
JUNEAU, ALASKA 99811

907-465-3818
907-465-3810

M E M O R A N D U M

August 12, 1982

TO: Representative Hugh Malone, Chairman
Legislative Council

FROM: Senator Arliss Sturgulewski, Chairman
Legislative Budget and Audit Committee

RE: Legislative Space

A July 16 letter by Mr. Charney, Director of the Legislative Affairs Agency, to Mr. Jay Hogan, Director of the Legislative Finance Division, clearly lays out the responsibilities for assignment of legislative office space. Written at the direction of the Legislative Council, the letter references the respective authorities of the Council during the interim and the two Rules Committees during the session. The relationship between the Council and the Rules Committees, however, lacks definition, which has lead to problems in the space allocation process, both now and in the past.

I urge the Council to take this opportunity to clarify the authority of, and relationship between, the Council and Rules Committees. Among the issues that need resolution are the following:

° The "continuity" of the allocation decisions made by each body. That is, are space assignments made by the Rules Committee only in effect during the session, or is the Council bound by Rules Committee decisions year-round? Is the Council's authority over space limited only to the interim?

° What is the scope of authority of each? Rule 12 states that the Rules Committees control the assignment of "legislative offices" during the session. Does this include offices of legislative agencies, such as the Ombudsman and Code Revision Commission in addition to the Legislative Affairs Agency and the Divisions of the Legislative Budget and Audit Committee? Or is that authority limited to offices related to each respective house of the legislature, with legislative agencies remaining under Council jurisdiction?

° Which agency has the authority to contact the executive and judicial branches of government regarding negotiations for legislative space needs? Is there any mechanism for the "joint" exercise of Rules

Committee authority or can a single committee enter into negotiations affecting both houses with another branch of government?

° How are those agencies with ongoing space requirements to be assured of consistent treatment? The Legislative Affairs Agency (including Legal Services, Information Services, Print Shop, Maintenance, Supply and other divisions), Ombudsman's Office, Code Revision Commission, the research agencies, Legislative Audit Division, Finance Division and the Budget and Audit Committee all have responsibilities which require year-round office space. Is there any means of assigning these agencies office space on an annual basis, with the apparent separation of Council and Rules Committee jurisdictions?

Based on past events, the pressure for additional office space will increase, exacerbating the "space wars" which the legislature is subjected to each year. In order to encourage a more orderly assignment of office space, I strongly support the Council's control of space assignments and I would encourage the Council to take a more direct role in the allocation of legislative space. One priority could be the development of an overall policy toward the space in various buildings occupied by the legislature. The ideal situation, of course, would be the permanent assignment of office space for the several committees, hearing rooms and staff functions. This would help eliminate the disruptive scramble for office space that occurs at the start of each session.

Given the fragmented authority for space assignment, neither Council nor the Rules Committees are able to consider the long-range needs for legislative office space. As a second priority for Council action, I urge the Council to project legislative space requirements for the next three to five years, and develop a plan for meeting the legislature's growing space needs. (The various capital relocation cost studies provide projections of legislative space needs and could be used as a starting point.) There could be a very critical need for office space in Juneau in the near future, and alternative means of meeting those requirements need to be present for Council action. The relocation of executive and/or court facilities could be involved, which will require sufficient advance notice to those agencies so that they can also find alternative space.

In short, I think that the whole question of how the legislature allocates space needs to be addressed, and I would support changes to the current situation which result in a more equitable, consistent and predictable system of managing legislative space.

cc: All Council Members

Alaska State Legislature

JUNEAU, ALASKA

February 24, 1983

Norman C. Gorsuch
Attorney General
State of Alaska
Pouch K
Juneau, AK 99811

Dear Mr. Gorsuch:

The House and the Senate have established a Joint Committee on Legislative Reform. The first priority of the Committee is to address the conflict of interest issue and to recommend changes in the statutes to the full Legislature.

The Committee would like to work closely with your office on this matter and would appreciate any recommendations you might have for changes in the law that would clarify standards of conduct for all state officers and employees.

Time constraints mandate that we proceed with this issue as rapidly as possible. May we have your recommendations by March 3, 1983?

Sincerely,

/s/
Senator Jan Faiks
Co-Chairman

/s/
Representative Randy Phillips
Co-Chairman

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

February 21, 1983

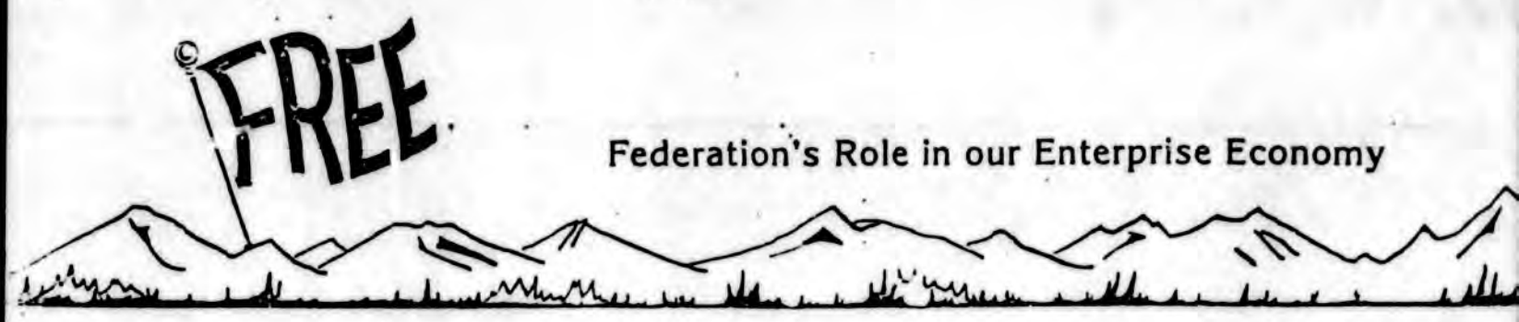
To: Representative Randy Phillips

From: Senator Jan Faiks JBoortoff for Faiks

Re: Conflict of Interest Legislation

Attached are documents related to the study done by the GFWC Anchorage Women's Club FREE Committee:

1. FREE cover letter
2. Draft of suggestions
3. Memo from Richard Bradley, Legislative Counsel, relating to the proposed legislation.
4. Senate CS for CS for House Bill No.154, An Act relating to financial disclosure; and providing for an effective date, offered 4/13/82.



January 18, 1983

Senator Jan Faiks
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Tom Jahnke
AG's office
3400
conflict of interest

Dear Senator Faiks:

The FREE Committee has recently completed a careful review of the ethics and conflict of interest laws in all 50 states and based upon that review has identified several areas that should be addressed in any ethics legislation considered by the Legislature. Enclosed is a copy of suggested changes to the existing Alaska law. These suggestions reflect our concern about public officials obtaining state loans and state contracts, using information not readily available to the public, using public office to raise funds, and other activities.

In developing its recommendations, the FREE Committee was also concerned that amendments to the present law not become so restrictive that good legislators with other sources of income be prohibited from serving the public. Therefore, we suggest that public officials not be prohibited from obtaining loans or contracts from the state, so long as suggested safeguards are incorporated.

We also believed that public officials have the right to expect that criminal violations be clearly defined so that ethical problems can be avoided. With these things in mind, the Committee drafted language which if adopted would more clearly identify problem areas and which would provide for binding Attorney General opinions where the law is not clear. This procedure has been used in several jurisdictions, including Oregon.

One approach the Committee rejected deserves mention because some legislators have considered it attractive. Several states created a new commission whose sole purpose is to evaluate and investigate legislator activities for conflicts and to recommend action. The Committee rejected this idea for three reasons. First, since conflicts are treated as criminal violations, this duplicates the grand jury system, unduly lengthens the process, and may violate someone's constitutional rights. Second, we are opposed to creating new governmental bodies if other less expensive and complicated approaches would provide the same or better results. Third, this could result in politically motivated investigations.

While the remaining suggested amendments are clear, three other areas should be briefly mentioned. The bribery statute should be amended to clearly cover actions taken in exchange for promises of future employment. The Committee also suggests that anyone convicted of a felony should be prohibited from holding office and if the individual is already a legislator, he or she should be automatically expelled. Finally, there is one more modern concern which the present conflict of interest statute does not address. Many unmarried people are now living together, for tax or other reasons. Conflicts of interest involving these persons are also covered by the proposed amendments.

The Committee carefully weighed its options for promoting these changes. With the Legislature already in session and several legislators already proposing changes to the existing law, timing becomes crucial. Since your committee is involved with legislative reform and we are aware that you are actively considering alternatives, we believe that you are the appropriate person to contact. We urge you to consider these recommendations and introduce them. If you have any questions about the recommendations or the research, please feel free to contact me.

Sincerely,

Daniel L. Knapp

13-0599
Bradley
2/2/83

IN THE SENATE BY THE RULES COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to financial disclosure; and providing for an effective date."

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

* Section 1. AS 39.50.030(a) is amended to read:

(a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of the [HIS] family and of the household of the public official or candidate, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. An asset or liability under $1,000 [$500], household goods, and personal effects need not be identified.

* Sec. 2. AS 39.50.030(b) is amended to read:

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over $500 [$100], including capital gains, whether or not taxable, received by the public official or candidate or by a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the preceding calendar year;

(2) the identity, by name and address, of each business in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH

HIM] was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by the public official or candidate or by a member of the family or of the household of a public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF

HIS WHO IS LIVING WITH HIM] owed $500 or more;

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM, HIS SPOUSE, DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the public official or candidate or a member of the family or of the household of a public official or candidate [HIM, A DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest.

* Sec. 3. AS 39.50.090 is repealed and reenacted to read:

Sec. 39.50.090. PROHIBITED ACTS. (a) The official position or office of a public official may not be used for the primary purpose of obtaining financial gain, special privileges, exemptions, or compensa-

tion for the benefit of the public official or for the benefit of a member of the family or of the household of the public official or for the benefit of a business with which the public official or a member of the family or of the household of the public official is associated or owns stock.

(b) A public official and a former public official may not disclose information that by law or regulation is not available to a member of the public and that the public official or employee of the legislature acquired during the course of official duties for the personal gain or benefit of the public official or anyone else.

(c) Violation of a provision of (a) or (b) of this section is a class C felony.

(d) The provisions of (a) and (b) of this section do not preclude a member of the legislature from introducing, advocating, or voting for legislation that affects the public generally or that affects a specific class of individuals of which the member of the legislature or a member of the family or of the household of a member of the legislature is a member.

(e) A person may not offer or pay to a public official and a public official may not solicit or receive money for advice or assistance given in the course of the public office or employment of the public official. Each member of a state commission or board who is a full-time public official of the state and each municipal officer who serves as a full-time employee with the municipality may not solicit or receive money for advice or assistance if the subject matter of the advice or assistance is related to the function of the commission, board, or municipality.

(f) A full-time public official of the state may not represent a client before a state agency for a fee. Each member of a state

commission or board who is not a full-time employee of the state may represent a client before a different commission or board for a fee.

(g) A municipal officer may not represent a client for a fee before the municipal body that the municipal officer serves.

(h) A former public official may not within 12 months after termination of office or employment assist any person or act in a representative capacity for a fee or other consideration on a matter in which the public official personally participated as a public official. This subsection does not prohibit any agency from contracting with a former public official and does not prevent a public official from appearing before the public agency in regard to the office or employment.

(i) A public official may not apply for a loan from a state agency unless the application is simultaneously filed with the commission. A state agency may not approve a loan to a public official who fails to file the application with the commission and a state agency may not grant special consideration to the application of a public official.

(j) A public official, a member of the family or of the household of a public official, and a business with which the public official or the member of the family or of the household of a public official is associated may not enter into a contract with the state valued at $100 or more unless the contract is awarded under competitive bidding. A member of the legislature shall simultaneously file the offer to contract with the commission; if the offer to contract is a sealed bid, the commission may not open the offer to contract until after the offer to contract has been opened by the agency receiving the offer to contract. A state agency may not award a contract to a public official or to a person known to be a member of the family or

of the household of a public official or to a business that is associated with the public official or with a member of the family or of the household of a public official unless the offer to contact is filed with the commission.

(k) A member of the legislature and a person acting on behalf of a member of the legislature and a member of the family or of the household of a member of the legislature may not solicit or accept funds for political contributions to the campaign treasury of the member of the legislature during a legislative session.

(l) A violation of AS 39.50.090(e) - (k) is a class A misdemeanor.

(m) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), each member of a commission or board established by law as an agency of the state.

* Sec. 4. AS 39.50 is amended by adding a new section to read:

Sec. 39.50.095. ADVICE FROM ATTORNEY GENERAL. A public official, a member of the family or of the household of a public official, and a business with which the public official is associated that is concerned whether action may constitute a violation of this chapter may request the attorney general to determine whether a violation would exist under the situation presented in the request. The attorney general shall issue the determination within 30 days of the receipt of the request; if the attorney general does not issue a determination within 30 days of the request, the situation as presented in the request does not constitute a violation of this chapter.

* Sec. 5. AS 39.50.200(a)(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the

[HIS] employer of the person is the source of the [HIS] income; but if the person [HE] is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person or a member of the family or of the household of the person [HE OR HIS SPOUSE OR HIS CHILDREN], or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are [CONSIDERED] the source;

* Sec. 6. AS 39.50.200(a) is amended by adding new paragraphs to read:

(10) "member of the household" means

(A) a person whose permanent address is the same as the permanent address of the public official; and

(B) a person who actually resides in the household of the public official;

(11) "member of the family" means a spouse, mother, father, a mother or father of a spouse, child, and brother or sister of a public official.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM February 2, 1983

SUBJECT: Legislative reform
(Work Order No. 13-0599)

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Richard A. Bradley
Legislative Counsel

I have prepared the attached bill consistently with your request to the extent possible. But to the extent that the request suggests the content of bills that may not be dealt with by a bill or which if included in this bill might violate the single subject requirements of the constitution, I have omitted those items. I will identify those issues for your consideration.

In my view, the thrust of the bill is basically a broadening of the coverage of financial disclosure statements required by AS 39.50; the bill therefore concerns "financial disclosure".

One observation should perhaps be made, though a person such as a legislator who has filed financial disclosure statements will understand it.

While the legislature may require a public official to file a financial disclosure statement and may require that information concerning members of the family of household be included, the constitutional right of privacy and practical realities cannot oblige a person who is not a public official to make information available to the public official for inclusion in the report. There will, therefore, inevitably be gaps in the information disclosed as to the kin of the public official and the provisions of sec. 30(a) acknowledges this fact. I mention this only so that it will be clear that there are practical limits to legislative power in this area.

One other problem with the existing structure of AS 39.50.030 that your request does not address should be noted. There is tension between the requirement in sec. 30(a) that "assets and liabilities (over) $500" be listed and the requirement in sec. 30(b) that items which constitute in fact "assets and liabilities" be listed without regard to value or when the value exceeds either $100 or $500.

The question has been addressed in the past by eliminating the phrase "assets and liabilities" in sec. 30(a). See, for example, SCS CSHB 154 (Finance).

Apart from the changes to the language of sec. 30 required by Chapter 58, SLA 1982, I have followed the language in your draft.

The drafting of AS 39.50.090 was more difficult. In the amendment to existing sec. 90(a), I added the suggested phrase "special privileges, exemptions, or compensation" to the existing "financial gain". I suggest, however, that the material added adds little, if anything, to the section. As a matter of legislative drafting and logic, a broader coverage is almost inevitably better achieved by a single generic phrase than by a series of narrower particular phrases. In my view, "financial gain" is likely to cover everything that a corrupt public official is likely to do wrong.

In sec. 90(a), the usage of "associated" in the last sentence is weak.

The concern that the prohibitions not inhibit legislative activity is included but seems unnecessary. No bill on any subject may deprive a legislator of the constitutionally granted prerogative of using legislative office properly; abuse of legislative office is appropriately dealt with in the section. The proviso from the draft is moved to new sec. 90(d).

The request of the draft that public officials not disclose information not available generally for personal gain is included as new sec. 90(b).

I have deleted the portion of the request that deals with "legislative employees" for several reasons.

I have not added them to the bill because they do not fit within a chapter dealing with "financial disclosure". The bill would not have imposed any financial disclosure requirements on them and thus the concept was inappropriate here.

But more to the point, there is an existing burden of confidentiality on employees of the Legislative Affairs Agency in the law establishing the agency (AS 24.20.100). And, of course, there is an existing prohibition against use of confidential information for personal gain in the criminal code: see AS 11.56.860.

If you wish to have that question dealt with legislatively in a fashion different from the existing treatment, I suggest a separate bill.

The provisions of sec. 90(c) are dealt with in new sec. 90(e). The section as originally written was awkward with "exceptions from general prohibitions" and other problems. I have rewritten the section and achieved your goals; here, as before, I eliminated the references to "legislative employees".

Existing sec. 90(f) was renumbered as new sec. 90(g).

New sec. 90(h) is essentially as requested; I suggest that it is not tightly drafted and does not constitute reform of existing law. A more usual "revolving door" prohibition deals with the problem in two particulars: (1) it establishes a lifetime prohibition on matters actually worked on; and (2) it establishes a one year (or similar) prohibition on contacts with the agency.

The bill would permit use of inside information on an item actually worked on after one year. You may wish to review this rule again.

The provisions regarding loans are slightly modified and, I think, improved.

The prohibition against contributions to a member of the legislature during the session is clarified.

The provision permitting advice from the attorney general is included.

With regard to definitions, I have modified the definition of "source of income" as requested. I defined "member of the household" and "member of the family" as suggested. I have not added "legislative employee" for reasons suggested earlier and I have not added "financial gain" because the definition clarifies nothing in the meaning of the term.

I have suggested an immediate effective date.

The remaining aspects of the request are not included in this bill.

The revision to the bribery statute should be included in a separate bill. I suspect that the amendment suggested is unnecessary because a "promise of future employment" is not excluded under AS 11.56.120. It seems clearly within the definition of "benefit". But I would prefer to defer that very technical question to a request on that subject.

Finally, your request asked for inclusion of language dealing with exclusion of a member of the legislature on conviction of a felony apart from the disqualification existing under the interaction of Article II, section 2 and Article V, section 2. Two problems exist:

(1) Your first goal appears to broaden the categories of felonies (to all felonies) which constitute a disqualification for voting and therefore for elective office. There may be some difficulties with that goal.

Article V of the constitution regulates voting and provides that

> Every citizen of the United States who is at least 18 years of age, who meets the registration residency requirements which may be prescribed by law, and who is qualified under this article, may vote in any state or local election. Article V, section 1.

The disqualification on an individual for conviction of a felony involving moral turpitude is part of Article V, section 2 and therefore is a disqualification "under this article". But if the legislature seeks to establish further disqualifications on the right to vote, the added disqualification is not found "under this article" and therefore seems to constitute a

violation of the rather clear language of section 1 of Article V.

Since a person is eligible for election to the legislature if the person is a "qualified voter" who meets the other constitutional requirement of Article II, section 2, I would conclude that the legislature may not by law add additional requirements for election to legislative office.

The suggested amendment to AS 24.50.060 would therefore be unconstitutional.

(2) The second suggestion is that a person "convicted of a felony shall be expelled".

If the suggestion is that the house of the legislature in which this felon sits may expel the member, the amendment is unnecessary: the legislature may expel a person for less than a felony, assuming due process has been complied with. But if it suggests that the house of the legislature must expel a member on conviction, then the suggestion constitutes a concept inconsistent with the existing language of Article II, section 12, of the constitution which permits but does not require the expulsion of a member; the expulsion occurs only on the "concurrence of two-thirds of its members". Any statutory provision requiring automatic expulsion is therefore inconsistent with Article II, section 12.

In summary, I have provided you under this work order request with a bill amending the "financial disclosure" laws.

In my view, there is no need to add "legislative employees" to the bill because existing law achieves your stated goals.

And provisions relating to either qualifications to vote or to expulsion of a member of the legislature may be dealt with only by constitutional amendment and those concepts may not be added to this bill.

If I may assist further, please advise.

RAB:ljb

Attachment

Offered: 4/13/82
Referred: Rules

Original sponsor: Rules Committee

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 154 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to financial disclosure; and providing for an effective date."

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

* Section 1. AS 39.50.020(a) is amended to read:

(a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, person appointed as assistant to the governor, and a municipal officer, shall file a statement giving [HIS] income sources and business interests, under oath and on penalty of perjury, within 30 days after taking [HE TAKES] office as a public official. An individual who files a declaration of candidacy or a nominating petition or who becomes a candidate by any other means for state elective office between January 1 and April 15 shall file the statement no later than April 15. An individual who becomes a candidate [CANDIDATES] for state elective office after April 15 shall file the [SUCH A] statement at the time of filing a declaration of candidacy or within 30 days of the filing of a [ANY] nominating petition, or within 30 days of becoming a candidate by any other means. If an individual files or becomes a candidate for state elective office during a calendar year other than the year in which the election is held, the individual shall file an updated statement on or before April 15 of each succeeding year that the individual remains a candidate. Candidates for elective municipal office shall file the [SUCH A] statement at the time of filing a

nominating petition, declaration of candidacy, or other required filing for the elective municipal office. A public official who has a current statement on file with the commission who files for state elective office is not required to file a statement at the time the public official becomes a candidate. A municipal officer who has a current statement on file with the municipality who files for state elective office shall file a copy of the statement with the commission. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that the candidate's [HIS] previously accepted filing fee be returned and the [HIS] name of the candidate be removed from the filing records. A statement shall also be filed by public officials no later than April 15 [OR 15 DAYS AFTER THE PERSON FILES HIS FEDERAL INCOME TAX RETURN] in each following year [, WHICHEVER SHALL COME FIRST]. Persons who are [, ON OR AFTER DECEMBER 11, 1974, WERE] members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

* Sec. 2. AS 39.50.030(a) is repealed and reenacted to read:

(a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the information specified in this section concerning each member of the family of the public official or candidate to the extent that the information is ascertainable by the public official or candidate. Household goods and personal effects need not be identified.

* Sec. 3. AS 39.50.030(b) is amended to read:

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over $5,000 [$100], including capital gains, whether or not taxable, received by the public official or candidate [HIM] or by the [HIS] spouse or dependent child of the

public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the preceding calendar year;

(2) the identity, by name and address, of each business in which the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM] was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by the public official or candidate [HIM] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by the public official or candidate [HIM] or by the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee over $5,000 made to the public official or candidate [HIM] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the identity of the maker of the loan or loan

guarantor and the identity of each creditor to whom the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM] owed over $5,000 [$500 OR MORE];

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by the public official or candidate, the [HIM, HIS] spouse or [,] dependent child of the public official or candidate [HIS] or the nondependent child [OF HIS] who is living with the public official or candidate, the [HIM, HIS] mother or father of the public official or candidate, or a partnership or professional corporation of which the public official or candidate [HE] is a member, or a corporation in which the public official or candidate [HE] or the [HIS] spouse or [HIS] children of the public official or candidate, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the public official or candidate, the spouse or [HIM, A] dependent child of the public official or candidate [HIS] or the nondependent child living with the public official or candidate, the [OF HIS WHO IS LIVING WITH HIM, HIS] mother or father of the public official or candidate, or a partnership or professional corporation of which the public official or candidate [HE] is a member, or a corporation in which the public official or candidate [HE] or the [HIS] spouse or the [HIS] children of the public official or candidate, or a combination of them, hold a controlling interest;

(9) any other asset or liability valued at over $5,000.

* Sec. 4. AS 39.50.030 is amended by adding new subsections to read:

(d) A public official, a candidate for state elective office, or a

candidate for elective municipal office who is licensed under AS 08.20, AS 08.32, AS 08.36, AS 08.64, AS 08.68, AS 08.71, AS 08.72, AS 08.80, AS 08.84, or AS 08.86 is not required to report the name of a person who is a patient, client, or customer of the public official or candidate or a patient, client, or customer of an entity that is a source of income to the public official or candidate.

(e) A gift from a spouse, child, mother or father, brother or sister, grandparent, or grandchild does not need to be reported under this section.

* Sec. 5. AS 39.50.200(a)(6) is amended to read:

(6) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, <u>charter commission member</u>, members of a city or borough planning or zoning commission within a home rule or general law city or borough, including but not limited to a unified municipality under AS 29.68;

* Sec. 6. AS 39.50.200(a) is amended by adding a new paragraph to read:

(10) "elective municipal office" means the office of borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, charter commission member, city or borough planning or zoning commission member within a home rule or general law city or borough, including but not limited to a unified municipality under AS 29.68.

* Sec. 7. AS 39.50.030(d) added by sec. 4 of this Act is retroactive to January 1, 1982.

* Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1983.

* Sec. 9. Sections 5 - 6 of this Act take effect July 1, 1982.

* Sec. 10. Sections 4 and 7 of this Act take effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 2, 1983

SUBJECT: Legislative reform
(Work Order No. 13-0599)

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Richard A. Bradley
Legislative Counsel

I have prepared the attached bill consistently with your request to the extent possible. But to the extent that the request suggests the content of bills that may not be dealt with by a bill or which if included in this bill might violate the single subject requirements of the constitution, I have omitted those items. I will identify those issues for your consideration.

In my view, the thrust of the bill is basically a broadening of the coverage of financial disclosure statements required by AS 39.50; the bill therefore concerns "financial disclosure".

One observation should perhaps be made, though a person such as a legislator who has filed financial disclosure statements will understand it.

While the legislature may require a public official to file a financial disclosure statement and may require that information concerning members of the family of household be included, [redacted] there will, therefore, inevitably be gaps in the information disclosed as to the kin of the public official and the provisions of sec. 30(a) acknowledges this fact. I mention this only so that it will be clear that there are practical limits to legislative power in this area.

One other problem with the existing structure of AS 39.50.030 that your request does not address should be noted. There is tension between the requirement in sec. 30(a) that "assets and liabilities (over) $500" be listed and the requirement in sec. 30(b) that items which constitute in fact "assets and liabilities" be listed without regard to value or when the value exceeds either $100 or $500.

The question has been addressed in the past by eliminating the phrase "assets and liabilities" in sec. 30(a). See, for example, SCS CSHB 155 (Finance).

Apart from the changes to the language of sec. 30 required by Chapter 58, SLA 1982, I have followed the language in your draft.

The drafting of AS 39.50.090 was more difficult. In the amendment to existing sec. 90(a), I added the suggested phrase "special privileges, exemptions, or compensation" to the existing "financial gain". I suggest, however, that the material added adds little, if anything, to the section. As a matter of legislative drafting and logic, a broader coverage is almost inevitably better achieved by a single generic phrase than by a series of narrower particular phrases. In my view, "financial gain" is likely to cover everything that a corrupt public official is likely to do wrong.

In sec. 90(a), the usage of "associated" in the last sentence is weak.

The concern that the prohibitions not inhibit legislative activity is included but seems unnecessary. No bill on any subject may deprive a legislator of the constitutionally granted prerogative of using legislative office properly; abuse of legislative office is appropriately dealt with in the section. The proviso from the draft is moved to new sec. 90(d).

The request of the draft that public officials not disclose information not available generally for personal gain is included as new sec. 90(b).

I have deleted the portion of the request that deals with "legislative employees" for several reasons.

I have not added them to the bill because they do not fit within a chapter dealing with "financial disclosure". The bill would not have imposed any financial disclosure requirements on them and thus the concept was inappropriate here.

But more to the point, there is an existing burden of confidentiality on employees of the Legislative Affairs Agency in the law establishing the agency (AS 24.20.100). And, of course, there is an existing prohibition against use of confidential information for personal gain in the criminal code: see AS 11.56.860.

If you wish to have that question dealt with legislatively in a fashion different from the existing treatment, I suggest a separate bill.

The provisions of sec. 90(c) are dealt with in new sec. 90(e). The section as originally written was awkward with "exceptions from general prohibitions" and other problems. I have rewritten the section and achieved your goals; here, as before, I eliminated the references to "legislative employees".

Existing sec. 90(f) was renumbered as new sec. 90(g).

New sec. 90(h) is essentially as requested; I suggest that it is not tightly drafted and does not constitute reform of existing law. A more usual "revolving door" prohibition deals with the problem in two particulars: (1) it establishes a lifetime prohibition on matters actually worked on; and (2) it establishes a one year (or similar) prohibition on contacts with the agency.

The bill would permit use of inside information on an item actually worked on after one year. You may wish to review this rule again.

The provisions regarding loans are slightly modified and, I think, improved.

The prohibition against contributions to a member of the legislature during the session is clarified.

The provision permitting advice from the attorney general is included.

With regard to definitions, I have modified the definition of "source of income" as requested. I defined "member of the household" and "member of the family" as suggested. I have not added "legislative employee" for reasons suggested earlier and I have not added "financial gain" because the definition clarifies nothing in the meaning of the term.

I have suggested an immediate effective date.

The remaining aspects of the request are not included in this bill.

The revision to the bribery statute should be included in a separate bill. I suspect that the amendment suggested is unnecessary because a "promise of future employment" is not excluded under AS 11.56.120. It seems clearly within the definition of "benefit". But I would prefer to defer that very technical question to a request on that subject.

Finally, your request asked for inclusion of language dealing with exclusion of a member of the legislature on conviction of a felony apart from the disqualification existing under the interaction of Article II, section 2 and Article V, section 2. Two problems exist:

(1) Your first goal appears to broaden the categories of felonies (to all felonies) which constitute a disqualification for voting and therefore for elective office. There may be some difficulties with that goal.

Article V of the constitution regulates voting and provides that

> Every citizen of the United States who is at least 18 years of age, who meets the registration residency requirements which may be prescribed by law, and who is qualified under this article, may vote in any state or local election. Article V, section 1.

The disqualification on an individual for conviction of a felony involving moral turpitude is part of Article V, section 2 and therefore is a disqualification "under this article". But if the legislature seeks to establish further disqualifications on the right to vote, the added disqualification is not found "under this article" and therefore seems to constitute a

violation of the rather clear language of section 1 of Article V.

Since a person is eligible for election to the legislature if the person is a "qualified voter" who meets the other constitutional requirement of Article II, section 2, I would conclude that the legislature may not by law add additional requirements for election to legislative office.

The suggested amendment to AS 24.50.060 would therefore be unconstitutional.

(2) The second suggestion is that a person "convicted of a felony shall be expelled".

If the suggestion is that the house of the legislature in which this felon sits may expel the member, the amendment is unnecessary: the legislature may expel a person for less than a felony, assuming due process has been complied with. But if it suggests that the house of the legislature must expel a member on conviction, then the suggestion constitutes a concept inconsistent with the existing language of Article II, section 12, of the constitution which permits but does not require the expulsion of a member; the expulsion occurs only on the "concurrence of two-thirds of its members". Any statutory provision requiring automatic expulsion is therefore inconsistent with Article II, section 12.

In summary, I have provided you under this work order request with a bill amending the "financial disclosure" laws.

In my view, there is no need to add "legislative employees" to the bill because existing law achieves your stated goals.

And provisions relating to either qualifications to vote or to expulsion of a member of the legislature may be dealt with only by constitutional amendment and those concepts may not be added to this bill.

If I may assist further, please advise.

RAB:ljb

Attachment

Offered: 4/13/82
Referred: Rules

Original sponsor: Rules Committee

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 154 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to financial disclosure; and providing for an effective date."

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

* Section 1. AS 39.50.020(a) is amended to read:

(a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, person appointed as assistant to the governor, and a municipal officer, shall file a statement giving [HIS] income sources and business interests, under oath and on penalty of perjury, within 30 days after <u>taking</u> [HE TAKES] office as a public official. <u>An individual who files a declaration of candidacy or a nominating petition or who becomes a candidate by any other means for state elective office between January 1 and April 15 shall file the statement no later than April 15. An individual who becomes a candidate</u> [CANDIDATES] for state elective office <u>after April 15</u> shall file <u>the</u> [SUCH A] statement at the time of filing a declaration of candidacy or within 30 days of the filing of <u>a</u> [ANY] nominating petition, or within 30 days of becoming a candidate by any other means. <u>If an individual files or becomes a candidate for state elective office during a calendar year other than the year in which the election is held, the individual shall file an updated statement on or before April 15 of each succeeding year that the individual remains a candidate.</u> Candidates for elective municipal office shall file <u>the</u> [SUCH A] statement at the time of filing a

nominating petition, declaration of candidacy, or other required filing for the elective municipal office. A public official who has a current statement on file with the commission who files for state elective office is not required to file a statement at the time the public official becomes a candidate. A municipal officer who has a current statement on file with the municipality who files for state elective office shall file a copy of the statement with the commission. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that the candidate's [HIS] previously accepted filing fee be returned and the [HIS] name of the candidate be removed from the filing records. A statement shall also be filed by public officials no later than April 15 [OR 15 DAYS AFTER THE PERSON FILES HIS FEDERAL INCOME TAX RETURN] in each following year [, WHICHEVER SHALL COME FIRST]. Persons who are [, ON OR AFTER DECEMBER 11, 1974, WERE] members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

* Sec. 2. AS 39.50.030(a) is repealed and reenacted to read:

(a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the information specified in this section concerning each member of the family of the public official or candidate to the extent that the information is ascertainable by the public official or candidate. Household goods and personal effects need not be identified.

* Sec. 3. AS 39.50.030(b) is amended to read:

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over $5,000 [$100], including capital gains, whether or not taxable, received by the public official or candidate [HIM] or by the [HIS] spouse or dependent child of the

public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the preceding calendar year;

(2) the identity, by name and address, of each business in which the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM] was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by the public official or candidate [HIM] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by the public official or candidate [HIM] or by the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee over $5,000 made to the public official or candidate [HIM] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the identity of the maker of the loan or loan

guarantor and the identity of each creditor to whom the public official or candidate [HE] or the [HIS] spouse or dependent child of the public official or candidate [HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM] owed over $5,000 [$500 OR MORE];

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by the public official or candidate, the [HIM, HIS] spouse or [,] dependent child of the public official or candidate [HIS] or the nondependent child [OF HIS] who is living with the public official or candidate, the [HIM, HIS] mother or father of the public official or candidate, or a partnership or professional corporation of which the public official or candidate [HE] is a member, or a corporation in which the public official or candidate [HE] or the [HIS] spouse or [HIS] children of the public official or candidate, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the public official or candidate, the spouse or [HIM, A] dependent child of the public official or candidate [HIS] or the nondependent child living with the public official or candidate, the [OF HIS WHO IS LIVING WITH HIM, HIS] mother or father of the public official or candidate, or a partnership or professional corporation of which the public official or candidate [HE] is a member, or a corporation in which the public official or candidate [HE] or the [HIS] spouse or the [HIS] children of the public official or candidate, or a combination of them, hold a controlling interest;

(9) any other asset or liability valued at over $5,000.

* Sec. 4. AS 39.50.030 is amended by adding new subsections to read:

(d) A public official, a candidate for state elective office, or a

candidate for elective municipal office who is licensed under AS 08.20, AS 08.32, AS 08.36, AS 08.64, AS 08.68, AS 08.71, AS 08.72, AS 08.80, AS 08.84, or AS 08.86 is not required to report the name of a person who is a patient, client, or customer of the public official or candidate or a patient, client, or customer of an entity that is a source of income to the public official or candidate.

(e) A gift from a spouse, child, mother or father, brother or sister, grandparent, or grandchild does not need to be reported under this section.

* Sec. 5. AS 39.50.200(a)(6) is amended to read:

(6) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, charter commission member, members of a city or borough planning or zoning commission within a home rule or general law city or borough, including but not limited to a unified municipality under AS 29.68;

* Sec. 6. AS 39.50.200(a) is amended by adding a new paragraph to read:

(10) "elective municipal office" means the office of borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, charter commission member, city or borough planning or zoning commission member within a home rule or general law city or borough, including but not limited to a unified municipality under AS 29.68.

* Sec. 7. AS 39.50.030(d) added by sec. 4 of this Act is retroactive to January 1, 1982.

* Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1983.

* Sec. 9. Sections 5 - 6 of this Act take effect July 1, 1982.

* Sec. 10. Sections 4 and 7 of this Act take effect immediately in accordance with AS 01.10.070(c).

13-0599
Bradley
2/2/83

IN THE SENATE BY THE RULES COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to financial disclosure; and providing for an effective date."

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

* Section 1. AS 39.50.030(a) is amended to read:

(a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of the [HIS] family and of the household of the public official or candidate, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. An asset or liability under $1,000 [$500], household goods, and personal effects need not be identified.

* Sec. 2. AS 39.50.030(b) is amended to read:

(b) Each statement filed by a public official or candidate under this chapter shall include:

(1) the source of all income over $500 [$100], including capital gains, whether or not taxable, received by the public official or candidate or by a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] during the preceding calendar year;

(2) the identity, by name and address, of each business in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH

LA-L 20A

HIM] was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] in any business during the preceding calendar year;

(4) the identity and nature of each interest in real property, including an option to buy, owned by the public official or candidate or by a member of the family or of the household of a public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, AT ANY TIME] during the preceding calendar year;

(5) the identity of each trust or other fiduciary relation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to the public official or candidate or a member of the family or of the household of the public official or candidate [HIM OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM,] and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF

HIS WHO IS LIVING WITH HIM] owed $500 or more;

(7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by the public official or candidate or a member of the family or of the household of the public official or candidate [HIM, HIS SPOUSE, DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of the public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the public official or candidate or a member of the family or of the household of a public official or candidate [HIM, A DEPENDENT CHILD OF HIS OR NONDEPENDENT CHILD OF HIS WHO IS LIVING WITH HIM, HIS MOTHER OR FATHER] or a partnership or professional corporation of which the public official or candidate or a member of the family or of the household of the public official or candidate [HE] is a member, or a corporation in which the public official or candidate or a member of the family or of the household of a public official or candidate [HE OR HIS SPOUSE OR HIS CHILDREN,] or a combination of them, hold a controlling interest.

* Sec. 3. AS 39.50.090 is repealed and reenacted to read:

Sec. 39.50.090. PROHIBITED ACTS. (a) The official position or office of a public official may not be used for the primary purpose of obtaining financial gain, special privileges, exemptions, or compensa-

tion for the benefit of the public official or for the benefit of a member of the family or of the household of the public official or for the benefit of a business with which the public official or a member of the family or of the household of the public official is associated or owns stock.

(b) A public official and a former public official may not disclose information that by law or regulation is not available to a member of the public and that the public official or employee of the legislature acquired during the course of official duties for the personal gain or benefit of the public official or anyone else.

(c) Violation of a provision of (a) or (b) of this section is a class C felony.

(d) The provisions of (a) and (b) of this section do not preclude a member of the legislature from introducing, advocating, or voting for legislation that affects the public generally or that affects a specific class of individuals of which the member of the legislature or a member of the family or of the household of a member of the legislature is a member.

(e) A person may not offer or pay to a public official and a public official may not solicit or receive money for advice or assistance given in the course of the public office or employment of the public official. Each member of a state commission or board who is a full-time public official of the state and each municipal officer who serves as a full-time employee with the municipality may not solicit or receive money for advice or assistance if the subject matter of the advice or assistance is related to the function of the commission, board, or municipality.

(f) A full-time public official of the state may not represent a client before a state agency for a fee. Each member of a state

commission or board who is not a full-time employee of the state may represent a client before a different commission or board for a fee.

(g) A municipal officer may not represent a client for a fee before the municipal body that the municipal officer serves.

(h) A former public official may not within 12 months after termination of office or employment assist any person or act in a representative capacity for a fee or other consideration on a matter in which the public official personally participated as a public official. This subsection does not prohibit any agency from contracting with a former public official and does not prevent a public official from appearing before the public agency in regard to the office or employment.

(i) A public official may not apply for a loan from a state agency unless the application is simultaneously filed with the commission. A state agency may not approve a loan to a public official who fails to file the application with the commission and a state agency may not grant special consideration to the application of a public official.

(j) A public official, a member of the family or of the household of a public official, and a business with which the public official or the member of the family or of the household of a public official is associated may not enter into a contract with the state valued at $100 or more unless the contract is awarded under competitive bidding. A member of the legislature shall simultaneously file the offer to contract with the commission; if the offer to contract is a sealed bid, the commission may not open the offer to contract until after the offer to contract has been opened by the agency receiving the offer to contract. A state agency may not award a contract to a public official or to a person known to be a member of the family or

of the household of a public official or to a business that is associated with the public official or with a member of the family or of the household of a public official unless the offer to contact is filed with the commission.

(k) A member of the legislature and a person acting on behalf of a member of the legislature and a member of the family or of the household of a member of the legislature may not solicit or accept funds for political contributions to the campaign treasury of the member of the legislature during a legislative session.

(l) A violation of AS 39.50.090(e) - (k) is a class A misdemeanor.

(m) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), each member of a commission or board established by law as an agency of the state.

* Sec. 4. AS 39.50 is amended by adding a new section to read:

Sec. 39.50.095. ADVICE FROM ATTORNEY GENERAL. A public official, a member of the family or of the household of a public official, and a business with which the public official is associated that is concerned whether action may constitute a violation of this chapter may request the attorney general to determine whether a violation would exist under the situation presented in the request. The attorney general shall issue the determination within 30 days of the receipt of the request; if the attorney general does not issue a determination within 30 days of the request, the situation as presented in the request does not constitute a violation of this chapter.

* Sec. 5. AS 39.50.200(a)(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the

[HIS] employer of the person is the source of the [HIS] income; but if the person [HE] is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person or a member of the family or of the household of the person [HE OR HIS SPOUSE OR HIS CHILDREN], or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are [CONSIDERED] the source;

* Sec. 6. AS 39.50.200(a) is amended by adding new paragraphs to read:

[redacted]

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

MEMORANDUM State of Alaska

TO: Heads of All Departments, Boards, Commissions, and Authorities

DATE: December 28, 1982

FILE NO:

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Implementation of Conflict of Interests Opinion

By now I hope you have had the opportunity to review the opinion issued by this office on December 3, 1982 concerning conflicts of interest. All supervisors should be aware of, and sensitive to, the concerns addressed in that opinion.

I recognize the opinion sets out principles which are, in large part, new to virtually all state officers and employees. As a practical result, therefore, persons with the kinds of conflicts addressed in the opinion may find it difficult to immediately eliminate them. Also, as recognized in the opinion, the common law rules relating to conflicts of interest may be modified or even rejected by the legislature through the enactment of general laws dealing with the subject. Obviously, the legislature has not yet had an opportunity to consider the rules set out in the opinion and determine whether, or to what extent, it may wish to alter them in Alaska.

Consequently, given the potentially harsh consequences (e.g. termination of employment, cancellation of contracts, and forced divestiture of various business and property interests), I believe it appropriate to exercise the discretion which I have by deferring, except in more serious circumstances (e.g. where an official's public duties may directly advantage his or her private business interests or where the conflict violates express civil or criminal statutes), any "enforcement" action until after the close of the upcoming legislative session. By doing so, the legislature will have the opportunity to address the common law rules set out in the opinion and make whatever changes to them it considers appropriate.

I suggest that you ask your officers and employees to examine their private business interests and dealings to determine if there are interests which might be viewed as causing divided loyalty. If there are such interests, then you should consider how, in the coming months, either their duties or their business interests might be changed to eliminate the conflict.

Additionally, I believe it would be helpful to the legislature in addressing conflicts problems if it had as complete a listing of the kinds of potential conflicts which may exist as possible. In this regard, I would appreciate it if you would advise me of any situations which you identify as potentially coming within the proscriptions of the conflicts opinion.

cc: Representative Joe Hayes
Speaker of the House

Senator Jalmar Kerttula
Senate President

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 3, 1982

Hon. Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: Conflict of interests
Our files: 366-255-83, 366-286-83,
A66-393-81, J66-457-81

Dear Governor Hammond:

I. INTRODUCTION

Seven situations have been brought to our attention which require analysis of the law of conflict of interests. We address this opinion to you because of the statewide importance of these questions and because of the profound implications of our remarks for all officers and employees of state government.

At the outset we must emphasize our key theme. The fact that there may be no conflict of interests statute that makes a particular course of conduct criminal or otherwise improper does not mean that it is legal. A transaction may not violate Alaska's criminal conflict of interests law, AS 39.50.-090; it may not even violate any one of a dozen civil statutes which prohibit conflicts of interests in specific agencies; yet it may still be illegal. By this opinion, we hope to make state officers and employees aware of an ethical code which is not in

the Alaska Statutes but which is in force in Alaska: the common law. Unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interests, as declared by the courts, prescribes the standards of conduct which must be followed by all state officers and employees.

The common law provides, generally, that public officers and employees are trustees of the people, and as such they are forbidden to have outside interests which conflict with that trust; they not only may not, as public officers, make decisions to benefit their own private businesses (or influence other public officers to do so), but they must avoid even the appearance that they have engaged in self-dealing or attempts to influence official decision-making for their private advantage. Where there is the fact or appearance of impropriety, the courts will declare the contract, transaction, or decision void unless a statute permits the action in question, and this result cannot be avoided by the expedient of letting a "disinterested" colleague or subordinate make the decision.

The questions which prompted this opinion are related below. Our analysis follows thereafter.

First, may a legislator, or his or her company, contract with the state to provide the state with goods or services? The answer is no.

Second, may a legislator, state officer, or state em-

ployee receive a loan from the state? The answer with respect to educational and residential loans is a qualified yes. Because educational and residential loan programs have relatively rigid requirements and loan ceilings, there is much less opportunity for improper influence; thus, state legislators, officers, and employees may receive such loans. However, it would be incumbent upon the applicant/lendee to insure that no one takes any step which might be viewed as an attempt to influence the administrators of the program in their evaluation of the applicant/lendee's application and their administration of the loan. Commercial loans are much more questionable transactions which we will discuss below.

Third, may a legislator vote on a bill which will inure to the financial benefit of the legislator? The answer is yes, unless the legislator's interest is peculiarly personal, such as when the bill benefits only a tiny class of which the legislator is a member, or when the bill concerns a project on which the legislator, or the legislator's company, is a contractor.

Fourth, may a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute hold that position if he or she is also an officer, manager, or large stockholder of a private company which has entered into contracts to provide the state with goods or services? If the director's company has a contract with an agency of state

government different from the agency in which the director serves, and if the likelihood that the two agencies will interact on other than routine, ministerial matters is small, there would be no conflict. If, however, the director's company has contracts with the agency in which the director serves, the director must divest himself of his private holdings or resign his directorship; otherwise, any contracts his company executes with that agency would be void.

Fifth, may an officer of the Division of Minerals and Energy Management of the Department of Natural Resources (DMEM) own a mineral claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction? Ownership of such interests is not prohibited under AS 27.05.010 unless DMEM is engaged in an "investigation" described in AS 27.05.010 -- 27.05.070. However, the common law does prohibit the ownership of such interests: A conflict of interests would exist because the officer (or the officer's subordinates) would be required to review and approve the officer's filings with DMEM concerning the officer's mining interests. In addition, the officer would have a substantial voice in the department's land use classifications, which could inure very much to the officer's benefit were he an actual or potential investor in mineral claims on land subject to state regulation.

Sixth, may an inspector in a state regulatory agency

sell the right to use a process the inspector developed and patented to companies whose plants he inspects? The answer is no. Neither may that inspector obtain a state grant to test the process in plants which he inspects.

Seventh, may a person with an interest in a business that has a contract with the state be a member of the board of the Alaska Resources Corporation (ARC)? The answer is a qualified yes. A member is forbidden to acquire any conflicting interest after joining the board. AS 37.12.065(b). Concerning interests which a member holds and held before joining the board, there are two answers: First, if the contract is with an agency other than ARC, and if that other agency has only routine, ministerial contacts with ARC, there is no conflict. Second, if the contract is with ARC, the board member must abstain from voting and take no formal or informal part in discussions of ARC's policies or actions toward the business in which the member has an interest. Id.

II. THE ROLE OF THE ATTORNEY GENERAL

The attorney general is the chief legal officer of the state and "the legal advisor of the governor and other state officers." AS 44.23.020(a). As such, he is duty bound to assist the governor in "the faithful execution of the laws." Alaska Const., art. III, § 16. These laws include the common law of

conflict of interest, see AS 01.10.010; the constitutional requirements that "[no] appropriation of public money [be] made ... except for a public purpose," and that "[n]o obligation for the payment of money shall be incurred except as authorized by law." Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.

The attorney general performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal opinions. AS 44.23.020(b)(4). The attorney general is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090. Short of court action, the attorney general may advise against an agency course of action which he believes is against the public interest. See Mobil Oil Corp. v. Kelley, 353 F. Supp. 582, 586 (S.D. Ala. 1973), aff'd 493 F.2d 784 (5th Cir. 1974). Indeed, the attorney general is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators. D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974)(In Bank); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865 (Ky. 1974). The first allegiance of the attorney general is to the public interest. Id.

In this opinion, we advise on various courses of action. This advice is based upon our best reading of the case law

and our conviction that, were the specific situations presented to a court in a lawsuit, particular outcomes would follow. This is not a certain prospect: as will be made clearer below, we are, with few exceptions, dealing not with specific statutes but with the common law, a general and changing body of principles developed and applied by courts over the centuries. Our conclusions are based upon what we believe a court would do given those general principles, prevailing public policy, the public interest, and the continuing silence of the legislature in this area generally. Thus, this memorandum is a prescription for agency action in the face of conflicts of interests not addressed by statute, and a guide for legislative action should the agency or court resolution be unsatisfactory to the legislature.

State agencies, officers, and employees should heed advice in this memorandum until ordered to do otherwise by a court. See Gray v. Main, 309 F. Supp. 207, 220 (M.D. Ala. 1968); State v. District Court of Mayes County, 440 P.2d 700, 707 (Okla. 1968).

III. STATUTES AND COMMON LAW PRINCIPLES

There are more than a dozen provisions dealing with conflict of interests scattered through the Alaska Statutes. Only AS 39.50 applies to state officers generally. One of that chapter's purposes is "to discourage public officials from acting

upon a private or business interest in the performance of a public duty," AS 39.50.010(a)(1), and it declares that "public office is a public trust which should be free from the danger of conflict of interest." AS 39.50.010(b)(1). Its main feature is its disclosure requirements. E.g., AS 39.50.020. The chapter's only prohibitions are contained in AS 39.50.090, subsection (a) of which provides:

> No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

Violation of this subsection is a crime. AS 39.50.090(d).

Other Alaska conflict statutes incorporate AS 39.50 by reference, 1/ or impose other limitations. 2/ The other limitations range from a simple prohibition on the employment of close relatives, AS 14.14.140, to a duty to divest oneself of the conflicting interest or suffer forfeiture of one's office. AS 42.07.061.

The statutes mentioned above speak only to a relative handful of government agencies, boards, corporations, and commissions. 3/ In some cases, the statutes prescribe rules of conduct

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1/ AS 24.55.310; AS 46.12.090.

2/ AS 08.88.391; AS 14.14.140; AS 18.55.080; 18.55.500; AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 37.12.065(b); AS 38.06.035; AS 42.07.061; AS 44.07.330; and AS 44.88.180.

3/ See nn.1, 2, supra.

for officers of state agencies, but offer no guidance for employees. 4/ There remain hundreds of conflict situations to which no Alaska conflict legislation 5/ pertains except as AS 39.50. 6/

It is well-settled in the federal courts, particularly with regard to criminal sanctions for bribery and fraud, that the existence of criminal statutes (such as AS 39.50.090) does not extinguish the common law rights and remedies which would ordinarily exist. United States v. Kearns, 595 F.2d 729, 732-733 (D.C. Cir 1978); Continental Management, Inc. v. United States, 527 F.2d 613, 620 (Ct. Cl. 1975), and cases cited therein. We believe that the same rule would apply in Alaska: AS 39.50 will not be held to repeal, amend, or preempt the common law of conflict of interests which will apply "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew, 629 P.2d

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4/ Compare AS 21.06.040, AS 27.05.020, and AS 44.07.330 with AS 44.88.180, AS 46.12.090, and AS 48.55.500.

5/ Personnel Rules 13 12.0 and 13 16.0 apply to most executive branch personnel and prohibit conflicts of interests in terms which essentially incorporate the standards of the common law.

6/ AS 39.50 governs the conduct of very few persons. AS 39.50.200(a)(1) limits the chapter's scope by excluding officers or employees below the director level from the coverage of the provision. There remain outside the coverage of the Act deputy directors in the executive branch, assistant attorneys general, appointive officers of the legislative branch (including legislative assistants), non-judicial officers of the court system, and all subordinate employees of these agencies. Thus, fully 90 percent of state officers and employees are beyond the reach of the criminal sanctions in AS 39.50.090(a).

969, 973 (Alaska 1981). Thus, a person may act illegally without violating the criminal law, and serious non-penal consequences may follow.

Neither is it possible to formulate a rule of administrative decision for a given situation by analogy, based upon legislative pronouncements with respect to other agencies, for no consistent policy is apparent from an examination of the various statutes. One statute lays down no other rule than that school boards may not hire close relatives of the board members, AS 14.-14.140, and even that rule may be waived by the commissioner of education. Id. Thus, on local school boards, were it not for the common law rule and AS 39.50.090(a), a board member could let a contract to himself. 7/ In another agency, the law provides that a board member may not vote on a contract with his own firm or one in which he holds a "direct" ownership interest, but he need not divest himself of the interest. AS 44.88.180. In still other agencies, such interests are prohibited and the officer must dispose of the interest or forfeit the office. AS 42.07.-061. See AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 38.06.075. From this range of solutions, no overriding general policy prescription is apparent for the guidance of public officers and employees.

7/ A stricter rule applies to regional school boards. AS 14.-08.131.

* * * *

Most conflict of interests situations in Alaska are covered not by statute but by the common law. Judge Wickersham described the common law in In Re Burkell, 2 Alaska 108 (D. Alaska 1903):

> The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the Legislature (1 Kent's Com. 533); a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country (Pierce v. Props. Swan Point Cemetery, 10 R.I. 227, 14 Am. Rep. 667).

Id. at 117. See Howard v. Pfeifer, 443 P.2d 39, 44 (Alaska 1968). In Alaska, the common law controls judicial decision-making "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew. See AS 01.10.010.

The common law of conflict of interests is clearest in the case of a contract made by a public officer who will, as a private person, benefit from the contract. The most comprehensive discussion of the typical situation, the controlling rule, and the underlying public policy is found in Beebe v. Supervisors of Sullivan County, 19 N.Y.S. 629 (App. Div. 1892), aff'd 37 N.E. 566 (N.Y. 1894):

> At the time of his employment [by the board of supervisors as the board's attorney in several

> collection matters], the defendant Anderson was a member of the board of supervisors. They were the agents of the county of Sullivan, and as such had no right to enter into contracts for their own benefit with their principal, the county of Sullivan. They are trustees, and have no right to enter into contracts with each other at the expense of those for whom they are acting, and whose interests they are bound to guard and protect. The illegality of such contracts does not depend upon statutory nactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with the municipality of which they are officers; and this principle applies with particular force to members of a board like the board of supervisors, which not only makes the contract, but subsequently audits the bill.
>
> But it is said that in the case before us the supervisor who was employed did not vote on the question of his own employment, or upon the audit of his bill. That does not cure the evil. The influence upon fellow members is the same. His constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act. He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests. He is a part of the board of supervisors. Its act is his act; and he cannot, as a supervisor, make a contract with himself as a private citizen.

Id. at 630 (citations omitted).

IV. THE PROCESS OF COMMON LAW ADJUDICATION

In the absence of legislation, it is the task of the courts, with the assistance of the attorney general, other mem-

bers of the bar, litigants, and amici curiae, to apply common law principles and policies articulated by the Beebe court and hundreds of other courts and commentators before and since. The task is a difficult one because, with the exception of the self-dealing public officer situation just described, the law is not settled; the courts must reason from the situations already addressed by the courts to solutions for new questions presented.

For this undertaking the common law is well-suited, as Chief Justice Lemuel Shaw noted in his classic description of the process:

> It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adopted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles founded on reason, natural justice, and enlightened public policy modified and adapted to the circumstances of all the particular cases which fall within it.
>
> ....
>
> Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances.

Norway Plains Co. v. Boston & Main Railroad, 1 Gray (67 Mass.)

263 (1854), reprinted in Hart and Sacks, The Legal Process: Basic Problems In The Making And Application Of Law (1958) 386-395. 8/

It is our task to begin with the legislative solutions to determine if any statute answers any of the conflict questions posed. Failing that, we must turn to the common law and, beginning with the first principles, reason to the conclusion the courts would likely reach given the facts, judicial precedent in analogous cases, and prevailing public policy.

V. LEGISLATOR CONFLICTS

Two questions are presented concerning potential legislator conflicts: First, may a legislator, or his or her firm or business, contract with the state to provide the state with goods or services? Second, may a legislator receive a state loan?

The first question does not concern classic self-dealing, the letting of contracts by an official to himself or his relatives, associates or company. It is a different problem described in the following terms:

> There is a great possibility that an official who has no immediate administrative connection with

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8/ Thus, even if there is no statute and not one case addressing the situation before a court, that court may, by the process of common law adjudication, formulate a wholly new answer to settle the dispute which gave rise to the lawsuit. See Howard v. Pfeifer, 443 P.2d at 44.

> the contract may be sufficiently motivated by his personal interest to exert whatever influence his position allows to pressure the public official who in fact has a direct responsibility concerning the contract to favor that personal interest. In this way, an official without a personal interest in the contract acquires a conflicting interest in the sense that he must choose between appeasing the pressuring official and properly discharging his duties in the matter.
>
> Experience indicates the harm that may flow from [this situation]. Contracts may be awarded that are over-priced or unnecessary, or the performance rendered under the contract may be inferior, all because of official favoritism, compromise or intentional oversight. Even if the abuse is nothing more than partiality in awarding a contract, it may import an aspect of unfairness into public administration, engendering popular disrespect for government.

Note, Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation, 107 U. Pa. L. Rev. 985, 987-988 (1959). See Eisenberg, Conflict of Interest Situations And Remedies, 13 Rutgers L. Rev. 666, 686 (1959).

There are no cases which squarely hold, as a matter of common law, that a legislator, having no formal, institutional connection with the letting or oversight of a contract, can or cannot contract with the state. The archetypical situation arises in the municipal context where principles of separation of powers do not apply and assemblymen or councilmen act administratively as well as legislatively. Thus, an assemblyman might, in a private contractor capacity, offer goods or services to the city, which goods or services are accepted, inspected, super-

vised, and compensated by the assembly on which the contractor sits. It is the virtually universal rule at common law that such a transaction is illegal, even if the assemblyman-contractor abstains and takes no part in the review and compensation of the performance. E.g., Beebe v. Supervisors of Sullivan County, quoted supra. While some commentators have declared that the common law rule has been extended to bar such transactions if any public officer or employee, regardless of their official connection with the transaction, is the private contractor, 9/ a close analysis of the cases decided to date and due regard for the difference between holding and dicta belie the claim. 10/

Many states have statutes or constitutional provisions which prohibit legislators or other public officers from contracting with the state. A number of cases have declared that such provisions are declaratory of the common law, i.e., even if there were no statute, the same rule would apply by force of the common law. One case is Schultze v. City of New York, 136 N.Y.S.

9/ E.g., Note, Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034, 1039 (1961).

10/ Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Col. L. Rev. 157, 158-174 (1958). We were guilty of uncritically accepting the conclusion of the Virginia Law Review note writer in our formal opinion of August 8, 1979; fortunately, it made no difference in the result in that opinion since the individual in question was an officer with authority to vote on the award of contracts and review the contractor's performance.

715 (App. Div. 1912), aff'd 106 N.E. 1042 (N.Y. 1914). Schultze was a duly appointed coroner's physician whose duty it was to perform autopsies and give evidence at coroners' inquests. He was called upon to assist the district attorney in a homicide case involving a decedent whom Schultze had not examined; he acted as an expert consultant. He submitted a bill which was disapproved under a charter provision which forbade officers to become interested, directly or indirectly, in performance of any contract or work to be paid for from the city treasury; a violation was a misdemeanor, the violator forfeited his office, and the contract was voidable. The court held that the city was not required to pay the bill, and observed that "[t]hese prohibitions are merely declaratory of the common law." Id. at 718. Accord, Marjohn Realty Co. v. City of Long Beach, 204 N.Y.S. 53, 55 (Sup. Ct. 1924), aff'd 206 N.Y.S. 933 (App. Div. 1924).

The case of Norbeck & Nicholson Co. v. State, 142 N.W. 847 (S.D. 1913), involved a legislator who contracted with the state to drill a well. The contract was voided on the basis of a constitutional provision which prohibited legislators to be directly or indirectly interested in any state contract. However, there followed extremely broad dicta:

> A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the

> state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.

Id. at 849.

On the other hand, at least two courts have described statutory prohibitions of such contracts as new legislative rules foreign to the common law. In re Opinion of Justices, 82 A. 90, 93 (Me. 1911); Lindberg v. Benson, 70 N.W.2d 42, 45 (N.D. 1955). However, the Lindberg court went on to state in forceful terms the very public policy considerations which militate in favor of a common law rule in the absence of legislative action:

> The purpose of the enactment was to extend the ancient common-law rule that no state officer may be interested in any contract which he has a voice in letting (which rule is expressed in many statutes of this state) by providing a more comprehensive legislative rule, founded in public policy, which would take away from legislators as a class any personal incentive to increase their opportunities to make profitable contracts by their votes in the legislature or to use their influence as legislators in securing contracts or the approval of the work done under them. The members of the Legislative Assembly exercise a high degree of control over the fiscal affairs of the State and its subdivisions. They regulate assessments and tax levy limits. They authorize bond issues and, for the State, they make all appropriations. By enacting this initiated measure the people have attempted to remove from the legislators temptation to venality in the exercise of their legislative functions. Many states have constitutional or legislative provisions which are similar in

> nature and which have remained in force unchallenged for many years.

Id. at 45-46.

In two recent cases, courts have held that legislator attorneys may not represent persons in litigation against their city or state. In Georgia Department of Human Resources v. Sistrunk, 291 S.E.2d 524 (Ga. 1982), the Sistrunks were represented by Hill, a state legislator. The department invoked fiduciary principles and a Georgia constitutional provision which declared that "[p]ublic officers are the trustees and servants of the people, and at all times are amenable to them." The court expressly noted that this was not analogous to the classic self-dealing situation, since Hill was not representing both the Sistrunks and the state. Id. at 526.

The Sistrunk court framed the issued in the following terms:

> All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.
>
> ....
>
> May one trustee of the people, as attorney and for his own financial gain, negotiate on behalf of another for a favorable official dispensation at the hands of another trustee of the people?
>
> Specifically concerning legislators, may one

> trustee of the people -- in whose office are vested the powers of enhancement, diminution, and destruction of the office of another trustee of the people -- as attorney and for his own financial gain act in a manner to hinder or frustrate the discharge by such other trustee of the duties of their common trust?
>
> No.

Id. at 528.

It bears noting that the court in Sistrunk based its decision on a Georgia constitutional provision and not on the common law. However, that provision is so general in its terms and was analyzed with such close attention to common law trust principles that the Sistrunk holding has significance independent of the constitutional language. A similar provision appears in Alaska law. 11/

In a California case, People v. Municipal Court of San Diego Judicial District, 138 Cal. Rptr. 235, 238 (Cal. App. 1977), the court barred a city councilman-attorney from representing a defendant being prosecuted by the city. The decision appears to rest primarily on the ethical standards of, and trust reposed in, members of the bar, rather than on any statutory or constitutional provision. 12/

11/ Compare the Georgia constitutional provision quoted in the text with AS 39.50.010(b)(1), which provides "public office is a public trust which should be free from the danger of conflict of interest."

12/ However, the court did, in passing, compare the councilman's

A legislator contract also raises novel and troubling questions of separation of powers. The federal courts have, in perhaps a dozen cases, condemned the practice of interference by individual legislators or committees in executive branch decision-making. The leading case is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a decision of the FTC in its quasi-judicial capacity was invalidated because of intense Congressional committee pressure while the decision was pending.

Much less pressure was required to invalidate the decision at issue in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied 439 U.S. 1052 (1978). The court ruled that a letter sent by Congressman Dingell to the Secretary of the Interior, in effect urging him to deny several applications for "native village" status, compromised the Secretary's impartiality in a quasi-judicial proceeding; the court ordered reconsideration of the applications by the new Secretary. In other cases, however, explicit and extreme threats were said to be required before invalidation would occur. E.g., D.C. Federation v. Volpe, 459 F.2d 1231 (D.C. Cir. 1972)(threat of loss of appropriation for unrelated project); Texas Medical Association v. Mathews, 408 F.

12/ cont. . . .
representation to conduct by "[a] local agency officer or employee" which is statutorily proscribed as "incompatible." Id. at 238.

Supp. 303 (W.D. Tex. 1976)(threat of loss of job).

Here, as in the federal legislator influence cases, the legislators would be placing themselves in a non-legislative, i.e., administrative or quasi-judicial, arena. But the kind of legislator pressure which caused the court in Pillsbury to invalidate the FTC decision is not involved here. Still, the federal legislator interference cases lead us to conclude that a court would not require a showing of direct threats where a legislator acted on behalf of himself rather than on behalf of a constituent.

The remarks of the Alaska Supreme Court in two opinions bear on this inquiry. Both cases, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), and Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976), involved legislators who held or wished to hold an office of state government outside the legislative branch.

In Begich, the court observed generally:

> Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government.

441 P.2d at 35.

In Warwick, the court considered Alaska Constitution, article II, section 5, which forbids a person to accept a government post which was created, or the salary for which was increased, while that person served in the legislature. The court observed:

> There is little disagreement as to the purpose of the type of constitutional provision under consideration here. Although the exact language varies from state to state, all such provisions are aimed at a common goal: to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. In one often-cited quotation, Justice Story, commenting upon a like provision in the Constitution of the United States, said:
>
> > The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness.
>
> This type of constitutional provision is designed not only to stop overt trafficking in offices, but also to prevent less obvious influences on a legislator's actions:
>
> > [T]his constitutional provision was enacted through fear that a legislator might be, either consciously or unconsciously, influenced by selfish motives when voting for or against a bill.
>
> Another purpose has been said to be the elimination of even the suspicion that legislators were acting with improper motives. As in the case of the judiciary, it is important that the legislature not only avoid impropriety, but also the appearance of impropriety.

548 P.2d at 387-388 (emphasis added by the court, footnotes omitted).

Both the Alaska Constitution and AS 39.50 were adopted by popular vote. From these electoral expressions it is clear that Alaskans view as morally opprobrious public officials who use public office for private gain. Indeed, even the appearance of impropriety is a circumstance to be avoided. Warwick at 388, quoted supra; Falcon v. A.P.O.C., 570 P.2d 469, 477 (Alaska 1977). See AS 39.50.010(b)(1)("public office is a public trust which should be free from the danger of conflict of interest").

The size of the legislature and the executive branch is also an important consideration. There are only 60 legislators, all of whom are likely well-known to the relatively few departmental commissioners, deputy commissioners and directors. Most of these persons work together in close proximity in Juneau for five months of the year.

Our legislators have a keen interest in the budget process. Those legislators who sit on the finance committees are usually familiar with the thousands of pages of budget documents in the minutest detail and make allocations in multi-billion dollar budgets in increments of thousands of dollars. Any legislator, and especially a member of the finance committees or the free conference committee on the budget, can have an enormous impact on the budget of a state agency. Recent legislative ses-

sions have seen both the creation and destruction of agencies at the behest of single or a few legislators who took the initiative to bless or gut the agencies. In recent years, the legislature has also taken to designating its own non-governmental agents to carry out state programs. E.g., p. 25, § 51, ch. 120, SLA 1980.

Alaska is a very small state, with a small pool of talented people from which to draw its leaders. Many of the most talented have extensive commercial enterprises which may do business with the state. Unreasonable barriers should not be placed before these most promising aspirants to public service. Yet, with the legislature tending toward a half-time profession, and with the great potential for conflicts of interests with multi-billion dollar budgets and pervasive government involvement in private commerce, the courts might well be convinced that the only solution in the public interest is a common law prohibition. This would be all the more compelling in the absence of evidence that aspirants to public service are being dissuaded by a common law rule prohibiting legislator contracts, and in the absence of legislative action in this area. Indeed, such a common law prohibition might be a telling experiment for the information of the courts and the legislature.

As we have already noted, there is no case authority directly on point pro or con, but the foundation is there, in Beebe and its progeny, in Begich, in Warwick, and in AS 39.50,

upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

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13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

ceive loans from the state. The only case which offers even brief analysis of the public policy considerations which would underlie an exception to the common law rule is State v. Yoakum, 306 S.W.2d 39 (Tenn. App. 1957). In explaining why a loan to a school board of which the president of the lender bank was a member did not violate a statutory prohibition of a direct or indirect interest in a public contract, the court impliedly undercut any common law prohibition:

> A loan of money, however, is unlike a contract for goods or services involved in all our reported decisions. Because they involve questions of value, contracts relating to goods and services provide opportunity for imposition upon the public. In the loan of money the law fixes the maximum rate of interest and no question of value is involved. Only a rate of interest below the maximum fixed by law can be the subject of negotiation. In the loan here involved it is not insisted that such a short term loan could have been made elsewhere at a lower rate of interest and, as we have seen, the loan actually resulted in a loss to the Bank. To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority.

Id. at 40.

While the analysis is terse, Yoakum provides a basis for distinguishing the loan situation from other contracts between the state and legislators. However, we can say this with confidence only in the cases of loans for tuition or personal residences, where loan ceilings are relatively low, eligibility

standards are fixed, and the range of administrator discretion subject to influence and abuse is small. 17/ Commercial loan programs, where ceilings are much higher and where evaluation of credit-worthiness is more subjective, may yet present conflicts of interests where the loans are made to legislators.

However, there is potential for influence or abuse in any loan program, especially when foreclosure or other enforcement actions must be considered. Thus, whether the loan is educational, residential, or commercial, a conflict of interests may arise, and state legislators (and some state officers and employees) and their agents, must act with the greatest circumspection and propriety in dealing with the agency concerning the loan or any other matter. The agency, in order to maintain public confidence in the fairness of its program, should brook not even a hint of interference and should report questionable communications to the attorney general.

* * * *

We view the third question, concerning the propriety of a legislator voting on a bill which will financially advantage the legislator, in a different light. It is clear in the case law that, when a legislator acts in a legislative capacity, that

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17/ Even a competitive bidding procedure is subject to greater influence and abuse where the contracting officer has discretion in evaluating the responsibility of the bidders. AS 39.05.230. See AS 36.98.040 -- 36.98.050.

action can be challenged only when the legislator's conduct is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power." Rollins v. Carter, 69 A. 777 (N.H. 1908); Pyatt v. Mayor of Dunellen, 89 A.2d 1, 3 (N.J. 1952); MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522. However, when a legislator acts outside the legislative sphere, with respect to a particular transaction or adjudication in which the legislator is interested, a challenge may be sustained if there is found a "private interest at variance with the impartial performance of ... public duty." Pyatt; Rollins. See Burton v. United States, 202 U.S. 344, 366-367 (1906); Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952, 964 (5th Cir. 1966); Note, Conflicts of Interest of State Legislators, 76 Harv. L. Rev. 1209, 1214, n.38 (1963)("[I]mproper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator.").

Therefore, where a legislator votes on a bill which will financially benefit the legislator as a member of the public generally, e.g., personal income tax repeal, or where a legislator votes on a bill which will financially benefit the legislator as a member of a numerous though limited class of Alaskans, e.g., bank deregulation or corporate income tax repeal which will benefit shareholders, the legislator's vote may not be challenged. See the memorandum opinion from Kenneth E. Vassar to Wilson L.

Condon dated April 1, 1982.

Where, however, the class of beneficiaries of the legislation is tiny, especially where the bill relates to a project for which the legislator is a private contractor or affiliated with a private contractor, the legislator must disclose the conflict of interests and the legislative body should bar the legislator from voting. See MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522 (1979).

VI. OFFICER CONFLICTS

Four potential conflicts of interests by executive branch officers have been presented for our review. We will treat them in turn.

It is first asked whether a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute has a conflict if he or she is an officer, employee, or large stockholder of a company or firm which has contracts with the state to provide goods or services. If there is a conflict, what remedial steps need be taken?

The question is answered by the Beebe case, quoted supra, and the accompanying discussion: a conflict clearly does exist if the person with the potential conflict is associated with both parties to the contract, i.e., the state agency procuring the goods or services and the private contractor providing

them. 18/ If, however, the person with the potential conflict works for a state agency with no contracts with the private contractor with which the person is associated, there would be no conflict. 19/

The Beebe case makes it clear that public service demands total fidelity to the public interest at all times. A public servant, faced with a conflict of interests by reason of private financial associations may not pass official decision-making responsibility on to a colleague or subordinate who may share the same prejudice or be subject to influence. "He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests." Id. at 630. Faced with a conflict, the person must either resign his or her position, or forego the private opportunity to do business with the state.

18/ If the person is only an employee, there may not be a conflict. Those situations must be addressed on a case-by-case basis.

19/ We must qualify this last mentioned conclusion by noting that a conflict might arise even if the person was not an official in the contracting state agency if the person nevertheless has extensive contacts with the contracting state agency. For example, certain officers of the Department of Law and the Office of the Governor, though not within the Department of Administration, may have extensive contacts with, and considerable influence in, the Department of Administration. A person with similar "interdepartmental" duties might be in a conflict situation if he or she entered into an agreement as a private contractor with the other department.

* * * *

It is next asked whether an officer of the Division of Minerals and Energy Management (DMEM) may hold a mining claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction. AS 27.05.020 provides:

> In conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070, no officer or employee of the department may have any personal or private interest in a mine or the products of a mine under investigation, or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer or other expert whose principal professional practice is outside his employment by the department.

The syntax of AS 27.05.020 is not an aid to understanding. A thoughtful reading of the provision reveals that it is not any officer or employee of the department who is prohibited from holding an interest in a mine under investigation; only officers and employees "conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070" are so restricted. We are informed by the director of DMEM that that division conducts virtually none of the "investigations" in question; those matters are within the jurisdiction of the Division of Geological and Geophysical Surveys. However, there is still the common law.

DMEM is the state agency which regulates the acquisition of mining claims and leases on lands under state jurisdiction, see AS 38.05.185 -- 38.05.280; 11 AAC 86, and issues mis-

cellaneous land use permits. See 11 AAC 96. DMEM also has a representative on the regional planning teams which make recommendations to the commissioner on state land use classifications. See AS 38.04.065; 11 AAC 55.

As the regulatory agency for mining claims, DMEM receives the filings of persons who stake mineral claims. See AS 38.05.195. It must review the filings to verify that there has been a discovery, see 11 AAC 86.105, and that the claim has been properly staked. See 11 AAC 86.205 -- 11 AAC 86.215. On an annual basis, DMEM receives additional filings from each claim owner attesting to the performance of statutorily-required annual labor on the claim, see AS 38.05.210; 11 AAC 86.220, and must verify that the claimed labor meets prescribed requirements. Id. A major component of the DMEM mining section's effort and budget is devoted to this "adjudication" of mineral claims.

In this light, we believe that an ownership interest in mineral claims (or in a company which owns mineral claims) on lands under state jurisdiction creates a common law conflict of interests on the part of officers and employees of DMEM. Given the size of the mining section of DMEM (25 persons) and the likely close working association of all the officers and employees, it is probable that a court, as a matter of common law, would forbid any person in DMEM to own a mineral claim on lands under state jurisdiction since the opportunity for influence is so evi-

dent. It is even clearer that a court would forbid a supervisory officer to own such a mineral claim since it would be that person's subordinate who would review the sufficiency of the claim and the annual labor affidavit. 20/ And, as we noted, supra, at page 31, the conflict is not cured by removing oneself from the review of one's own filings: the public has the right to demand that a state officer bring his or her skills to bear in all matters which the office calls upon him or her to consider.

DMEM is one of only three agencies principally responsible for overseeing mineral exploration and mining activities on lands under state jurisdiction. DMEM personnel cannot be both regulators and regulated. If they wish to serve in DMEM, they must forego this relatively narrow range of investment opportunities. The common law requires officers and employees in DMEM who have interests in mining claims to dispose of those interests with all deliberate speed, or resign. 21/

20/ DMEM officers and employees also have access to confidential geological, geochemical, geophysical, and airborne surveys. See AS 38.05.240. Were they permitted to own mineral claims, they might have a distinct advantage over other prospectors, miners, and investors. This is another aspect of the conflict of interests inherent in the situation.

21/ The Department of Law has had the full cooperation of DMEM officers and employees in this inquiry; indeed, it was a DMEM officer with an interest in mineral claims who first asked our advice on this matter. At that time, we informally advised him that there was no conflict, and he ordered his affairs accordingly. Thus, it was our erroneous advice, and no wrongdoing by the DMEM officer, that allowed the conflict situation to develop.

* * * *

It is next inquired whether a Department of Environmental Conservation (DEC) inspector of seafood processing plants may sell the right to use a process he developed and patented to companies whose plants he inspects. The answer is clearly no.

The evil of such an arrangement is patent: seafood processors might feel compelled to purchase the right to use the process or suffer the wrath of the seller when next he inspects their plants.

We hasten to add that there is not the slightest suggestion that the particular inspector involved has ever acted improperly; it is the appearance of impropriety which condemns these proposed transactions. If the inspector wishes to market his process, he must resign or sell his rights in the process to another who may market it. 22/

The same inspector also wishes to apply to the Department of Commerce and Economic Development (DCED) for a grant to test his process. Because the grant project would likely involve one or more seafood processors in a cooperative effort to test the process, a conflict of interests on the inspector's part

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22/ If the inspector chooses the latter course, he may not reserve any right to receive royalties or license fees; were he to do so, the spectre of influence would again appear since, though he is not personally marketing the process, each seafood processor that used the process would be paying the inspector indirectly.

would almost certainly arise. In that case, the grant would be illegal. See Newton v. Demas, 258 A.2d 376 (N.J. App. 1969)(municipal engineer had an outside contract with a developer to design a water system; the contract was void because the engineer would have had to review his own design in his official capacity).

* * * *

It is last asked whether a member of the board of the Alaska Resources Corporation (ARC) has a conflict of interests if he or she is associated with a company that has a contract with the state. AS 37.12.065 provides:

> (a) Members of the board are subject to the provisions of AS 39.50.
>
> (b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

Subsection (b) modifies the common law as it would apply to ARC. Under the common law, the member could neither acquire a new interest nor keep an old interest in a company doing business with ARC, and this disability could not be cured by abstaining on votes and taking no part in deliberations. Under AS 37.12.065, acquisition is forbidden, but interests owned upon appointment may be retained, so long as the member abstains from

voting and has no contact, formal or informal, with other members concerning ARC's policies or actions toward the firm in which the member has an interest. This departure from the common law applies only to members and employees of ARC. 23/

VII. CONCLUSION

The common law of conflict of interests is uncharted water for most public officials, including government attorneys. They err when they believe that a public official's conflict can be cured if the official takes no part in the decision in which he or she is interested. They err when they believe that a court will not invalidate a contract if, though a party to the contract has a conflict, it is still a fair price.

The courts take the view that officials have a duty to the public to participate in all the decisions they were elected or appointed to make. The courts ordinarily will not allow an

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23/ It was also inquired whether an ARC board member may also be a member of the Alaska Historical Commission. AS 44.27.061, et seq. In view of the clear prohibition on holding "any other state or federal office, position, or employment . . . ," AS 37.-12.045(b), we believe the board member must resign from either ARC or the Alaska Historical Commission. This prohibition goes further than the common law; indeed, as applied in this situation, it appears to advance no laudable goal. But it is within the legislature's power, and it does prevent the appearance of conflict of interests in many other situations. If a more refined provision is to be substituted, one which is better able to discriminate between real and imagined potential for abuse, the legislature alone has the power to do it.

official to decline to make a decision in order that he or she might be free to have the benefit of that decision.

The courts will not allow an official to make a contract with his agency and, when challenged, assert as a defense that the contract was more advantageous to the state than any other offer received.

The common law of conflict of interests aims not only to prevent officials from actually taking unfair advantage of their office. It also aims to eliminate the potential for abuse and the appearance to the public that officials are subject to temptation. For these reasons, the courts have dealt sternly with officials in conflict situations, and they will continue to do so. Unless the legislature formulates another means to sustain the public's confidence that public officials are not benefitting in private from their positions in public, we, and all public officials, must abide by the common law.

Sincerely yours,

Wilson L. Condon
Attorney General

WLC/pjg

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 3, 1982

Hon. Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: Conflict of interests
Our files: 366-255-83, 366-286-83,
A66-393-81, J66-457-81

Dear Governor Hammond:

I. INTRODUCTION

Seven situations have been brought to our attention which require analysis of the law of conflict of interests. We address this opinion to you because of the statewide importance of these questions and because of the profound implications of our remarks for all officers and employees of state government.

At the outset we must emphasize our key theme. The fact that there may be no conflict of interests statute that makes a particular course of conduct criminal or otherwise improper does not mean that it is legal. A transaction may not violate Alaska's criminal conflict of interests law, AS 39.50.-090; it may not even violate any one of a dozen civil statutes which prohibit conflicts of interests in specific agencies; yet it may still be illegal. By this opinion, we hope to make state officers and employees aware of an ethical code which is not in

the Alaska Statutes but which is in force in Alaska: the common law. Unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interests, as declared by the courts, prescribes the standards of conduct which must be followed by all state officers and employees.

The common law provides, generally, that public officers and employees are trustees of the people, and as such they are forbidden to have outside interests which conflict with that trust; they not only may not, as public officers, make decisions to benefit their own private businesses (or influence other public officers to do so), but they must avoid even the appearance that they have engaged in self-dealing or attempts to influence official decision-making for their private advantage. Where there is the fact or appearance of impropriety, the courts will declare the contract, transaction, or decision void unless a statute permits the action in question, and this result cannot be avoided by the expedient of letting a "disinterested" colleague or subordinate make the decision.

The questions which prompted this opinion are related below. Our analysis follows thereafter.

First, may a legislator, or his or her company, contract with the state to provide the state with goods or services? The answer is no.

Second, may a legislator, state officer, or state em-

ployee receive a loan from the state? The answer with respect to educational and residential loans is a qualified yes. Because educational and residential loan programs have relatively rigid requirements and loan ceilings, there is much less opportunity for improper influence; thus, state legislators, officers, and employees may receive such loans. However, it would be incumbent upon the applicant/lendee to insure that no one takes any step which might be viewed as an attempt to influence the administrators of the program in their evaluation of the applicant/lendee's application and their administration of the loan. Commercial loans are much more questionable transactions which we will discuss below.

Third, may a legislator vote on a bill which will inure to the financial benefit of the legislator? The answer is yes, unless the legislator's interest is peculiarly personal, such as when the bill benefits only a tiny class of which the legislator is a member, or when the bill concerns a project on which the legislator, or the legislator's company, is a contractor.

Fourth, may a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute hold that position if he or she is also an officer, manager, or large stockholder of a private company which has entered into contracts to provide the state with goods or services? If the director's company has a contract with an agency of state

government different from the agency in which the director serves, and if the likelihood that the two agencies will interact on other than routine, ministerial matters is small, there would be no conflict. If, however, the director's company has contracts with the agency in which the director serves, the director must divest himself of his private holdings or resign his directorship; otherwise, any contracts his company executes with that agency would be void.

Fifth, may an officer of the Division of Minerals and Energy Management of the Department of Natural Resources (DMEM) own a mineral claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction? Ownership of such interests is not prohibited under AS 27.05.010 unless DMEM is engaged in an "investigation" described in AS 27.05.010 -- 27.05.070. However, the common law does prohibit the ownership of such interests: A conflict of interests would exist because the officer (or the officer's subordinates) would be required to review and approve the officer's filings with DMEM concerning the officer's mining interests. In addition, the officer would have a substantial voice in the department's land use classifications, which could inure very much to the officer's benefit were he an actual or potential investor in mineral claims on land subject to state regulation.

Sixth, may an inspector in a state regulatory agency

sell the right to use a process the inspector developed and patented to companies whose plants he inspects? The answer is no. Neither may that inspector obtain a state grant to test the process in plants which he inspects.

Seventh, may a person with an interest in a business that has a contract with the state be a member of the board of the Alaska Resources Corporation (ARC)? The answer is a qualified yes. A member is forbidden to acquire any conflicting interest after joining the board. AS 37.12.065(b). Concerning interests which a member holds and held before joining the board, there are two answers: First, if the contract is with an agency other than ARC, and if that other agency has only routine, ministerial contacts with ARC, there is no conflict. Second, if the contract is with ARC, the board member must abstain from voting and take no formal or informal part in discussions of ARC's policies or actions toward the business in which the member has an interest. Id.

II. THE ROLE OF THE ATTORNEY GENERAL

The attorney general is the chief legal officer of the state and "the legal advisor of the governor and other state officers." AS 44.23.020(a). As such, he is duty bound to assist the governor in "the faithful execution of the laws." Alaska Const., art. III, § 16. These laws include the common law of

conflict of interest, see AS 01.10.010; the constitutional requirements that "[no] appropriation of public money [be] made ... except for a public purpose," and that "[n]o obligation for the payment of money shall be incurred except as authorized by law." Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.

The attorney general performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal opinions. AS 44.23.020(b)(4). The attorney general is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090. Short of court action, the attorney general may advise against an agency course of action which he believes is against the public interest. See Mobil Oil Corp. v. Kelley, 353 F. Supp. 582, 586 (S.D. Ala. 1973), aff'd 493 F.2d 784 (5th Cir. 1974). Indeed, the attorney general is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators. D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974)(In Bank); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865 (Ky. 1974). The first allegiance of the attorney general is to the public interest. Id.

In this opinion, we advise on various courses of action. This advice is based upon our best reading of the case law

and our conviction that, were the specific situations presented to a court in a lawsuit, particular outcomes ould follow. This is not a certain prospect: as will be made clearer below, we are, with few exceptions, dealing not with specific statutes but with the common law, a general and changing body of principles developed and applied by courts over the centuries. Our conclusions are based upon what we believe a court would do given those general principles, prevailing public policy, the public interest, and the continuing silence of the legislature in this area generally. Thus, this memorandum is a prescription for agency action in the face of conflicts of interests not addressed by statute, and a guide for legislative action should the agency or court resolution be unsatisfactory to the legislature.

State agencies, officers, and employees should heed advice in this memorandum until ordered to do otherwise by a court. See Gray v. Main, 309 F. Supp. 207, 220 (M.D. Ala. 1968); State v. District Court of Mayes County, 440 P.2d 700, 707 (Okla. 1968).

III. STATUTES AND COMMON LAW PRINCIPLES

There are more than a dozen provisions dealing with conflict of interests scattered through the Alaska Statutes. Only AS 39.50 applies to state officers generally. One of that chapter's purposes is "to discourage public officials from acting

upon a private or business interest in the performance of a public duty," AS 39.50.010(a)(1), and it declares that "public office is a public trust which should be free from the danger of conflict of interest." AS 39.50.010(b)(1). Its main feature is its disclosure requirements. E.g., AS 39.50.020. The chapter's only prohibitions are contained in AS 39.50.090, subsection (a) of which provides:

> No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

Violation of this subsection is a crime. AS 39.50.090(d).

Other Alaska conflict statutes incorporate AS 39.50 by reference, 1/ or impose other limitations. 2/ The other limitations range from a simple prohibition on the employment of close relatives, AS 14.14.140, to a duty to divest oneself of the conflicting interest or suffer forfeiture of one's office. AS 42.07.061.

The statutes mentioned above speak only to a relative handful of government agencies, boards, corporations, and commissions. 3/ In some cases, the statutes prescribe rules of conduct

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1/ AS 24.55.310; AS 46.12.090.

2/ AS 08.88.391; AS 14.14.140; AS 18.55.080; 18.55.500; AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 37.12.065(b); AS 38.06.035; AS 42.07.061; AS 44.07.330; and AS 44.88.180.

3/ See nn.1, 2, supra.

for officers of state agencies, but offer no guidance for employees. 4/ **There remain hundreds of conflict situations to which no Alaska conflict legislation 5/ pertains except as AS 39.50. 6/**

It is well-settled in the federal courts, particularly with regard to criminal sanctions for bribery and fraud, that the existence of criminal statutes (such as AS 39.50.090) does not extinguish the common law rights and remedies which would ordinarily exist. United States v. Kearns, 595 F.2d 729, 732-733 (D.C. Cir 1978); Continental Management, Inc. v. United States, 527 F.2d 613, 620 (Ct. Cl. 1975), and cases cited therein. We believe that the same rule would apply in Alaska: **AS 39.50 will not be held to repeal, amend, or preempt the common law of conflict of interests which will apply "unless and until the Alaska legislature acts to modify it."** Surina v. Buckalew, 629 P.2d

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4/ Compare AS 21.06.040, AS 27.05.020, and AS 44.07.330 with AS 44.88.180, AS 46.12.090, and AS 48.55.500.

5/ Personnel Rules 13 12.0 and 13 16.0 apply to most executive branch personnel and prohibit conflicts of interests in terms which essentially incorporate the standards of the common law.

6/ AS 39.50 governs the conduct of very few persons. AS 39.50.200(a)(1) limits the chapter's scope by excluding officers or employees below the director level from the coverage of the provision. There remain outside the coverage of the Act deputy directors in the executive branch, assistant attorneys general, appointive officers of the legislative branch (including legislative assistants), non-judicial officers of the court system, and all subordinate employees of these agencies. Thus, fully 90 percent of state officers and employees are beyond the reach of the criminal sanctions in AS 39.50.090(a).

969, 973 (Alaska 1981). Thus, a person may act illegally without violating the criminal law, and serious non-penal consequences may follow.

Neither is it possible to formulate a rule of administrative decision for a given situation by analogy, based upon legislative pronouncements with respect to other agencies, for no consistent policy is apparent from an examination of the various statutes. One statute lays down no other rule than that school boards may not hire close relatives of the board members, AS 14.-14.140, and even that rule may be waived by the commissioner of education. Id. Thus, on local school boards, were it not for the common law rule and AS 39.50.090(a), a board member could let a contract to himself. 7/ In another agency, the law provides that a board member may not vote on a contract with his own firm or one in which he holds a "direct" ownership interest, but he need not divest himself of the interest. AS 44.88.180. In still other agencies, such interests are prohibited and the officer must dispose of the interest or forfeit the office. AS 42.07.-061. See AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 38.06.035. From this range of solutions, no overriding general policy prescription is apparent for the guidance of public officers and employees.

7/ A stricter rule applies to regional school boards. AS 14.-08.131.

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Most conflict of interests situations in Alaska are covered not by statute but by the common law. Judge Wickersham described the common law in In Re Burkell, 2 Alaska 108 (D. Alaska 1903):

> The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the Legislature (1 Kent's Com. 533); a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country (Pierce v. Props. Swan Point Cemetery, 10 R.I. 227, 14 Am. Rep. 667).

Id. at 117. See Howard v. Pfeifer, 443 P.2d 39, 44 (Alaska 1968). In Alaska, the common law controls judicial decision-making "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew. See AS 01.10.010.

The common law of conflict of interests is clearest in the case of a contract made by a public officer who will, as a private person, benefit from the contract. The most comprehensive discussion of the typical situation, the controlling rule, and the underlying public policy is found in Beebe v. Supervisors of Sullivan County, 19 N.Y.S. 629 (App. Div. 1892), aff'd 37 N.E. 566 (N.Y. 1894):

> At the time of his employment [by the board of supervisors as the board's attorney in several

> collection matters], the defendant Anderson was a member of the board of supervisors. They were the agents of the county of Sullivan, and as such had no right to enter into contracts for their own benefit with their principal, the county of Sullivan. They are trustees, and have no right to enter into contracts with each other at the expense of those for whom they are acting, and whose interests they are bound to guard and protect. The illegality of such contracts does not depend upon statutory enactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with the municipality of which they are officers; and this principle applies with particular force to members of a board like the board of supervisors, which not only makes the contract, but subsequently audits the bill.
>
> But it is said that in the case before us the supervisor who was employed did not vote on the question of his own employment, or upon the audit of his bill. That does not cure the evil. The influence upon fellow members is the same. His constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act. He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests. He is a part of the board of supervisors. Its act is his act; and he cannot, as a supervisor, make a contract with himself as a private citizen.

Id. at 630 (citations omitted).

IV. THE PROCESS OF COMMON LAW ADJUDICATION

In the absence of legislation, it is the task of the courts, with the assistance of the attorney general, other mem-

bers of the bar, litigants, and amici curiae, to apply common law principles and policies articulated by the Beebe court and hundreds of other courts and commentators before and since. The task is a difficult one because, with the exception of the self-dealing public officer situation just described, the law is not settled; the courts must reason from the situations already addressed by the courts to solutions for new questions presented.

For this undertaking the common law is well-suited, as Chief Justice Lemuel Shaw noted in his classic description of the process:

> It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adopted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, **the common law consists of a few broad and comprehensive principles founded on reason, natural justice, and enlightened public policy modified and adapted to the circumstances of all the particular cases which fall within it.**
>
> ....
>
> Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances.

Norway Plains Co. v. Boston & Main Railroad, 1 Gray (67 Mass.)

263 (1854), reprinted in Hart and Sacks, The Legal Process: Basic Problems In The Making And Application Of Law (1958) 386-395. 8/

It is our task to begin with the legislative solutions to determine if any statute answers any of the conflict questions posed. Failing that, we must turn to the common law and, beginning with the first principles, reason to the conclusion the courts would likely reach given the facts, judicial precedent in analogous cases, and prevailing public policy.

V. LEGISLATOR CONFLICTS

Two questions are presented concerning potential legislator conflicts: First, may a legislator, or his or her firm or business, contract with the state to provide the state with goods or services? Second, may a legislator receive a state loan?

The first question does not concern classic self-dealing, the letting of contracts by an official to himself or his relatives, associates or company. It is a different problem described in the following terms:

> There is a great possibility that an official who has no immediate administrative connection with

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8/ Thus, even if there is no statute and not one case addressing the situation before a court, that court may, by the process of common law adjudication, formulate a wholly new answer to settle the dispute which gave rise to the lawsuit. See Howard v. Pfeifer, 443 P.2d at 44.

> the contract may be sufficiently motivated by his personal interest to exert whatever influence his position allows to pressure the public official who in fact has a direct responsibility concerning the contract to favor that personal interest. In this way, an official without a personal interest in the contract acquires a conflicting interest in the sense that he must choose between appeasing the pressuring official and properly discharging his duties in the matter.
>
> Experience indicates the harm that may flow from [this situation]. Contracts may be awarded that are over-priced or unnecessary, or the performance rendered under the contract may be inferior, all because of official favoritism, compromise or intentional oversight. Even if the abuse is nothing more than partiality in awarding a contract, it may import an aspect of unfairness into public administration, engendering popular disrespect for government.

Note, Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation, 107 U. Pa. L. Rev. 985, 987-988 (1959). See Eisenberg, Conflict of Interest Situations And Remedies, 13 Rutgers L. Rev. 666, 686 (1959).

There are no cases which squarely hold, as a matter of common law, that a legislator, having no formal, institutional connection with the letting or oversight of a contract, can or cannot contract with the state. The archetypical situation arises in the municipal context where principles of separation of powers do not apply and assemblymen or councilmen act administratively as well as legislatively. Thus, an assemblyman might, in a private contractor capacity, offer goods or services to the city, which goods or services are accepted, inspected, super-

vised, and compensated by the assembly on which the contractor sits. It is the virtually universal rule at common law that such a transaction is illegal, even if the assemblyman-contractor abstains and takes no part in the review and compensation of the performance. E.g., Beebe v. Supervisors of Sullivan County, quoted supra. While some commentators have declared that the common law rule has been extended to bar such transactions if any public officer or employee, regardless of their official connection with the transaction, is the private contractor, 9/ a close analysis of the cases decided to date and due regard for the difference between holding and dicta belie the claim. 10/

Many states have statutes or constitutional provisions which prohibit legislators or other public officers from contracting with the state. A number of cases have declared that such provisions are declaratory of the common law, i.e., even if there were no statute, the same rule would apply by force of the common law. One case is Schultze v. City of New York, 136 N.Y.S.

9/ E.g., Note, Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034, 1039 (1961).

10/ Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Col. L. Rev. 157, 158-174 (1958). We were guilty of uncritically accepting the conclusion of the Virginia Law Review note writer in our formal opinion of August 8, 1979; fortunately, it made no difference in the result in that opinion since the individual in question was an officer with authority to vote on the award of contracts and review the contractor's performance.

715 (App. Div. 1912), aff'd 106 N.E. 1042 (N.Y. 1914). Schultze was a duly appointed coroner's physician whose duty it was to perform autopsies and give evidence at coroners' inquests. He was called upon to assist the district attorney in a homicide case involving a decedent whom Schultze had not examined; he acted as an expert consultant. He submitted a bill which was disapproved under a charter provision which forbade officers to become interested, directly or indirectly, in performance of any contract or work to be paid for from the city treasury; a violation was a misdemeanor, the violator forfeited his office, and the contract was voidable. The court held that the city was not required to pay the bill, and observed that "[t]hese prohibitions are merely declaratory of the common law." Id. at 718. Accord, Marjohn Realty Co. v. City of Long Beach, 204 N.Y.S. 53, 55 (Sup. Ct. 1924), aff'd 206 N.Y.S. 933 (App. Div. 1924).

The case of Norbeck & Nicholson Co. v. State, 142 N.W. 847 (S.D. 1913), involved a legislator who contracted with the state to drill a well. The contract was voided on the basis of a constitutional provision which prohibited legislators to be directly or indirectly interested in any state contract. However, there followed extremely broad dicta:

> A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state's money in payment of the lawful contractual obligations of the

> state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.

Id. at 849.

On the other hand, at least two courts have described statutory prohibitions of such contracts as new legislative rules foreign to the common law. In re Opinion of Justices, 82 A. 90, 93 (Me. 1911); Lindberg v. Benson, 70 N.W.2d 42, 45 (N.D. 1955). However, the Lindberg court went on to state in forceful terms the very public policy considerations which militate in favor of a common law rule in the absence of legislative action:

> The purpose of the enactment was to extend the ancient common-law rule that no state officer may be interested in any contract which he has a voice in letting (which rule is expressed in many statutes of this state) by providing a more comprehensive legislative rule, founded in public policy, which would take away from legislators as a class any personal incentive to increase their opportunities to make profitable contracts by their votes in the legislature or to use their influence as legislators in securing contracts or the approval of the work done under them. The members of the Legislative Assembly exercise a high degree of control over the fiscal affairs of the State and its subdivisions. They regulate assessments and tax levy limits. They authorize bond issues and, for the State, they make all appropriations. By enacting this initiated measure the people have attempted to remove from the legislators temptation to venality in the exercise of their legislative functions. Many states have constitutional or legislative provisions which are similar in

> nature and which have remained in force unchallenged for many years.

Id. at 45-46.

In two recent cases, courts have held that legislator attorneys may not represent persons in litigation against their city or state. In Georgia Department of Human Resources v. Sistrunk, 291 S.E.2d 524 (Ga. 1982), the Sistrunks were represented by Hill, a state legislator. The department invoked fiduciary principles and a Georgia constitutional provision which declared that "[p]ublic officers are the trustees and servants of the people, and at all times are amenable to them." The court expressly noted that this was not analogous to the classic self-dealing situation, since Hill was not representing both the Sistrunks and the state. Id. at 526.

The Sistrunk court framed the issued in the following terms:

> All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.
>
> ....
>
> May one trustee of the people, as attorney and for his own financial gain, negotiate on behalf of another for a favorable official dispensation at the hands of another trustee of the people?

Specifically concerning legislators, may one

> trustee of the people -- in whose office are vested the powers of enhancement, diminution, and destruction of the office of another trustee of the people -- as attorney and for his own financial gain act in a manner to hinder or frustrate the discharge by such other trustee of the duties of their common trust?
>
> No.

Id. at 528.

It bears noting that the court in Sistrunk based its decision on a Georgia constitutional provision and not on the common law. However, that provision is so general in its terms and was analyzed with such close attention to common law trust principles that the Sistrunk holding has significance independent of the constitutional language. A similar provision appears in Alaska law. 11/

In a California case, People v. Municipal Court of San Diego Judicial District, 138 Cal. Rptr. 235, 238 (Cal. App. 1977), the court barred a city councilman-attorney from representing a defendant being prosecuted by the city. The decision appears to rest primarily on the ethical standards of, and trust reposed in, members of the bar, rather than on any statutory or constitutional provision. 12/

11/ Compare the Georgia constitutional provision quoted in the text with AS 39.50.010(b)(1), which provides "public office is a public trust which should be free from the danger of conflict of interest."

12/ However, the court did, in passing, compare the councilman's

A legislator contract also raises novel and troubling questions of separation of powers. The federal courts have, in perhaps a dozen cases, condemned the practice of interference by individual legislators or committees in executive branch decision-making. The leading case is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a decision of the FTC in its quasi-judicial capacity was invalidated because of intense Congressional committee pressure while the decision was pending.

Much less pressure was required to invalidate the decision at issue in Koniag, Inc. v. Andrus, 580 F.2d 601 (D.C. Cir. 1978), cert. denied 439 U.S. 1052 (1978). The court ruled that a letter sent by Congressman Dingell to the Secretary of the Interior, in effect urging him to deny several applications for "native village" status, compromised the Secretary's impartiality in a quasi-judicial proceeding; the court ordered reconsideration of the applications by the new Secretary. In other cases, however, explicit and extreme threats were said to be required before invalidation would occur. E.g., D.C. Federation v. Volpe, 459 F.2d 1231 (D.C. Cir. 1972)(threat of loss of appropriation for unrelated project); Texas Medical Association v. Mathews, 408 F.

12/ cont. . . .
representation to conduct by "[a] local agency officer or employee" which is statutorily proscribed as "incompatible." Id. at 238.

Supp. 303 (W.D. Tex. 1976)(threat of loss of job).

Here, as in the federal legislator influence cases, the legislators would be placing themselves in a non-legislative, i.e., administrative or quasi-judicial, arena. But the kind of legislator pressure which caused the court in Pillsbury to invalidate the FTC decision is not involved here. Still, the federal legislator interference cases lead us to conclude that a court would not require a showing of direct threats where a legislator acted on behalf of himself rather than on behalf of a constituent.

The remarks of the Alaska Supreme Court in two opinions bear on this inquiry. Both cases, Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), and Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976), involved legislators who held or wished to hold an office of state government outside the legislative branch.

In Begich, the court observed generally:

> Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government.

441 P.2d at 35.

In Warwick, the court considered Alaska Constitution, article II, section 5, which forbids a person to accept a government post which was created, or the salary for which was increased, while that person served in the legislature. The court observed:

> There is little disagreement as to the purpose of the type of constitutional provision under consideration here. Although the exact language varies from state to state, all such provisions are aimed at a common goal: to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices. In one often-cited quotation, Justice Story, commenting upon a like provision in the Constitution of the United States, said:
>
> > The reasons for excluding persons from offices who have been concerned in creating them, or increasing their emoluments, are to take away, as far as possible, any improper bias in the vote of the representative, and to secure to the constituents some solemn pledge of his disinterestedness.
>
> This type of constitutional provision is designed not only to stop overt trafficking in offices, but also to prevent less obvious influences on a legislator's actions:
>
> > [T]his constitutional provision was enacted through fear that a legislator might be, either consciously or unconsciously, influenced by selfish motives when voting for or against a bill.
>
> Another purpose has been said to be the elimination of even the suspicion that legislators were acting with improper motives. As in the case of the judiciary, it is important that the legislature not only avoid impropriety, but also the appearance of impropriety.

548 P.2d at 387-388 (emphasis added by the court, footnotes omitted).

Both the Alaska Constitution and AS 39.50 were adopted by popular vote. From these electoral expressions it is clear that Alaskans view as morally opprobrious public officials who use public office for private gain. Indeed, even the appearance of impropriety is a circumstance to be avoided. Warwick at 388, quoted supra; Falcon v. A.P.O.C., 570 P.2d 469, 477 (Alaska 1977). See AS 39.50.010(b)(1)("public office is a public trust which should be free from the danger of conflict of interest").

The size of the legislature and the executive branch is also an important consideration. There are only 60 legislators, all of whom are likely well-known to the relatively few departmental commissioners, deputy commissioners and directors. Most of these persons work together in close proximity in Juneau for five months of the year.

Our legislators have a keen interest in the budget process. Those legislators who sit on the finance committees are usually familiar with the thousands of pages of budget documents in the minutest detail and make allocations in multi-billion dollar budgets in increments of thousands of dollars. Any legislator, and especially a member of the finance committees or the free conference committee on the budget, can have an enormous impact on the budget of a state agency. Recent legislative ses-

sions have seen both the creation and destruction of agencies at the behest of single or a few legislators who took the initiative to bless or gut the agencies. In recent years, the legislature has also taken to designating its own non-governmental agents to carry out state programs. E.g., p. 25, § 51, ch. 120, SLA 1980.

Alaska is a very small state, with a small pool of talented people from which to draw its leaders. Many of the most talented have extensive commercial enterprises which may do business with the state. Unreasonable barriers should not be placed before these most promising aspirants to public service. Yet, with the legislature tending toward a half-time profession, and with the great potential for conflicts of interests with multi-billion dollar budgets and pervasive government involvement in private commerce, the courts might well be convinced that the only solution in the public interest is a common law prohibition. This would be all the more compelling in the absence of evidence that aspirants to public service are being dissuaded by a common law rule prohibiting legislator contracts, and in the absence of legislative action in this area. Indeed, such a common law prohibition might be a telling experiment for the information of the courts and the legislature.

As we have already noted, there is no case authority directly on point pro or con, but the foundation is there, in Beebe and its progeny, in Begich, in Warwick, and in AS 39.50,

upon which a common law rule against legislator contracts could be constructed. Any voter could bring an action to void such contracts 13/ and we would likely support that result in the absence of a compelling contrary justification. 14/

It is therefore our conclusion that a contract between a state agency, 15/ on the one hand, and a legislator, a business owned or operated by a legislator, or a business in which the legislator is an officer, manager, or large stockholder, on the other hand, would be illegal under the common law. 16/

* * * *

The second legislator conflict situation concerns legislators (and some state officers and employees) who apply to re-

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13/ See AS 39.50.100.

14/ Were a legislator contractor the only possible source for particular goods or services, we might support an exception. Similarly, an exception might be justifiable if a legislator proposed to provide non-unique, "off-the-shelf" goods (e.g., office supplies, motor oil) where price would be virtually the only variable. Exceptions are not supportable where the transaction requires the exercise of judgment by an administrator or an extended period of performance by the legislator. See State v. Yoakum, quoted infra.

15/ A court might well go further and say that legislators may not, as private contractors, do business with any entities (state agencies, municipalities, nonprofit corporations) whose projects are financed with state funds.

16/ At this time, we offer no opinion on situations where the legislator is an employee of the contracting firm, or where a close relative of a legislator is an officer, manager, large stockholder or employee of the contracting firm.

ceive loans from the state. The only case which offers even brief analysis of the public policy considerations which would underlie an exception to the common law rule is State v. Yoakum, 306 S.W.2d 39 (Tenn. App. 1957). In explaining why a loan to a school board of which the president of the lender bank was a member did not violate a statutory prohibition of a direct or indirect interest in a public contract, the court impliedly undercut any common law prohibition:

> A loan of money, however, is unlike a contract for goods or services involved in all our reported decisions. Because they involve questions of value, contracts relating to goods and services provide opportunity for imposition upon the public. In the loan of money the law fixes the maximum rate of interest and no question of value is involved. Only a rate of interest below the maximum fixed by law can be the subject of negotiation. In the loan here involved it is not insisted that such a short term loan could have been made elsewhere at a lower rate of interest and, as we have seen, the loan actually resulted in a loss to the Bank. To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority.

Id. at 40.

While the analysis is terse, Yoakum provides a basis for distinguishing the loan situation from other contracts between the state and legislators. However, we can say this with confidence only in the cases of loans for tuition or personal residences, where loan ceilings are relatively low, eligibility

standards are fixed, and the range of administrator discretion subject to influence and abuse is small. 17/ Commercial loan programs, where ceilings are much higher and where evaluation of credit-worthiness is more subjective, may yet present conflicts of interests where the loans are made to legislators.

However, there is potential for influence or abuse in any loan program, especially when foreclosure or other enforcement actions must be considered. Thus, whether the loan is educational, residential, or commercial, a conflict of interests may arise, and state legislators (and some state officers and employees) and their agents, must act with the greatest circumspection and propriety in dealing with the agency concerning the loan or any other matter. The agency, in order to maintain public confidence in the fairness of its program, should brook not even a hint of interference and should report questionable communications to the attorney general.

* * * *

We view the third question, concerning the propriety of a legislator voting on a bill which will financially advantage the legislator, in a different light. It is clear in the case law that, when a legislator acts in a legislative capacity, that

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17/ Even a competitive bidding procedure is subject to greater influence and abuse where the contracting officer has discretion in evaluating the responsibility of the bidders. AS 39.05.230. See AS 36.98.040 -- 36.98.050.

action can be challenged only when the legislator's conduct is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power." Rollins v. Carter, 69 A. 777 (N.H. 1908); Pyatt v. Mayor of Dunellen, 89 A.2d 1, 3 (N.J. 1952); MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522. However, when a legislator acts outside the legislative sphere, with respect to a particular transaction or adjudication in which the legislator is interested, a challenge may be sustained if there is found a "private interest at variance with the impartial performance of ... public duty." Pyatt; Rollins. See Burton v. United States, 202 U.S. 344, 366-367 (1906); Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952, 964 (5th Cir. 1966); Note, Conflicts of Interest of State Legislators, 76 Harv. L. Rev. 1209, 1214, n.38 (1963)("[I]mproper activities in other capacities should not be protected merely because the impropriety arises from the fact that the actor is also a legislator.").

Therefore, where a legislator votes on a bill which will financially benefit the legislator as a member of the public generally, e.g., personal income tax repeal, or where a legislator votes on a bill which will financially benefit the legislator as a member of a numerous though limited class of Alaskans, e.g., bank deregulation or corporate income tax repeal which will benefit shareholders, the legislator's vote may not be challenged. See the memorandum opinion from Kenneth E. Vassar to Wilson L.

Condon dated April 1, 1982.

Where, however, the class of beneficiaries of the legislation is tiny, especially where the bill relates to a project for which the legislator is a private contractor or affiliated with a private contractor, the legislator must disclose the conflict of interests and the legislative body should bar the legislator from voting. See MASON'S MANUAL OF LEGISLATIVE PROCEDURE, § 522 (1979).

VI. OFFICER CONFLICTS

Four potential conflicts of interests by executive branch officers have been presented for our review. We will treat them in turn.

It is first asked whether a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute has a conflict if he or she is an officer, employee, or large stockholder of a company or firm which has contracts with the state to provide goods or services. If there is a conflict, what remedial steps need be taken?

The question is answered by the Beebe case, quoted supra, and the accompanying discussion: a conflict clearly does exist if the person with the potential conflict is associated with both parties to the contract, i.e., the state agency procuring the goods or services and the private contractor providing

them. 18/ If, however, the person with the potential conflict works for a state agency with no contracts with the private contractor with which the person is associated, there would be no conflict. 19/

The Beebe case makes it clear that public service demands total fidelity to the public interest at all times. A public servant, faced with a conflict of interests by reason of private financial associations may not pass official decision-making responsibility on to a colleague or subordinate who may share the same prejudice or be subject to influence. "He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests." Id. at 630. Faced with a conflict, the person must either resign his or her position, or forego the private opportunity to do business with the state.

18/ If the person is only an employee, there may not be a conflict. Those situations must be addressed on a case-by-case basis.

19/ We must qualify this last mentioned conclusion by noting that a conflict might arise even if the person was not an official in the contracting state agency if the person nevertheless has extensive contacts with the contracting state agency. For example, certain officers of the Department of Law and the Office of the Governor, though not within the Department of Administration, may have extensive contacts with, and considerable influence in, the Department of Administration. A person with similar "interdepartmental" duties might be in a conflict situation if he or she entered into an agreement as a private contractor with the other department.

* * * *

It is next asked whether an officer of the Division of Minerals and Energy Management (DMEM) may hold a mining claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction. AS 27.05.020 provides:

> In conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070, no officer or employee of the department may have any personal or private interest in a mine or the products of a mine under investigation, or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer or other expert whose principal professional practice is outside his employment by the department.

The syntax of AS 27.05.020 is not an aid to understanding. A thoughtful reading of the provision reveals that it is not any officer or employee of the department who is prohibited from holding an interest in a mine under investigation; only officers and employees "conducting the inquiries and investigations authorized by AS 27.05.010 -- 27.05.070" are so restricted. We are informed by the director of DMEM that that division conducts virtually none of the "investigations" in question; those matters are within the jurisdiction of the Division of Geological and Geophysical Surveys. However, there is still the common law.

DMEM is the state agency which regulates the acquisition of mining claims and leases on lands under state jurisdiction, see AS 38.05.185 -- 38.05.280; 11 AAC 86, and issues mis-

cellaneous land use permits. See 11 AAC 96. DMEM also has a representative on the regional planning teams which make recommendations to the commissioner on state land use classifications. See AS 38.04.065; 11 AAC 55.

As the regulatory agency for mining claims, DMEM receives the filings of persons who stake mineral claims. See AS 38.05.195. It must review the filings to verify that there has been a discovery, see 11 AAC 86.105, and that the claim has been properly staked. See 11 AAC 86.205 -- 11 AAC 86.215. On an annual basis, DMEM receives additional filings from each claim owner attesting to the performance of statutorily-required annual labor on the claim, see AS 38.05.210; 11 AAC 86.220, and must verify that the claimed labor meets prescribed requirements. Id. A major component of the DMEM mining section's effort and budget is devoted to this "adjudication" of mineral claims.

In this light, we believe that an ownership interest in mineral claims (or in a company which owns mineral claims) on lands under state jurisdiction creates a common law conflict of interests on the part of officers and employees of DMEM. Given the size of the mining section of DMEM (25 persons) and the likely close working association of all the officers and employees, it is probable that a court, as a matter of common law, would forbid any person in DMEM to own a mineral claim on lands under state jurisdiction since the opportunity for influence is so evi-

dent. It is even clearer that a court would forbid a supervisory officer to own such a mineral claim since it would be that person's subordinate who would review the sufficiency of the claim and the annual labor affidavit. 20/ And, as we noted, supra, at page 31, the conflict is not cured by removing oneself from the review of one's own filings: the public has the right to demand that a state officer bring his or her skills to bear in all matters which the office calls upon him or her to consider.

DMEM is one of only three agencies principally responsible for overseeing mineral exploration and mining activities on lands under state jurisdiction. DMEM personnel cannot be both regulators and regulated. If they wish to serve in DMEM, they must forego this relatively narrow range of investment opportunities. **The common law requires officers and employees in DMEM who have interests in mining claims to dispose of those interests with all deliberate speed, or resign.** 21/

20/ DMEM officers and employees also have access to confidential geological, geochemical, geophysical, and airborne surveys. See AS 38.05.240. Were they permitted to own mineral claims, they might have a distinct advantage over other prospectors, miners, and investors. This is another aspect of the conflict of interests inherent in the situation.

21/ The Department of Law has had the full cooperation of DMEM officers and employees in this inquiry; indeed, it was a DMEM officer with an interest in mineral claims who first asked our advice on this matter. At that time, we informally advised him that there was no conflict, and he ordered his affairs accordingly. Thus, it was our erroneous advice, and no wrongdoing by the DMEM officer, that allowed the conflict situation to develop.

* * * *

It is next inquired whether a Department of Environmental Conservation (DEC) inspector of seafood processing plants may sell the right to use a process he developed and patented to companies whose plants he inspects. The answer is clearly no.

The evil of such an arrangement is patent: seafood processors might feel compelled to purchase the right to use the process or suffer the wrath of the seller when next he inspects their plants.

We hasten to add that there is not the slightest suggestion that the particular inspector involved has ever acted improperly; it is the appearance of impropriety which condemns these proposed transactions. If the inspector wishes to market his process, he must resign or sell his rights in the process to another who may market it. 22/

The same inspector also wishes to apply to the Department of Commerce and Economic Development (DCED) for a grant to test his process. Because the grant project would likely involve one or more seafood processors in a cooperative effort to test the process, a conflict of interests on the inspector's part

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22/ If the inspector chooses the latter course, he may not reserve any right to receive royalties or license fees; were he to do so,, the spectre of influence would again appear since, though he is not personally marketing the process, each seafood processor that used the process would be paying the inspector indirectly.

would almost certainly arise. In that case, the grant would be illegal. See Newton v. Demas, 258 A.2d 376 (N.J. App. 1969)(municipal engineer had an outside contract with a developer to design a water system; the contract was void because the engineer would have had to review his own design in his official capacity).

* * * *

It is last asked whether a member of the board of the Alaska Resources Corporation (ARC) has a conflict of interests if he or she is associated with a company that has a contract with the state. AS 37.12.065 provides:

> (a) Members of the board are subject to the provisions of AS 39.50.
>
> (b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

Subsection (b) modifies the common law as it would apply to ARC. Under the common law, the member could neither acquire a new interest nor keep an old interest in a company doing business with ARC, and this disability could not be cured by abstaining on votes and taking no part in deliberations. Under AS 37.12.065, acquisition is forbidden, but interests owned upon appointment may be retained, so long as the member abstains from

voting and has no contact, formal or informal, with other members concerning ARC's policies or actions toward the firm in which the member has an interest. This departure from the common law applies only to members and employees of ARC. 23/

VII. CONCLUSION

The common law of conflict of interests is uncharted water for most public officials, including government attorneys. They err when they believe that a public official's conflict can be cured if the official takes no part in the decision in which he or she is interested. They err when they believe that a court will not invalidate a contract if, though a party to the contract has a conflict, it is still a fair price.

The courts take the view that officials have a duty to the public to participate in all the decisions they were elected or appointed to make. The courts ordinarily will not allow an

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23/ It was also inquired whether an ARC board member may also be a member of the Alaska Historical Commission. AS 44.27.061, et seq. In view of the clear prohibition on holding "any other state or federal office, position, or employment . . . ," AS 37.-12.045(b), we believe the board member must resign from either ARC or the Alaska Historical Commission. This prohibition goes further than the common law; indeed, as applied in this situation, it appears to advance no laudable goal. But it is within the legislature's power, and it does prevent the appearance of conflict of interests in many other situations. If a more refined provision is to be substituted, one which is better able to discriminate between real and imagined potential for abuse, the legislature alone has the power to do it.

official to decline to make a decision in order that he or she might be free to have the benefit of that decision.

The courts will not allow an official to make a contract with his agency and, when challenged, assert as a defense that the contract was more advantageous to the state than any other offer received.

The common law of conflict of interests aims not only to prevent officials from actually taking unfair advantage of their office. It also aims to eliminate the potential for abuse and the appearance to the public that officials are subject to temptation. For these reasons, the courts have dealt sternly with officials in conflict situations, and they will continue to do so. Unless the legislature formulates another means to sustain the public's confidence that public officials are not benefitting in private from their positions in public, we, and all public officials, must abide by the common law.

Sincerely yours,

Wilson L. Condon
Attorney General

WLC/pjg

13-1184
Berrier
4/6/83

Comments by Ken Wonstolen, E39.
consultant to NCSL on Alaska
JRC Ethics Project ; 4/6/83

IN THE HOUSE

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature established under AS 24.20. This chapter does not apply to a former member of the legislature or to a person formerly

Such persons may, however, request an advisory opinion from the Legislative Ethics Commission immediately upon their election.

employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies. This chapter ~~does not~~ apply to ~~a person~~ newly-elected members of the legislature ~~who at the time of election is not a member of the~~ only upon the commencement of the next legislature session.

(b) The provisions of this chapter specifically ~~repeal~~ ~~the~~ supercede any provisions of the common law relating to legislative ~~conflict of interest~~ ethics which are inconsistent with this chapter. that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature established under AS 24.20.] delete

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence [which could benefit or harm] on any matter in which the person has a private interest.

(b) [Conflicts of interest are prohibited?] ~~but~~ there is not a conflict of interest if the commission determines that as to a specific [contract or loan matter] there is no substantial impropriety or appearance of impropriety because awkward

(1) the [legislator's interest or the interest of a person employed by the legislator or an agency of the legislature] person's interest is relatively insignificant;

(2) the [legislator's authority or the authority of a person employed by the legislator or an agency of the legislature] person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action; or

(3) the interest is of a type that is readily available to

the public or to a large class of ~~persons~~ citizens to which the ~~legislator, or a person employed by the legislator or an agency of the legislature~~ person belongs.

Sec. 24.60.040. ADOPTION OF REGULATIONS BY ETHICS COMMISSION. The commission may adopt regulations regulating the specific conduct of a person to whom this chapter applies consistent with the general principles stated in this chapter, [although the specific conduct is not provided for in this chapter.]

Sec. 24.60.050. CONTRACTS. (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract is $1000 or less. ~~A person has~~ an interest in a state contract exists under this section if the contract is awarded to

(1) the ~~legislator~~ person, or a member of the immediate family of the ~~legislator~~ person;

(2) a firm, corporation, or association in which the person owns more than 50 percent of the stock or serves as an officer or director ~~of the firm, corporation, or association;~~ → relatively large interest allowed

(3) a partnership in which the person is a partner.

Sec. 24.60.060. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies, a person in close economic association with that person, or a member of that person's family to receive a loan from the state if the loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification for the loan.

(b) In determining whether a conflict of interest exists with respect to a state loan other than loans described in (a) of this

section, because a ~~legislator~~ person may be in a position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of ~~existing~~ administrative procedures for granting and reviewing loans to legislators and legislative staff.

(c) Upon application for a state loan by a person to whom this chapter applies [other than loans described in (a) of this section] why not all loans? the lending agency must send a copy of the application and supporting documentation to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or is a member of the immediate family of a person required to file a disclosure statement. All records relating to a state loan to a person to whom this chapter applies, a person in close economic association with the person, or a member of the person's family, are public records and may not be made confidential.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to [legislators, except for loans described in (a) of this section] persons to whom this chapter applies The list must include the name of the ~~legislator~~ person, the date of issuance and current status of the loan.

(e) A legislator, a person in close economic association with a legislator, or a member of the legislator's family or staff, is prohibited from applying for a state loan from a loan program that was created or expanded by legislation acted on during the term for which the legislator was elected, and for one year thereafter.

(f) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. [However, the regulations need not govern loans described in (a) of this section.] this forces agency to decide if its program fits (a)

twtca: to whom this chapter applies

(g) The division of legislative audit shall annually review state loans granted to or held by ~~legislators~~ persons twtca to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics committee by April 15.

Sec. 24.60.070. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.080. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a potential conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter between

(1) the person and a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) ~~a~~ the person [to whom this chapter applies] and a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50; or

(4) ~~a~~ the person [to whom this chapter applies] and a lobbyist.

Sec. 24.60.090. GIFTS. (a) A person to whom this chapter applies may not ~~solicit~~, accept, or receive, directly or indirectly a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended

as a reward for an official action on the part of the person.

(b) There is no conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or [ground] transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $50 in value received by the person ~~for each meal or event~~ and that does not in the aggregate exceed $250 in value received during the calendar year from one person or organization.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over the benefits to the agency.

Sec. 24.60.100. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means husband, wife, mother, father, sister or brother, and includes an unmarried individual living in a spousal capacity with the person.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.110. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a person to whom this chapter applies may not represent another person for compensation before an agency, board, or commission of the state or a municipality of the state, except in

~~(b) A member of the legislature and a person employed by a~~

~~member of the legislature may represent a client in~~

(1) a criminal action before a court of the state; or

(2) a civil action before a court of the state if the state is not a party to the action.

(c) A ~~legislator or a~~ person twtca employed by ~~a member of the legislature~~ cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.120. ACTION ON A CONFLICT OF INTEREST. (a) A ptwtca ~~legislator~~ who has a conflict of interest shall ~~immediately~~

(1) refrain from acting on the matter ~~resign the position;~~

(2) divest the interest ~~dispose of the matter~~ which has resulted in the conflict or potential conflict; or

(3) ~~may~~ disclose the potential conflict of interest to the ~~in the Daily Journal of the appropriate body.~~ commission and abide by its recommendation.

Sec. 24.60.130. STATE PROPERTY AND FUNDS. A ptwtca ~~member of the~~ legislature or a person employed by a member of the legislature may not use state property or funds for personal or campaign purposes.

Sec. 24.60.140. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to the commission from the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives;

(3) the president of the senate shall appoint to the

commission two persons who are citizens of the United States and residents of the state;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

(1) hold or seek elective office; other than in a election

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(h) The commission may employ an executive director and staff as it considers necessary (subject to approval of both houses). A member of the commission may not serve as executive director or on the staff of the commission.

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.150. DUTIES OF THE COMMISSION. (a) The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt ~~rendition~~ rendering of ~~its~~ opinions;

(2) recommend ~~to the legislature~~ legislation the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(4) publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

(b) The commission may adopt regulations to implement, clarify, and interpret this chapter. Already covered in 24.60.040 (p3)

Sec. 24.60.160. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the

commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion.

Sec. 24.60.170. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) The commission shall investigate ~~the charges~~ a complaint filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the

complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall ~~file a complaint against the person charged with a violation of this chapter and the complaint and~~ render a statement of the alleged violation which shall be personally served on the person charged. The alleged violator has 20 days after service of the ~~complaint and~~ statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. A copy of transcripts of the testimony is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the commission may assess one half of the cost of the preparation of the transcript of testimony against the person charged.

(g) A decision of the commission shall be in writing and signed

by three or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation and may contain recommendations concerning penalties including imposition of civil penalties in an amount not to exceed $25,000. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

ptwtca

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

fix + time
minimal - implies
total coverage

(j) A commission member or individual who divulges information concerning a charge before the ~~filing of a complaint~~ rendering of a decision by the commission, ~~except as permitted by this chapter~~, is guilty of a class C felony.

Sec. 24.60.250. In this chapter, "commission" means the Legislative Ethics Commission.

define: "private interest" (see p 2 lines 5-6)
"close economic assoc" used several times

13-1185
Berrier
4/7/83

IN THE SENATE

BY THE SPECIAL COMMITTEE ON LEGISLATIVE REFORM

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature established under AS 24.20. This chapter applies when a person listed above has a direct beneficial interest in a matter

whether or not the person is a party to the matter. This chapter does not apply to a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies. This chapter does not apply to a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature established under AS 24.20.

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(b) Conflicts of interest are prohibited but there is not a conflict of interest if the commission determines that as to a specific matter there is no substantial impropriety or appearance of impropriety because

(1) the legislator's interest or the interest of a person employed by the legislator or an agency of the legislature is relatively insignificant;

(2) the legislator's authority or the authority of a person employed by the legislator or an agency of the legislature is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by

delegating responsibility for official action; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the legislator, or a person employed by the legislator or an agency of the legislature belongs.

Sec. 24.60.040. CONTRACTS. A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract is $1000 or less. A person has an interest in a state contract under this section if direct or indirect financial benefits inure to the person.

Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a legislator may be in a position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the lending agency must send a copy of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement. All records relating to a

state loan to a person to whom this chapter applies may be disclosed to the commission.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to legislators, except for loans described in (a) of this section. The list must include the name of the legislator, the date of issuance and current status of the loan.

(e) A legislator is prohibited from applying for participation in a state program or for a state loan from a loan program that was created or the class of persons who qualify for the program or loan was expanded by legislation acted on during the term for which the legislator was elected for a period of one year after the effective date of the Act which created the program or expanded the class.

(f) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. However, the regulations need not govern loans described in (a) of this section.

(g) The division of legislative audit shall annually review state loans granted to or held by legislators to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics commission by April 1.

(h) For purposes of this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person.

Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information

that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A person to whom this chapter applies shall disclose to the commission the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50.

(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist.

Sec. 24.60.080. GIFTS. (a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly a gift, in excess of $100, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action on the part of the person.

(b) There is no conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or ground transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person;

(4) gifts from the person's immediate family.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over the benefits to the agency.

Sec. 24.60.090. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, husband, wife, mother, father, sister or brother.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a person to whom this chapter applies may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature and a person employed by a member of the legislature may represent a client in

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

(c) A legislator or a person employed by a member of the legislature cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator who has a conflict of interest shall immediately

(1) resign the position;

(2) dispose of the matter which has resulted in the conflict or potential conflict; or

(3) may disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the commission which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session.

Sec. 24.60.120. STATE PROPERTY AND FUNDS. A member of the legislature or a person employed by a member of the legislature may not use state property or funds for personal or campaign purposes.

Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to the commission from the senate with the concurrence by roll call vote of three-fourths of the full membership of the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives with the concurrence by roll call vote of three-fourths of the full membership of the house;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the senate;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the house;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(h) The commission may employ an executive director and staff as it considers necessary. A member of the commission may not serve as executive director or on the staff of the commission.

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.140. DUTIES OF THE COMMISSION. (a) The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) recommend to the legislature legislation the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(4) publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

(b) The commission may adopt regulations to implement, clarify, and interpret this chapter.

Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter

applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential.

Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission. No complaint, other than a complaint initiated by three or more members of the commission may be received within a period of 60 days preceding a state primary or general election.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a

violation of this chapter.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission and to the person

charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing and signed by four or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation and may contain recommendations concerning penalties including imposition of civil penalties in an amount not to exceed $25,000. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

(j) A commission member or individual who divulges information concerning a charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class C felony.

Sec. 24.60.170. In this chapter, "commission" means the Legislative Ethics Commission.

13-1185
Berrier
4/8/83

IN THE SENATE

BY THE SPECIAL COMMITTEE ON LEGISLATIVE REFORM

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature established under AS 24.20. [This chapter does not apply to a former member of the legislature or to a person formerly

employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies. This chapter does not apply to a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature established under AS 24.20.

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if the commission determines that as to a specific matter there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

(d) A conflict does not exist if the commission determines that no benefit or detriment accrues to a person to whom this chapter

applies beyond that which accrues uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

Sec. 24.60.040. CONTRACTS. A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract is $1000 or less. A person has an interest in a state contract under this section if the person receives direct or indirect financial benefits. A person has an interest in a state contract under this section if the contract is awarded to

(1) a firm, corporation, or association in which the person has an ownership interest greater than ___ percent; or

(2) a partnership in which the person is a partner.

Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a legislator may be in a position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the lending agency must send a copy of the application to the Alaska Public Offices Commission, which will incorporate the material into

the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the commission.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section. The list must include the name of the person, the date of issuance and current status of the loan.

(e) A legislator is prohibited from applying for participation in a state program or for a state loan from a loan program that was created or the class of persons who qualify for the program or loan was expanded by legislation acted on during the term for which the legislator was elected for a period of one year after the effective date of the Act which created the program or expanded the class.

(f) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. However, the regulations need not govern loans described in (a) of this section.

(g) The division of legislative audit shall annually review state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics commission by April 1.

(h) For purposes of this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person.

Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A person to whom this chapter applies shall disclose to the commission the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50.

(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist who is not a member of the immediate family of the person.

Sec. 24.60.080. GIFTS. (a) A person to whom this chapter applies may not solicit a gift, or accept or receive, directly or indirectly, a gift, in excess of $100, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action by the person.

(b) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or ground or water transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person; or

(4) gifts from the person's immediate family.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or that require public officials to turn over the benefits to the agency.

Sec. 24.60.090. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, husband, wife, mother, father, sister or brother.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20

may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature may represent a client in

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator who has a conflict of interest shall immediately

(1) resign the 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 commission which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session.

Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this chapter applies may not use state property or funds for private gain or campaign purposes.

Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to the commission from the senate with the concurrence by roll call vote

of three-fourths of the full membership of the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives with the concurrence by roll call vote of three-fourths of the full membership of the house;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the senate;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the house;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The members of the commission shall elect a chair and vice-chair and may elect other officers. Those members of the commission who are members of the legislature may not serve as chair or vice-chair.

(e) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(f) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(g) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(h) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(i) The commission may contract for professional services and may employ staff as it considers necessary. [A member of the commission may not serve as executive director or on the staff of the commission.]

(j) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.140. DUTIES OF THE COMMISSION. (a) The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) recommend to the legislature {legislation} the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the

production for examination of any books or papers relating to any matter under investigation before the commission;

(4) publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

(b) The commission may adopt regulations to implement, clarify, and interpret this chapter.

Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential.

Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service. Nothing in this subsection bars proceedings against a person

who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission. No complaint, other than a complaint initiated by three or more members of the commission may be received within a period of 60 days preceding a state primary or general election.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an

opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing and signed by four or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation and may contain recommendations concerning penalties including imposition of civil penalties in an amount not to exceed $25,000. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

(j) A commission member or individual who divulges information concerning a charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class C felony.

Sec. 24.60.170. In this chapter, "commission" means the Legislative Ethics Commission.

Definition - Range 16 or under

13-1185
Berrier
4/11/83

IN THE SENATE

BY THE SPECIAL COMMITTEE ON LEGISLATIVE REFORM

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature, ~~established under AS 24.20~~. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by a member of the legislature or an employee of an agency of the legislature whose compensation is below Step A, Range 18 of the state salary schedule established in AS 39.-27.011(a).

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature, ~~established under AS 24.20.~~

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if ~~the commission determines that~~ as to a specific matter there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from

any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

(d) A conflict does not exist if ~~the commission determines that~~ no benefit or detriment accrues to a person to whom this chapter applies beyond that which accrues uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

Sec. 24.60.040. CONTRACTS. A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding under AS 37.05.230 or the total annual amount of the state contract is $1000 or less. A person has an interest in a state contract under this section if the person receives direct or indirect financial benefits. A person has an interest in a state contract under this section if the contract is awarded to

Also State Loans

Definition

(1) a firm, corporation, or association in which the person has an ownership interest greater than ___ percent; or

(2) a partnership in which the person is a partner.

Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a legislator may be in a

position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the lending agency must send a copy of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the commission.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section. The list must include the name of the person, the date of issuance and current status of the loan.

(e) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. However, the regulations need not govern loans described in (a) of this section.

(f) The division of legislative audit shall annually review state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics commission by April 1.

(g) For purposes of this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private

person.

Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A person to whom this chapter applies shall disclose to the commission the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50.

(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist who is not a member of the immediate family of the person.

Sec. 24.60.080. GIFTS. (a) A person to whom this chapter applies may not solicit ~~any~~ gift or may not accept in any amount or accept or receive, directly or indirectly, a gift, in excess of $100, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action

by the person.

(b) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or ground or water transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person; or

(4) gifts from the person's immediate family.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or that require public officials to turn over the benefits to the agency.

Sec. 24.60.090. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, husband, wife, mother, father, sister, brother, or a permanent member of the legislator's household.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a member of the legislature or a person

employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature may represent a client in

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator who has a conflict of interest shall immediately

(1) resign the 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 commission which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session.

Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this chapter applies may not use state property or funds for private gain or campaign purposes.

Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to

the commission from the senate with the concurrence by roll call vote of three-fourths of the full membership of the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives with the concurrence by roll call vote of three-fourths of the full membership of the house;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the senate;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the house;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The members of the commission shall elect a chair and vice-chair and may elect other officers. Those members of the commission who are members of the legislature may not serve as chair or vice-chair.

(e) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(f) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(g) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(h) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(i) The commission may contract for professional services and may employ staff as it considers necessary. A member of the commission may not serve on the staff of the commission.

(j) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) recommend legislation to the legislature the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any

matter under investigation before the commission;

(4) publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential.

Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission. No complaint, other than a complaint initiated by three or more

members of the commission may be received within a period of 60 days preceding a state primary or general election.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the commission determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a violation of this chapter the commission shall summarily dismiss the complaint.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the commission and the person charged with a violation of this chapter shall have an

opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing and signed by four or more members of the commission. Each decision of the commission must be accompanied by a written order of the commission determining that a violation of this chapter exists or does not exist. The order is confined to this determination. This order is a public record.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning penalties including imposition of civil penalties in an amount not to exceed $25,000. The commission shall make the decision public 30 days after the referral. Days during

which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission ~~shall~~ may issue a public statement of its decision 30 days after the date of the decision. ~~The attorney general shall exercise whatever remedies may be available to the state.~~

(j) A commission member or individual who divulges information concerning a charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class C felony.

Sec. 24.60.170. In this chapter, "commission" means the Legislative Ethics Commission.

13-1185
Berrier
4-12-83

Compared to 4/11 draft

BY THE SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission."

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

* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of the legislature. This chapter does not apply to

(1) a former member of the legislature or to a person

1) deleted "established under AS 24.20

formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by a member of the legislature or an employee of an agency of the legislature whose compensation is below Step A, Range 18 of the state salary schedule established in AS 39.-27.011(a).

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature. **They do not supersede or repeal provisions of the criminal laws of the state.**

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies has discretion to take or withhold official action or exert influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if 2 as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove

2) deleted "the commission determines that"

the appearance of impropriety by delegating responsibility for official action.

(d) A conflict does not exist if no benefit or detriment accrues to a person to whom this chapter applies beyond that which accrues uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract unless the contract is let by competitive bidding under AS 37.05.230 or the total annual amount of the state contract is $1000 or less. A person has an interest in a state contract under this section if the person receives direct or indirect financial benefits. A person has an interest in a state contract under this section if the contract is awarded to

(1) a firm, corporation, or association that has assets in excess of $5,000,000 and in which the person has an ownership interest greater than 10 percent or that has assets of $5,000,000 or less and in which the person has an ownership interest greater than 25 percent; or

(2) a partnership in which the person is a partner.

(b) In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, without regard to whether the person is a party to the contract, and without regard to whether the income, profits or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor.

Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a

state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a legislator may be in a position to influence the loan agency, the ethics commission must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the lending agency must send a copy of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the commission.

(d) Each February 1st, each loan agency must publish a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section. The list must include the name of the person, the date of issuance and current status of the loan.

(e) State agencies that have authority to grant loans shall adopt regulations that establish separate procedures for granting and reviewing loans to a person to whom this chapter applies. However, the regulations need not govern loans described in (a) of this section.

(f) The division of legislative audit shall annually review

state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures were observed in granting or reviewing the loans. The division shall report its findings to the ethics commission by April 1.

(g) For purposes of this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person.

Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A person to whom this chapter applies shall disclose to the commission the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50.

(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist who is not a member of the immediate family of the person.

Sec. 24.60.080. GIFTS. (a) A person to whom this chapter applies may not solicit a gift **in any amount**, or accept or receive, directly or indirectly, a gift in excess of $100, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action by the person.

(b) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence, including meals, lodging or ground or water transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event that does not exceed $100 in value received by the person for each meal or event and that does not in the aggregate exceed $250 in value during the calendar year from one person; or

(4) gifts from the person's immediate family.

(c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or that require public officials to turn over the benefits to the agency.

Sec. 24.60.090. NEPOTISM. (a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee

has supervisory authority. In this subsection, "an individual who is related to" means a child, husband, wife, mother, father, sister, brother, or a permanent member of the legislator's household.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state.

(b) A member of the legislature may represent a client in

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator who has a conflict of interest shall immediately

(1) resign the 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 commission which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session.

Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this chapter applies may not use state property or funds for private gain

or campaign purposes.

Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members appointed as follows:

(1) the president of the senate shall appoint one member to the commission from the senate with the concurrence by roll call vote of three-fourths of the full membership of the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives with the concurrence by roll call vote of three-fourths of the full membership of the house;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the senate;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state with the concurrence by roll call vote of two-thirds of the full membership of the house;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The members of the commission shall elect a chair and vice-chair and may elect other officers. Those members of the commission

who are members of the legislature may not serve as chair or vice-chair.

(e) The term of office of a public member of the commission is four years from February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(f) A member of the commission may not

B-1
B-2

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group; or

(3) lobby.

(g) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(h) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(i) The commission may contract for professional services and may employ staff as it considers necessary. A member of the commission may not serve on the staff of the commission.

(j) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission shall

(1) adopt regulations to facilitate the receipt of

inquiries and prompt rendition of its opinions;

(2) recommend legislation to the legislature the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(4) publish **semi-annual** summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential.

Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential.

Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope

of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within 4 years after the alleged violation occurs and within one year after termination of state service. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the filing of a complaint with the commission. No complaint, other than a complaint initiated by **five** or more members of the commission may be received within a period of 60 days preceding a state primary or general election.

(d) A complaint shall be in writing and signed under oath by the person making the complaint. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the commission determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a violation of this chapter the commission shall summarily dismiss the complaint.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the person against whom the complaint was made may request a formal opinion or comply with the advisory opinion. If the person fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against

the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing and signed by four or more members of the commission. Each decision of the commission must be accompanied by a written order of the commission determining that a violation of this chapter exists or does not exist. The order is confined to this determination. This order is a public record.

(h) If the commission issues a decision that a member of the

legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning any penalties the legislature may lawfully impose including imposition of civil penalties in an amount not to exceed $25,000, divestment of the interest, repaying profits, censure, removal from committee assignments, termination of legislative privileges, or expulsion. The commission shall make the decision public 30 days after the referral. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission shall issue a public statement of its decision 30 days after the date of the decision.[3] **The legislature shall act on the decision as it considers appropriate. In the case of an employee the action may include suspension, demotion, or dismissal.**

(j) A commission member or individual who divulges information concerning a charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty **of misuse of confidential information under AS 11.56.**860.

Sec. 24.60.170. DEFINITION. In this chapter, "commission" means the Legislative Ethics Commission.

3 deleted "The attorney general shall exercise whatever remedies may be available to the state."

#2

DRAFT
Law 3/29/83 #2

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the responsibilities of the Alaska Public Offices Commission; establishing standards of conduct for public officials; and providing for an effective date."

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

* Section 1. AS 39 is amended by adding a new chapter read:

CHAPTER 52. STANDARDS OF CONDUCT

Sec. 39[redacted].010. LEGISLATIVE FINDINGS. The legislature finds that it is essential in the conduct of public business that public officials hold the respect and confidence of the people. Public officials must avoid conduct that violates the trust the people have placed in them or creates a justifiable impression among the public that the public trust is being violated. To ensure and preserve public confidence, persons serving in state and municipal government should have the benefit of specific standards to guide their conduct. In order to strengthen faith and confidence that the governmental process reflects the will of the people and that each public official considers and makes decisions affecting the public according to the best interests of the public, [redacted]

Sec. [redacted] CONFLICTS OF INTEREST. (a) A conflict of interest exists if a public official is in a position to take or withhold official action or exert influence which could benefit or harm any matter in which the public official has a private interest.

(b) All conflicts of interest are prohibited, except that

potential conflicts of interest enumerated in AS 39.52.030 -- 39.52.080 may exist if the ethics agency or a court determines that there is no substantial appearance of impropriety because

(1) the public official's interest is relatively insignificant;

(2) the public official's authority is relatively far removed from any official action that could reasonably [redacted]; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the public official belongs.

Sec. 39.[redacted].030. CONTRACTS. (a) It is a potential conflict of interest for a public official, or a person in close economic association with the public official, to be a party to, or possess an interest in, a contract with the state or a municipality of the state.

(b) In determining whether a public official is in a position to influence the contracting agency, or whether any other appearance of inpropriety exists, the inquiry must consider, but need not be limited to, the following factors, in addition to those set out in AS 39.[redacted].020(b):

(1) whether th[redacted];

(2) whether there is adequate justification for awarding a sole source contract; and

(3) whether existing administrative procedures for granting contracts to public officials are sufficient to avoid the appearance of impropriety.

(c) All records relating to a state or municipal contract

awarded to a public official, or a person in close association with the public official, are public records and may not be made confidential.

(d) The state, or a municipality, may adopt policies to limit the extent to which public officials, or a person in close economic association with a public official, may be awarded contracts.

(e) As used in this section, "public official" [redacted]

Sec. 39[redacted].040. STATE LOANS. (a) It is a potential conflict of interest for a public official, or a person in a close economic association with the public official, to receive a state or municipal loan.

(b) There is no potential conflict of interest under this section if the loan program is [redacted] generally [redacted] subject to fixed eligibility [redacted] and minimal discretion is exercised in [redacted] consideration for the loan.

(c) In determining whether a public official is in a position to influence the agency granting or reviewing the loan, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to, in addition the factors set out in Sec. 39.[redacted].020(b), the adequacy of existing administrative procedures for granting and reviewing loans to public officials.

(d) [redacted]

Sec. 39.[redacted].050. INTERESTS IN REGULATED ACTIVITIES. (a) It is a potential conflict of interest for a state or municipal public

official, or a person in close economic association with the public official, to possess or obtain any direct or indirect financial interest in a business or industry regulated by the state or municipality.

dropped former (b)+(c)

[redacted]

Sec. 39.[redacted].060. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a potential conflict of interest [redacted] a close economic association involving a substantial financial matter:

(1) a public official and any supervisor who has responsibility or authority, [redacted], over the public official's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) public officials in different branches and levels of government, if one of the public officials is required to file a financial disclosure statement under AS 39.50; or

(4) public officials and lobbyists.

Sec. 39.[redacted].070. GIFTS. (a) It is a potential conflict of interest for a state or municipal public official to solicit or receive any gift, property, goods, services or other benefit, for less than its fair market value, from any person or group that contracts with, is regulated by, or may benefit from, any action or inaction by the state or municipality.

(b) There is no potential conflict of interest under this

section if a public official accepts:

(1) hospitality at a person's principal place of residence, including meals, lodging or ground transportation; or

(2) discounts that are generally available to the public or a large class of persons to which the public official belongs.

(c) Government agencies may establish policies that limit the extent to which public officials may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over such benefits to the agency.

Sec. 39.[redacted].080. NEPOTISM. (a) It is a potential conflict of interest for a public official to be a supervisor of a relative where the public official has responsibility or authority, either directly or indirectly, over the relative's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions.

(b) It is a potential conflict of interest for a government agency to employ a relative of a public official who is required to file a statement of financial disclosure under AS 39.50.

(c) In determining whether a public official is in a position to influence the employing agency, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to, in addition to the factors set out in AS 39.52.020(b), whether there has been any appearance of influence with respect to a relative who has been employed for a substantial length of time.

(d) [redacted]

(e) In this section "relative" means spouse or ex-spouse, and parents, children, grandparents, grandchildren, siblings, aunts, and

uncles, either of the whole or half-blood, adopted or step.

Sec. 39.[redacted]110. REPRESENTATION BY FORMER PUBLIC OFFICIALS. (a) It is a conflict of interest for a former public official to render advice or assistance to any person or group, [redacted] on a case, contract, transaction or other matter upon which the person took or withheld official action or exercised discretion while a public official if

(1) the advice or assistance is for compensation; or

(2) the advice or assistance is without compensation and it is rendered for the benefit of the former public official or for a person in close economic association with the former public official.

(b) For purposes of this section, "official action" does not include voting or otherwise considering legislation by a member of the legislature or a municipal legislative body.

(c) Except as otherwise provided by law, a former public official may accept employment with or may contract with a governmental agency.

Sec. 39[redacted]120. REPRESENTATION BY PUBLIC OFFICIALS. (a) It is a conflict of interest for a state or municipal public official to advise or assist a client for compensation in a matter pending before an agency, board, or commission of the state or a municipality of the state, respectively.

(b) There is no conflict of interest under this section if a public official who is not an official in the judicial branch of government [redacted] a client for compensation in a civil action before a court if neither the state nor the municipality, respectively, is a party to the action.

(c) A public official cannot avoid a conflict of interest under this section by waiving compensation for advising or assisting a

present or former client, under circumstances where compensation would ordinarily be expected.

(d) As used in this section, "client" means a [redacted]r group.

Sec. 39.[redacted].130. GOVERNMENTAL OPPORTUNITIES. (a) It is a conflict of interest for a public official to take advantage, either on his own behalf or on behalf of a person with whom he has a close economic association, of an overture for the acquistion or use of property, goods, services or other benefit that the state, or a municipality which employs the official, has or may have an interest in acquiring or using.

(b) There is no conflict of interest under this section if

(1) the property, goods, services or other benefit is a fungible commodity or of a type that is readily available in quantities appropriate for the state or municipality; or

(2) the public official first obtains written permission to take advantage of the overture from an official, not subordinate to him, who is authorized to act on the overture.

Sec. 39.[redacted].140. MEMBERS OF BOARDS AND COMMISSIONS. (a) It is a conflict of interest for a person who is a public member of a board, commission, authority, council, committee, task force or other similar governmental entity, to vote, deliberate, testify, advocate or provide information to another member on a matter in which he, or a person with whom he has a close economic association, has a private interest.

(b) There is no conflict of interest under this section if a member participates in the consideration of a matter if

(1) [redacted];

(2) the member fully discloses the nature of his interest to the body on which he sits; and

(3) the official action taken will only affect the member to the same extent as others in the same profession, trade, business or industry.

Sec. 39.[redacted].200. ACTION ON A CONFLICT OF INTEREST. (a) A public official who has a conflict of interest or a potential conflict of interest shall immediately

(1) resign his position;

(2) divest himself of the matter which has resulted in the conflict or potential conflict; or

(3) disclose the matter in writing to his immediate supervisor and refrain from taking any action of any kind that may affect the matter.

(b) The immediate supervisor of the public official must immediately notify the ethics agency in writing that a conflict or potential conflict may exist. The ethics agency must then undertake a preliminary investigation, issue an advisory opinion or take other appropriate action.

(c) Each governmental agency shall establish rules or policies that specify which public officials are "immediate supervisors" for purposes of this section.

Sec. 39.57.210. ADMINISTRATION; COMMISSION POWERS AND DUTIES. (a) The Alaska Public Offices Commission under AS 15.13.020(a) shall administer the provisions of this chapter and shall promulgate regulations to implement and interpret the provisions of this chapter.

(b) The commission shall, in addition to its other duties:

(1) issue on its own motion, or upon request, opinions on the interpretation of this chapter;

(2) investigate on its own motion, or upon request, alleged violations of this chapter;

(3) prescribe forms for reports, statements and other documents required by this chapter; and

(4) prepare and publish manuals and guides explaining the provisions of this chapter.

(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence relevant to the performance of the commission's duties or exercise of powers, including powers of investigation. A subpoena issued by the commission is enforceable in superior court to the same extent as a subpoena issued by the court.

Sec. 39[redacted].220. COMPLAINTS; HEARINGS. (a) Upon the sworn complaint of any person, or on its own initiative, the commission shall investigate alleged violations of this chapter. Any investigation conducted under this chapter is confidential unless a finding of probable cause is made under (b) of this section.

(b) [redacted]

(c) If the commission determines by a preponderance of the evidence that a violation of this chapter has occurred, it shall issue an order to cease and desist violation of this chapter. A cease and desist order is subject to judicial review [redacted]

(d) The commission may refer violations of this chapter to the

Attorney General if it believes that civil or criminal action is warranted.

Sec. 39.[redacted].230. ADVISORY OPINIONS. (a) The commission may, on its own motion or upon request, issue an opinion on the duties of a person under this chapter in a specific factual situation. The commission shall publish its opinions at regular intervals. Opinions shall be modified to maintain confidentiality, when appropriate.

(b) Within thirty (30) days of a request for an opinion, the commission shall issue the opinion or advise the person who made the request if or when an opinion will be issued.

(c) A person who acts in good faith in reliance on an opinion issued to that person by the commission is not subject to civil penalties under this chapter or AS 39.50, provided that the information submitted to the commission was complete and true.

(d) The commission may in issuing an opinion make recommendations for action, including [redacted] divestiture, establishment of a blind trust, and forfeiture. The findings and the recommendations made by the commission shall be reported to:

(1) the head of the appropriate department, if the person is an employee of the executive branch of the state; or

(2) the appropriate legislative committee, if the person is a legislator or an employee of an individual legislator or a legislative committee; or

(3) the Commission on Judicial Conduct or other body established by law or court rule, if the person is a judicial officer or employee; or

(4) the governing body of a municipality, if the person is a municipal officer or employee.

(e) Upon referral of the findings and recommendations of the

commission to the appropriate department or other agency under (d) of this section, that department or agency shall take d[redacted]y [redacted] appropriate, based on the findings of the commission.

Sec. 39[redacted].300. ATTORNEY GENERAL POWERS AND DUTIES. After the ethics agency has determined that a conflict of interest or a potential conflict of interest exists or if a public official has violated [redacted] the attorney general may bring an action

(1) to recover the amount by which the value of the public official's financial interest increased during his tenure, or, for a former public official, within 12 months of leaving office;

(2) to void a contract [redacted] former public official has a financial interest; if a contract is voided, the state is liable only for the fair market value of the services rendered, and may recover any consideration in excess of fair market value.

(3) to forfeit to the state any gifts, benefits or other compensation of any kind that the public official or former public official received during his tenure;

(4) to enjoin the use of confidential information and to void any transaction in which that information was used; or

(5) to enjoin or to void any official action by a public official which was affected or may have been affected by the conflict of interest.

Sec. 39.[redacted].900. DEFINITIONS. In this chapter, unless the context requires otherwise:

(1) "group" means an association, partnership, business, corporation, or other entity made up of one or more persons or groups, whether for profit or non-profit;

(2) "person in close economic association" means a person

who is a member, counsel, advisor, consultant, representative of, or has an interest in, any group;

(3) "public official" means those persons set out in AS 39.50.200(a)(1) and any other employee of the executive, legislative or judicial branches of the State of Alaska, or of a municipality of the state, in addition to their spouses or ex-spouses, and parents, children, grandparents, grandchildren, aunts, uncles, and siblings, either of the whole or half blood, adopted or step.

* Sec. 2. This Act takes effect _____.

DRAFT

DRAFT Law #1 3/29/83

IN THE _____

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the responsibilities of the Alaska Public Offices Commission; establishing standards of conduct for public officials; and providing for an effective date."

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

AS 39.57.010. LEGISLATIVE FINDINGS. The legislature finds that it is essential in the conduct of public business that public officials hold the respect and confidence of the people. Public officials must avoid conduct that violates the trust the people have placed in them or creates a justifiable impression among the public that the public trust is being violated. To ensure and preserve public confidence, persons serving in state and municipal government should have the benefit of specific standards to guide their conduct. In order to strengthen faith and confidence that the governmental process reflects the will of the people and that each public official considers and makes decisions affecting the public according to the best interests of the public, AS 39.49 is enacted in sec. 2 of this Act.

AS 39.57.020. CONFLICTS OF INTEREST. (a) A conflict of interest exists if a public official is in a position to take or withhold official action or exert influence which could benefit or harm any matter in which the public official has a private interest.

(b) All conflicts of interest are prohibited, except that potential conflicts of interest enumerated in AS 39.57.030 -- 39.57.080 may exist if the ethics agency or a court determines that

there is no substantial appearance of impropriety because,

(1) the public official's interest is relatively insignificant;

(2) the public official's authority is relatively far removed from any official action that could reasonably affect the matter; provided that however, the appearance of impropriety has not necessarily removed by delegating responsibility for official action; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the public official belongs.

AS 39.57.030. CONTRACTS. (a) It is a potential conflict of interest for a public official, or a person in close economic association with the public official, to be a party to, or possess an interest in, a contract with the state or a municipality of the state.

(b) In determining whether a public official is in a position to influence the contracting agency, or whether any other appearance of inpropriety exists, the inquiry must consider but need not be limited to, the folowing factors, in addition to those set out in AS 39.57.020(b):

(1) whether competitive bidding is used;

(2) whether there is adequate justification for awarding a sole source contract; and

(3) whether existing administrative procedures for granting contracts to public offficials are sufficient to avoid the appearance of impropriety.

(c) All records relating to a state or municipal contract awarded to a public official, or a person in close association with a public official, are public records and may not be made confidential.

(d) The state, or a municipality, may adopt policies to limit the extent to which public officials, or a person in close economic association with a public official, may be awarded contracts.

(e) As used in this section, "public official" means a person who was a public official within 12 months of the potential conflict.

AS 39.57.040. STATE LOANS. (a) It is a potential conflict of interest for a public official, or a person in a close economic association with the public official, to receive a state or municipal loan.

(b) There is no potential conflict of interest under this section if the loan program is as generally available to members of the public by regulation or ordinance under fixed eligibility standards and if the exercise of discretion is minimal in determining qualification for the loan.

(c) In determining whether a public official is in a position to influence the agency granting or reviewing the loan, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to, in addition the factors set out in AS 39.57.020(b), the adequacy of existing administrative procedures for granting and reviewing loans to public officials.

(d) Except for loans described in (b) of this section, all records relating to a state or municipal loan granted to a public official, or a person in close association with a public official, are public records and may not be made confidential.

AS 39.57.050. INTERESTS IN REGULATED ACTIVITIES. (a) It is a potential conflict of interest for a state or municipal public official, or any person in close economic association with the public official, to possess or obtain any direct or indirect financial interst in a business or industry regulated by the state or

municipality.

(b) In determining whether a public official is in a position to influence the regulating agency, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to, in addition to the factors set out in AS 39.57.020(b), whether the financial interest is one that is generally available to the public and whether the public official is in a position to possess confidential information that may affect the financial interest.

(c) Governmental agencies may adopt policies which limit the extent to which public officials may possess or obtain interests in a regulated industry.

AS 39.57.060. INTERESTS BETWEEN PUBLIC OFFICIALS. It is a potential conflict of interest for a close economic association involving a substantial financial matter to be formed or maintained between

(1) a public official and any supervisor who has responsibility or authority over the public official's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) public officials in different branches or levels of government, if one of the public officials is required to file a financial disclosure statement under AS 39.50; or

(4) public officials and lobbyists.

AS 39.57.070. GIFTS. (a) It is a potential conflcit of interest for a state or municipal public official to solicit or receive any gift, property, good, service or other benefit, for less than its fair market value, from any person or group that contracts with, is regulated by, or stands to benefit from, any action or inaction by the state or municipality.

(b) There is no potential conflict of interest under this section if a public official accepts:

(1) hospitality at a person's principal place of residence, including meals, lodging or ground transportation; or

(2) discounts that are generally available to the public or a large class of persons to which the public official belongs.

(c) Government agencies may establish policies that limit the extent to which public officials may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over such benefits to the agency.

AS 39.57.080. NEPOTISM. (a) It is a potential conflict of interest for a public official to be a supervisor of a relative where the public official has responsibility or authority, over the relative's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions.

(b) It is a potential conflict of interest for a government agency to employ a relative of a public official who is required to file a statement of financial disclosure under AS 39.50.

(c) In determining whether a public official is in a position to influence the employing agency, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to, in addition to the factors set out in AS 39.57.020(b), whether there has been any appearance of influence with respect to a relative who has been employed for a substantial length of time.

(d) There is no potential conflict of interst under this section if the relative works for no compensation.

(e) In this section "relative" means spouse or ex-spouse, and parents, children, grandparents, grandchildren, siblings, aunts, and uncles, either of the whole or half-blood, adopted or step.

AS 39.57.120. REPRESENTATION BY FORMER PUBLIC OFFICIALS. (a) It is a conflict of interest for a former public official to render advice or assistance to any person or group within 12 months of termination on a case, contract, transaction or other matter upon which the person took or withheld official action or exercised discretion while a public official if

(1) the advice or assistance is for compensation; or

(2) the advice or assistance is without compensation and it is rendered for the benefit of the former public official or for a person in close economic association with the former public official.

(b) For purposes of this section, "official action" does not include voting or otherwise considering legislation by a member of the legislature or a municipal legislative body.

(c) Except as otherwise provided by law, a former public may accept employment with or may contract with a governmental agency.

AS 39.57.110. REPRESENTATION BY PUBLIC OFFICIALS. (a) It is a conflict of interest for a state or municipal public official to advise or assist a client for compensation in a matter pending an agency, board, or commission of the state or a municipality of the state.

(b) There is no conflict of interest under this section if A public official who is not an official in the judicial branch of government, a client for compensation in a civil action before a court if neither the state nor the municipality respectively, is a party to the action.

(c) A public official can not avoid a conflict of interest by waiving compensation for advising or assisting a present or former client, under circumstances where compensation would ordinarily be expected.

(d) As used in this section, "client" means an individual or group.

AS 39.57.130. GOVERNMENTAL OPPORTUNITIES. (a) It is a conflict of interest for a public official to take advantage, either on his own behalf or on behalf of a person with whom he has a close economic association, of an overture for the acquistion or use of property, goods, service or other benefits that the state, or a municipality which employs the official, has or may have an interest in acquiring or using.

(b) There is no conflict of interest under this section if

(1) the property, goods, services or other benefit is a fungible commodity or of a type that is readily available in quantities appropriate for the state or municipality; or

(2) the public official first obtains written permission to take advantage of the overture from an official, not subordinate to him, who is authorized to act on the overture.

AS 39.57.140. MEMBERS OF BOARDS AND COMMISSIONS. (a) It is a conflict of interest for a person who is a public members of a baord, commission, authority, council, committe, task force or other similar governmental entity, to vote deliberate, testify, advocate or provide information to another member on a matter in which he, or a person with whom he has a close economic association, has a private interest.

(b) There is no conflict of interest under this section if a member participates in the consideration of a matter if

(1) the law requires that the member be from a particular profession, trade, business or industry;

(2) the member fully discloses the nature of his interest to the body of which he sits; and

(3) the official action taken will only affect the member

to the same extent as others in the same profession, trade, business or industry.

AS 39.57.200. ACTION ON A CONFLICT OF INTEREST. (a) A public official who has a conflict of interest or a potential conflict of interest must immediately

(1) resign his position;

(2) divest himself of the matter which has resulted in the conflict or potential conflict; or

(3) disclose the matter in writing to his immediate supervisor and refrain from taking any action of any type that may affect the matter.

(b) The immediate supervisor of the public official must immediately notify the ethics agency in writing that a conflict or potential conflict may exist. The ethics agency must then undertake a preliminary investigation, issue an advisory opinion or take other appropriate action.

(c) Each governmental agency must establish rules or policies that specify which public officials are "immediate supervisors" for purposes of this section.

Sec. 39.57.210. ADMINISTRATION COMMISSION POWERS AND DUTIES. (a) The Alaska Public Offices Commission under AS 15.13.020(a) shall administer the provisions of this chapter and shall promulgate regulations to implement and interpret the provisions of this chapter.

(b) The commissioner shall, in addition to its other duties:

(1) issue on its own motion, or upon request, opinions on the interpretation of this chapter;

(2) investigate on its own motion, or upon request, alleged violations of this chapter;

(3) prescribe forms for reports, statements and other

documents required by this chapter; and

(4) prepare and publish manuals and guides explaining the provisions of this chapter.

(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence relevant to the performance of the commission's duties or exercise of powers, including powers of investigation A subpoena issued by the commission is enforceable in superior court to the same extent as a subpoena issued by the court.

Sec. 39.57.220. COMPLAINTS; HEARINGS. (a) Upon the sworn complaint of any person, or on its own initiative, the commission shall investigate alleged violations of this chapter. Any investigation conducted under this chapter is confidential unless a finding of probable cause is made under (b) of this section.

(b) If the commission determines there is probable cause for believing that a violation of this chapter has occurred, it may hold a haering. The hearing shall be conducted in accordance with the provisions of AS 44.62.330 -- .630.

(c) If the commission determines by a preponderance of the evidence that a violation of this chapter has occurred, it shall issue an order to cease and desist violation of this chapter. A cease and desist order is subject to judicial review under procedures set out in AS 44.62.560 or applicable rules of court. The Judicial review on appeal shall be limited to the question of whether there was a prejudicial abuse of discretion in issuing the order.

(d) The commission may refer violations of this chapter to the Attorney General if it believes that civil or criminal action is warranted.

Sec. 39.57.230. ADVISORY OPINIONS. (a) The commission may, on its own motion or upon request, issue an opinion on the duties of a person under this chapter in a specific factual situation. The commission shall publish its opinions at regular intervals. Opinions shall be modified to maintain confidentiality, when appropriate.

(b) Within thirty (30) days of a request for an opinion, the commission shall issue the opinion or advise the person who made the request if or when an opinion will be issued.

(c) A person who acts in good faith in reliance on an opinion issued to that person by the commission is not subject to civil penalties under this chapter or AS 39.50, provided that the information submitted to the commission is complete and true.

(d) The commission may in issuing an opinion make recommendations for action, including divestiture, establishment of a blind trust, and forfeiture. The findings and the recommendations made by the commission shall be reported to:

(1) the head of the appropriate department, if the person is an employee of the executive branch of the state; or

(2) the appropriate legislative committee, if the person is a legislator, or an employee of an individual legislator or a legislative committee; or

(3) the Commission on Judicial Qualifications Commission Conduct or other body established by law or court rule, if the person is a judicial officer or employee; or

(4) the governing body of a municipality, if the person is a municipal officer or employee.

(e) Upon referral of the findings and recommendations of the commission to the appropriate department or other agency under (d) of this section, that department or agency shall take appropriate

disciplinary action, based on the findings of the commission.

Sec. 39.57.300. ATTORNEY GENERAL POWERS AND DUTIES. After the ethics agency has determined that a conflict of interest or a potential conflict of interest exists or if a public official has violated AS 39.57.100-140, the attorney general may bring an action:

(1) to recover the amount by which the value of the public official's financial interest increased during his tenure, or, for a former public official, within 12 months of termination;

(2) to void a contract that the public official or former public official has a financial interest in; if a contract is voided, the state is liable only for the fair market value of the services rendered, and may recover any consideration in excess of fair market value.

(3) to forfeit to the state any gifts, benefits or other compensation of any kind that the public official or former public official received during his tenure;

(4) to enjoin the use of confidential information and to void any transaction in which that information was used; or

(5) to enjoin or to void any official action by a public official which was affected or may have been affected by a conflict of interest.

AS 39.57.900. DEFINITIONS.

"group" means an association, partnership, business, corporation, or other entity made up of one or more persons or groups, whether for profit or non-profit;

"person in close economic association" means a person who is a member, counsel, advisor, consultant, representative of, or has an interest in, any group;

"public official" means those persons set out in AS 39.50.200(a)(1)

and any other employee of the executive, legislative or judicial branches of the State of Aalska, or of a municipality of the state, in addition to their spouses or ex-spouses, and parents, children, grandparents, grandchildren, aunts, uncles, and siblings, either of the whole or half blood, adopted or step;

combines Fischer, Josephson, & A6.

FAIKS
3/31/83

For an Act entitled: "An Act relating to the prohibition of conflict of interest among public employees; creating the Alaska State Ethics Commission and prescribing ~~it's~~ responsibilities and providing for an effective date."

Section 1. AS 39 is amended by adding a new chapter to read:

Chapter 52. STANDARDS OF CONDUCT

Sec. 39.52.010 LEGISLATIVE FINDINGS AND PURPOSE The legislature finds that it is essential in the conduct of public business that public officials hold the respect and confidence of the people. Public officials must avoid conduct that ~~appears to that~~ violates the trust the people have placed in them or creates a justifiable impression among the public that the public trust is being violated. To ensure and preserve public confidence, persons serving in state government should have the benefit of specific standards to guide their conduct. In order to strengthen faith and confidence that the governmental process reflects the will of the people and that each public official considers ~~and makes decisions affecting the~~ public according to the best interests of the public. It is therefore the purpose of the legislature that the Alaska State Ethics Commission will:

1) prescribe standards of conduct for state legislators, public officials and other exempt employees of the state;

2) educate the citizens of the state on ethics in the legislature;

3) render advisory opinions ~~and enforce the provisions of the law~~ so that public confidence in the legislature will be preserved.

Section 2 AS 39.52.020 CONFLICTS OF INTEREST. (a) A conflict of interest exists if a public official(s) in a position to take or withhold official action or exert influence which could benefit or harm any matter in which the public official has a private interest.

(b) All conflicts of interest are prohibited, except that potential conflicts of interest enumerated in AS 39.52.030 to _____ may exist if the ethics agency or a court determines that there is no substantial appearance of impropriety because:

(1) the public officials interest is relatively insignificant;

(2) the public official's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action; or

(3) the interest is of a type that is readily available to the public or to a large class of persons to which the public official belongs.

Section 3 AS 39.52.030 CONTRACTS. (a) A public official may not be a party to or have an interest in the profits or benefits of a state contract unless the contract is let by competitive bidding or the total

annual amount of the state contract equals $1000 or less. A public official has an interest in the profits or benefits of a state contract under this subsection if the contract is awarded to:

(1) the public official,

(2) a firm, corporation, or association in which the public official, owns 25% of the stock of the firm, corporation, or association;

(3) a partnership in which the public official is a partner;

(4) As used in this, "public official" includes legislators and other exempt employees of the state, members of their immediate family and former public officials within 12 months of their leaving office.

Section 4 AS 39.52.040 STATE LOANS. (a) There is no potential conflict of interest if the loan program is by regulation generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification for the loan.

(b) It is a potential conflict of interest for a public official, or a person in close association with the public official, to receive a commercial state loan or other discretionary state loan.

(c) In determining whether a public official is in a position to influence the agency granting or reviewing the loan, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to the adequacy of existing administrative procedures for granting and reviewing loans to public officials.

(d) All records relating to a state loan held by or granted to a public official, or a person in close economic association with the public official, are public records and may not be made confidential.

(1) Upon application for a commercial loan, the agency will notify the Alaska Public Offices Commission which will incorporate this information into the public official's financial disclosure statement;

(2) Every February 1st, each agency will publish a listing of all outstanding commercial loans to public officials. It should list the name of the public official, date of issuance and current status of the loan. *

Section 5 AS 39.52.050 CONFIDENTIAL INFORMATION It is a potential conflict of interest if a public official discloses or uses for personal gain or for the benefit of anyone else information that by law is not available to the public and that the public official acquires in the course of official duties.

Section 6 AS 39.52.060 INTERESTS IN REGULATED ACTIVITIES. (a) It is a potential conflict of interest for a state public official, or a person in close economic association with the public official, to possess or obtain any direct or indirect financial interest in a business or industry regulated by the state or municipality.

(b) There is no potential conflict of interest under this section if the financial interest is one that is generally available to the public and the public official is not in a position to possess confidential information that may affect the financial interest.

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Section 6 AS 39.52.070 INTERESTS BETWEEN PUBLIC OFFICIAL. It is a

potential conflict of interest for the following persons to form or maintain a close economic association involving a substantial financial matter:

(1) a public official and any supervisor who has responsibility or authority, either directly or indirectly, over the public official's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) public officials in different branches and levels of government, if one of the public officials is required to file a financial disclosure statement under AS 39.52.060; or

(4) public officials and lobbyists.

Section 7 AS 39.52.080 GIFTS (a) A public official may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or in any other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the legislator in the performance of the duties of the legislator or is intended as a reward for an official action on the part of the public official.

(b) There is no potential conflict of interest under this section if a public official accepts:

(1) hospitality at a person's principal place of residence, including meals, lodging or ground transportation; or

(2) discounts that are generally available to the public or a large class of persons to which the public official belongs.

(c) Government agencies may establish policies that limit the extent to which public officials may accept the benefits set out in (b)(2) of this section, or which require public officials to turn over such benefits to the agency.

Section 8 AS 39.52.090 NEPOTISM (a) It is a potential conflict of interest for a public official to be a supervisor of a relative where the public official has responsibility or authority, either directly or indirectly, over the relative's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions.

(b) In determining whether a public official is in a position to influence the employing agency, or whether any other appearance of impropriety exists, the inquiry must consider, but need not be limited to whether there has been any appearance of influence with respect to a relative who has been employed for a substantial length of time.

(c) There is no potential conflict of interest under this section if the relative does not receive compensation for any work performed.

(d) In this section, "relative" means spouse, parents and children.

Section 9 AS 39.52.100 REPRESENTATION BY PUBLIC OFFICIALS (a) It is a conflict of interest for a public official to advise or assist a client for compensation in a matter pending before an agency, board, or commission of the state of quasi-judicial agency of the state.

(b) There is no conflict of interest under this section if a public official who is not an official in the judicial branch of government represents a client for compensation in a civil action before a court if the state respectively, is a party to the action.

(c) A public official cannot avoid a conflict of interest under this section by waiving compensation for advising or assisting a present or former client, under circumstances where compensation would ordinarily be expected.

Section 10 AS 39.52.110 MEMBERS OF STATE BOARDS AND COMMISSIONS (a) It is a conflict or interest for a person who is a public member of a

board, commission, authority, council, committee, task force or other similar state governmental entity to vote, deliberate, testify, advocate or provide information to another member on a matter in which he, or a person with whom he has a close economic association, has a private interest.

(b) There is no conflict of interest under this section if a member participates in the consideration of a matter if:

(1) the statutes concerning the body require that the member be from a particular profession, trade, business or industry;

(2) the member fully discloses the nature of his interest to the body on which he sits; and

(3) the official action taken will only affect the member to the same extent as others in the same profession, trade, business or industry.

Section 11 AS 39,52.120 ACTION ON A CONFLICT OF INTEREST. (a) A public official who has a conflict of interest or a potential conflict of interest shall immediately

(1) resign his position;

(2) divest himself of the matter which has resulted in the conflict or potential conflict; or

(3) disclose the matter in writing to his immediate supervisor and refrain from taking any action of any kind that may affect the matter.

(4) legislators may disclose the potential conflict of interest in the Daily Journal of the appropriate body.

(b) the immediate supervisor of the public official must immediately notify the ethics agency in writing that a conflict or potential conflict may exist. The ethics agency must then undertake a preliminary investigation, issue an advisory opinion or take other appropriate action.

(c) Each governmental agency shall establish rules or policies that specify which public officials are "immediate supervisors" for purposes of this section.

Section 12 AS 39.52.120 Alaska State

~~SEC. 24.60.060.~~ ~~LEGISLATIVE~~ ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members selected as follows:

(1) the president of the senate shall appoint one member to the commission from the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives;

(3) the president of the senate shall appoint to the commission ~~two~~ 1 persons who ~~are~~ is a citizens of the United States and residents of the state who ~~have~~ has not held an elected public office;

(4) the speaker of the house of representatives shall appoint to the commission ~~two~~ 1 persons who ~~are~~ is a citizens of the United States and residents of the state who ~~have~~ has not held an elected public office;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission. (6) Governor (1) Commissioner or designee and (1) citizen

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a member of the commission is four years from the February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

~~Sec. 8~~

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group;

~~(3) support or oppose a candidate, proposition, or question or make a contribution in support of or in opposition to a candidate for the legislature;~~

~~(4) participate in an election campaign for a legislator or contribute to a political party; or~~

(3) lobby or employ a lobbyist.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(h) The commission may employ ~~an executive director and~~ staff as it considers necessary. ~~A member of the commission may not serve as executive director or on the staff of the commission.~~

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Section 13 AS 39.52.130

~~Sec. 24.60.070.~~ DUTIES OF THE COMMISSION. The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

~~(2) adopt forms and procedures for the submission of statements of financial disclosure and maintain files of the statements of~~

~~financial disclosure; a statement of financial disclosure filed with the commission is public information;~~

(2) advise the attorney general and the legislature of noncompliance with the financial disclosure requirement;

~~(4) recommend to the legislature legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;~~

(3) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

~~(6) shall distribute its publications without cost to the public and shall initiate programs to educate the citizens of the state, legislators, and members of the staff of a legislator on ethics in government;~~

~~(7) shall publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential;~~

(4) may adopt regulations to implement, clarify, and interpret this chapter.

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~~Attorney General if it believes that civil or criminal action is warranted.~~

Section 14 Sec. 39.52.~~130~~ 140. ADVISORY OPINIONS. (a) The commission may, on its own motion or upon request, issue an opinion on the duties of a person under this chapter in a specific factual situation. The commission shall publish its opinions at regular intervals. Opinions shall be modified to maintain confidentiality, when appropriate.

(b) Within thirty (30) days of a request for an opinion, the commission shall issue the opinion or advise the person who made the request if or when an opinion will be issued.

(c) A person who acts in good faith in reliance on an opinion issued to that person by the commission is not subject to civil penalties under this chapter or AS 39.50, provided that the information submitted to the commission was complete and true.

(d) The commission may in issuing an opinion make recommendations for action, including discipline, divestiture, establishment of a blind trust, and forfeiture. The findings and the recommendations made by the commission shall be reported to:

(1) the head of the appropriate department, if the person is an employee of the executive branch of the state; or

(2) the appropriate legislative committee, if the person is a legislator or an employee of an individual legislator or a legislative committee; or

(3) the Commission on Judicial Conduct or other body established by law or court rule, if the person is a judicial officer or employee; or

~~(4) the governing body of a municipality, if the person is a municipal officer or employee~~.

(e) Upon referral of the findings and recommendations of the

commission to the appropriate department or other agency under (d) of this section, that department or agency shall take disciplinary action, as appropriate, based on the findings of the commission.

Section 15 Sec. 39.52.~~300.~~ 150 ATTORNEY GENERAL POWERS AND DUTIES. After the ethics agency has determined that a conflict of interest or a potential conflict of interest exists or if a public official has violated this chapter, the attorney general may bring an action

(1) to recover the amount by which the value of the public official's financial interest increased during his tenure, or, for a former public official, within 12 months of leaving office;

(2) to void a contract in which the public official or former public official has a financial interest; if a contract is voided, the state is liable only for the fair market value of the services rendered, and may recover any consideration in excess of fair market value.

(3) to forfeit to the state any gifts, benefits or other compensation of any kind that the public official or former public official received during his tenure;

(4) to enjoin the use of confidential information and to void any transaction in which that information was used; or

(5) to enjoin or to void any official action by a public official which was affected or may have been affected by the conflict of interest.

Section 16 ~~Sec.~~ 39.52.~~900~~. DEFINITIONS. In this chapter, unless the context requires otherwise:

(1) "group" means an association, partnership, business, corporation, or other entity made up of one or more persons or groups, whether for profit or non-profit;

(2) "person in close economic association" means a person

who is a member, counsel, advisor, consultant, representative of, or has an interest in, any group; of 25% or more

(3) "public official" means those persons set out in AS 39.50.200(a)(1) and any other employee of the executive, legislative or judicial branches of the State of Alaska, ~~or of a municipality of the state~~ or who have to file a financial disclosure with APOC, in addition to their spouses ~~or ex-spouses~~, and parents, children, ~~grandparents, grandchildren, aunts, uncles, and siblings, either of the whole or half blood, adopted or step~~.

* Sec. 2. This Act takes effect July 1, 1983.

Introduced: 3/22/83
Referred: Special Committee on
Legislative Reform
and State Affairs

IN THE SENATE BY JOSEPHSON

SENATE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to ethics in the legislature; and providing for an effective date."

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

* Section 1. STATEMENT OF PURPOSE. (a) The legislature declares as the public policy of the state that a public office is a public trust and shall be held for the sole benefit of the people. To enhance the faith of the people in the integrity and impartiality of public officers, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(b) The purpose of AS 24.60 as enacted in sec. 2 of this Act is to

(1) prescribe standards of conduct for state legislators and for the staff of legislators;

(2) educate the citizens of the state on ethics in the legislature; and

(3) establish an ethics commission to render advisory opinions and enforce the provisions of the law so that public confidence in the legislature will be preserved.

* Sec. 2. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. LEGISLATIVE ETHICS.

Sec. 24.60.010. CONSTRUCTION. This chapter shall be liberally construed to promote high standards of ethical conduct in the state legislature.

Sec. 24.60.020. APPLICABILITY. This chapter applies to a legislator, a former legislator, [redacted]

Any to legislative staff person

[redacted]

Sec. 24.60.030. GIFTS. (a) A legislator and a person on the staff of a legislator may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or in any other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the legislator in the performance of the duties of the legislator or is intended as a reward for an official action on the part of the legislator.

(b) Acceptance by a legislator and by a person on the staff of a legislator of an [redacted]

Sec. 24.60.040. CONFIDENTIAL INFORMATION. A legislator and a person on the staff of a legislator may not disclose or use for personal gain or for the benefit of anyone else information that by law is not available to the public and that the legislator and a person on the staff of a legislator acquires in the course of official duties.

Sec. 24.60.050. CONFLICT OF INTEREST. (a) A legislator and a person on the staff of a legislator may not appear on behalf of a person before a state department, agency, board, commission, institution, or instrumentality in any manner for which the legislator is being compensated by the person.

(b) The provisions of (a) of this section do not apply to

(1) a judicial proceeding;

(2) an administrative hearing or proceeding

(A) which is adversary in character;

(B) on which a record is made by the agency involved; or

(C) in which the appearance is a matter of public record.

(c) A legislator may not participate in the consideration of legislation in which the legislator or the immediate family of the legislator has a substantial personal interest unless the legislator has complied with this chapter, AS 39.50.020, and with the rules of the commission. A legislator has a substantial personal interest in legislation within the meaning of this subsection if the legislator or the immediately family of the legislator has a direct personal pecuniary interest in the legislation in a manner or to a degree that is different from the interest of a member of the public.

[redacted]

(e) A legislator may not be a party to or have an interest in the profits or benefits of a state contract unless the contract is let by competitive bidding or the total annual amount of the state contract equals [redacted] A legislator has an interest in the profits or benefits of a state contract under this subsection if the contract is awarded to

(1) the legislator or a member of the family of the legislator;

(2) a firm, corporation, or association in which the legislator or a member of the family of the legislator owns 10 percent of the stock of the firm, corporation, or association; or

(3) a partnership in which a legislator or a member of the family of the legislator is a partner.

Sec. 24.60.060. LEGISLATIVE ETHICS COMMISSION. (a) There is established within the legislative branch of the state government the Legislative Ethics Commission.

(b) The commission consists of seven members selected as follows:

(1) the president of the senate shall appoint one member to the commission from the senate;

(2) the speaker of the house of representatives shall appoint one member to the commission from the house of representatives;

(3) the president of the senate shall appoint to the commission two persons who are citizens of the United States and residents of the state who have not held an elected public office;

(4) the speaker of the house of representatives shall appoint to the commission two persons who are citizens of the United States and residents of the state who have not held an elected public office;

(5) one member of the commission shall be a former legislator of the state who is appointed by the other members of the commission.

(c) No more than four members of the commission may be members of the same political party or residents of the same borough or of the unorganized borough.

(d) The term of office of a member of the commission is four years from the February 1 of the year of appointment and until a successor is appointed and qualifies. A legislator appointed to the commission may not serve beyond the expiration of the legislative term of office. A commission member may not serve more than one full term.

(e) A member of the commission may not

(1) hold or seek elective office;

(2) be an officer of a political party, political committee, or group;

(3) support or oppose a candidate, proposition, or question or make a contribution in support of or in opposition to a candidate for the legislature;

(4) participate in an election campaign for a legislator or contribute to a political party; or

(5) lobby or employ a lobbyist.

(f) The provisions of (e) of this section do not apply to the members of the commission appointed under (b)(1) and (2) of this section.

(g) A vacancy on the commission shall be filled under (b) of this section for the balance of the term.

(h) The commission may employ an executive director and staff as it considers necessary. A member of the commission may not serve as executive director or on the staff of the commission.

(i) A member of the commission receives no compensation for service on the commission. Members of the commission are entitled to travel expenses and per diem authorized by law for members of boards and commissions under AS 39.20.180, but a member of the commission who is a legislator is not entitled to travel expenses and per diem from the commission if the legislator is receiving travel expenses and per diem as a legislator.

Sec. 24.60.070. DUTIES OF THE COMMISSION. The commission shall

(1) adopt regulations to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) adopt forms and procedures for the submission of statements of financial disclosure and maintain files of the statements of

financial disclosure; a statement of financial disclosure filed with the commission is public information;

(3) advise the attorney general and the legislature of noncompliance with the financial disclosure requirement;

(4) recommend to the legislature legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(5) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission;

(6) shall distribute its publications without cost to the public and shall initiate programs to educate the citizens of the state, legislators, and members of the staff of a legislator on ethics in government;

(7) shall publish yearly summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions which have remained confidential;

(8) may adopt regulations to implement, clarify, and interpret this chapter.

Sec. 24.60.080. ADVISORY OPINIONS. The commission shall issue an advisory opinion on the request of a legislator, a former legislator, a person on the staff of a legislator, or a person formerly on the staff of a legislator as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances of the

particular case do not constitute a violation of the ethical standards. The opinion issued or considered issued is binding on the commission and in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion.

Sec. 24.60.090. COMPLAINTS. (a) The commission may initiate, receive and consider complaints alleging a violation of this chapter.

(b) Before the commission may exercise power authorized in (c) of this section, the commission shall by resolution, supported by a vote of three members of the commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of this chapter in a proceeding begun within one year after termination of state service by a legislator or a member of the staff of a legislator. Nothing in this subsection bars proceedings against a person who by fraud prevents discovery of a violation of this chapter. A proceeding is commenced by the signing of a complaint by three members of the commission.

(d) A complaint concerning a legislator or a former legislator, or a member or a former member of the staff of a legislator, must be in writing, signed by the person making the complaint and under oath. A complaint may also be initiated by three or more members of the commission. The commission shall notify in writing each legislator, each former legislator, and each member or former member of a staff of a legislator against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) The commission shall investigate the charges filed under this section and issue an advisory opinion to the person alleged to

have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the advisory opinion indicates a probable violation, the legislator, former legislator, member or former member of the staff of a legislator may request a formal opinion or comply with the advisory opinion. If the legislator, former legislator, member or former member of the staff of a legislator fails to comply with the advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a complaint against the person charged with a violation of this chapter and the complaint and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the complaint and statement to respond in writing to the commission.

(f) The commission may set a time and place for a hearing with notice to the complainant, if any, and to the person charged with a violation of this chapter. The executive director of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath and the hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The testimony taken at the hearing shall be recorded and evidence shall be maintained. A copy of transcripts of the testimony is available only to the staff of the commission and to the person charged with a violation of this chapter. If the person

charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the commission may assess one half of the cost of the preparation of the transcript of testimony against the person charged.

(g) A decision of the commission shall be in writing and signed by three or more members of the commission.

(h) If the commission issues a decision that a member of the legislature has violated a provision of this chapter, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation. If within 30 days after the referral, a committee of the legislature has not reported action on the decision, the commission shall make the decision public. Days during which the legislature is not in session may not be counted in determining the 30-day period.

(i) If the four members of the commission agree to a decision that a former member of the legislature or a member or a former member of the staff of a legislator has violated a provision of this chapter, the commission may issue a public statement of its decision. The attorney general may exercise whatever remedies may be available to the state.

(j) If a legislator is determined by the commission to have violated this chapter or if a legislator declines or refuses to cooperate with the commission, it may refer its determinations and its records to the presiding officers of the legislature for action the legislature considers appropriate.

(k) A commission member or individual who divulges information concerning the charge before the filing of a complaint by the commission, except as permitted by this chapter, is guilty of a class

C felony.

Sec. 24.60.900. DEFINITIONS. In this chapter, "commission" means the Legislative Ethics Commission.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

IN THE SENATE BY V.FISCHER

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to legislative standards of conduct."

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

* Section 1. LEGISLATIVE DETERMINATION. The Constitution of the State of Alaska in Art. II, sec. 12 grants to each house of the legislature the power to judge the qualifications of its members. The legislature determines that the maintenance of the highest standards of conduct constitutes an important qualification for membership in the legislature.

* Sec. 2. AS 24 is amended by adding a new chapter to read:

CHAPTER 60. LEGISLATIVE STANDARDS OF CONDUCT.

ARTICLE 1. STANDARDS OF CONDUCT GENERALLY.

Sec. 24.60.010 APPLICABILITY. (a) This chapter applies to a member of the legislature and to a person employed by a member of the legislature. This chapter does not apply to a former member of the legislature or to a person formerly employed by a member of the legislature unless the provision affirmatively states its application to a former member of the legislature or to a person formerly employed by a member of the legislature. This chapter does not apply to a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically repeal the provisions of the common law relating to legislative conflict of interest insofar as it applies to a member of the legislature or to a person employed by a member of the legislature.

(c) Nothing in this chapter precludes the application of other law.

Sec. 24.60.020. GENERAL STANDARDS. (a) A member of the legislature and a person employed by a member of the legislature may not accept a benefit directly or indirectly resulting from improperly exerted influence.

(b) A member of the legislature and a person employed by a member of the legislature may not engage in a business or professional activity that is inconsistent with the conscientious performance of official duties.

(c) A member of the legislature and a person employed by a member of the legislature may not misuse state property or funds.

Sec. 24.60.030. ADOPTION OF GUIDELINES BY ETHICS COMMITTEE. The absence of a specific statement in this chapter permitting or prescribing conduct for a member of the legislature or a person employed by a member of the legislature does not prevent an ethics committee from adopting a guideline regulating the conduct that is consistent with the general principles stated in this chapter.

Sec. 24.60.040. CONFLICT OF INTEREST. (a) A conflict of interest does not exist under this chapter and there is no duty to disclose a conflict of interest if the benefit or detriment received by a member of the legislature or by a person employed by a member of the legislature is not different from that shared by all residents of the state or by all members of a large group or class of residents of the state.

(b) If the benefit or detriment received by a member of the legislature or by a person employed by a member of the legislature is shared only by a small group or class of residents of the state, then a conflict of interest may exist.

(c) A personal interest of a member of the legislature or a person employed by a member of the legislature conflicts with the public interest if it tends to impair the independence of judgment of the member of the legislature or the person employed by a member of the legislature.

(d) If a member of the legislature or a person employed by a member of the legislature acts on a legislative matter in which a personal interest may exist, the member of the legislature or a person employed by a member of the legislature shall consider whether the personal interest will tend to impair the independence of judgment of the member of the legislature or a person employed by a member of the legislature.

(e) If the member of the legislature determines that an actual conflict of interest exists, the member of the legislature shall declare the interest on the floor or in committee, ask to be permitted not to vote, and file a written statement of the conflict of interest with the ethics committee within 48 hours of the determination that a conflict of interest exists. If a person employed by a member of the legislature determines that an actual conflict of interest exists, the person shall file a written statement with the ethics committee within 48 hours of the determination that a conflict of interest exists and may not participate further in the matter.

Sec. 24.60.050. PRESUMED CONFLICTS OF INTEREST. (a) Except as provided in (b) and (c) of this section a member of the legislature shall request permission to abstain from voting and a member of the legislature or a person employed by a member of the legislature may not undertake other official duties where the member of the legislature or a person employed by a member of the legislature

(1) has an interest that is direct and different from the

interest of a member of the public in an activity that would receive a benefit or detriment from proposed legislation or official duties;

(2) is a participant in a close economic association with an individual or person who the member of the legislature or an employee of the legislature knows

(A) has a direct interest in a business activity that will receive a benefit or detriment directly by the proposed legislation or official duties;

(B) is a lobbyist or has employed a lobbyist;

(3) solicits, accepts, or agrees to accept a gift, loan, or payment in an aggregate amount during a single calendar year of more than $100 from an individual or person with an interest in a business activity that would receive a benefit by or share a detriment from proposed legislation or official duties.

(b) Notwithstanding (a) of this section, a member of the legislature may vote for proposed legislation or engage in other official duties prescribed in (a) of this section if the legislator files a sworn statement with an ethics committee. The statement shall describe the circumstances of the apparent conflict and shall state that the apparent conflict will not prevent a fair and objective consideration of the proposed legislation or official duties by the member of the legislature.

(c) If the member of the legislature files a statement under (b) of this section or if the member of the legislature requests an opinion on an apparent or presumed conflict, the ethics committee may issue an opinion concerning the propriety of the proposed action by the member of the legislature.

(d) A disclosure to the Public Offices Commission under AS 39.-50.020 does not constitute compliance with the requirements of

disclosure of a conflict of interest under this section or AS 24.60.-300.

(e) The acceptance by a member of the legislature of campaign contributions that are reported under AS 15.13 does not create a conflict of interest.

(f) As used in this section, "close economic association" means, as related to a member of the legislature or a person employed by a member of the legislature, partners, associates, employers and employees in business and professional enterprises, corporations in which the member of the legislature or a person employed by a member of the legislature owns capital stock in excess of $1,000, and a corporation of which a member of the legislature or a person employed by a member of the legislature is an officer, director, or agent.

Sec. 24.60.060. CONTRACTS. (a) A member of the legislature and a person employed by a member of the legislature may not be a party to a contract with the state or a municipality of the state and may not have an interest in the investment of state funds or municipal funds unless the contract or the investment is obtained through competitive bidding.

(b) An ethics committee may grant a member of the legislature and an employee of the legislature permission to engage in a contract or in the investment of state or municipal funds not obtained through competitive bidding if the ethics committee determines that the member of the legislature or the person employed by a member of the legislature would not improperly exercise influence in obtaining the contract.

(c) An employee of an agency of the legislature established under AS 24.20 may not be a party to a contract with the state or a municipality of the state.

Sec. 24.60.070. REPRESENTATIONS. (a) Except as provided in this section, a member of the legislature and a person employed by a member of the legislature may not represent a person for compensation before an agency, board, or commission of the state or a municipality of the state.

(b) A member of the legislature and a person employed by a member of the legislature may represent a client in

(1) a criminal action before a court of the state; or

(2) a civil action before a court of the state if the state is not a party to the action.

Sec. 24.60.080. STATE PROPERTY AND FUNDS. A member of the legislature and a person employed by a member of the legislature may not use state property or funds of the state for personal or campaign purposes.

Sec. 24.60.090. ELIGIBILITY FOR STATE BENEFITS. (a) Except as provided in this section, a member of the legislature and a person employed by a member of the legislature may not accept a benefit from the state not available generally to a member of the public on the same terms. Acceptance of compensation, travel, per diem and other benefits provided by law and consistent with law does not constitute a violation of this subsection.

(b) A member of the legislature and a person employed by a member of the legislature may be granted a loan from the state if the qualifications for the loan are established in law or by regulation and the exercise of discretion is not required to determine eligibility for the loan.

(c) A member of the legislature and a person employed by a member of the legislature may obtain land from the state if the qualifications for participation in the state land disposal are established

in law or by regulation and the exercise of discretion is not required to determine eligibility for the land disposal.

Sec. 24.60.100. NEPOTISM. (a) A member of the legislature may not approve the employment of an individual who is related to the member of the legislature and an employee of the legislature may not approve the employment of an individual who is related to the employee of the legislature. For the purposes of this section, a husband, wife, mother, father, grandparent, grandchild, sister, brother, uncle, aunt, nephew, or niece is related to the approving officer.

(b) An individual is not employed if no compensation is received from the state for the services provided.

Sec. 24.60.110. BLIND TRUSTS AND DIVESTITURE. A member of the legislature and a person employed by a member of the legislature may establish a blind trust or seek divestiture of assets that create or appear to create a conflict of interest. If circumstances make the establishment of a blind trust or divestiture difficult or impossible, the circumstances shall be reported to the ethics committee and its determinations followed.

Sec. 24.60.120. RETALIATION. Retaliation for filing an ethics complaint with or for providing truthful testimony to an ethics committee or to publicly constituted investigatory body constitutes a violation of legislative ethics and shall be dealt with by an ethics committee appropriately.

Sec. 24.60.130. EMPLOYMENT OF FORMER MEMBERS AND EMPLOYEES. A former member of the legislature and a former employee of the legislature may accept employment with an agency of the state or with a municipality of the state and may engage in lobbying immediately on the termination of service as a member of the legislature or as a person employed by a member of the legislature. A former member of

the legislature and a former employee of the legislature may not use confidential information obtained from the earlier service except for the benefit of the state.

Sec. 24.60.140. CONFIDENTIAL INFORMATION. Information obtained by a member of the legislature or a person employed by a member of the legislature in the course of official duties that is not available to the general public by law, regulation, or practice may not be used for personal gain.

ARTICLE 2. ETHICS COMMITTEES.

Sec. 24.60.200. ETHICS COMMITTEES ESTABLISHED. (a) An ethics committee of the senate and an ethics committee of the house of representatives are established as permanent committees of the legislature.

(b) Each ethics committee shall provide the particular house of the legislature and its members with guidance on legislative standards of conduct through the establishment of substantive and procedural guidelines, the issuance of advisory opinions, and the investigation of complaints of violations of legislative standards of conduct by members of the legislature and by persons employed by a member of the legislature.

(c) Nothing in this chapter authorizes the referral by the presiding officer of legislation to an ethics committee at a regular or special session of the legislature.

Sec. 24.60.210. MEMBERSHIP. The ethics committee of the senate is composed of five members of the senate appointed by the president of the senate and the ethics committee of the house of representatives is composed of five members of the house of representatives appointed by the speaker of the house. The membership of each committee shall include at least one member from each of the two major political

parties represented in that house. The appointing authority in each house shall announce the appointment of members of each committee within 15 days after the convening of the first regular session of each legislature.

Sec. 24.60.220. TERM OF MEMBERSHIP. A member serves for the duration of the legislature in which the member is appointed and a member reelected to office or serving a term of office extending into the next succeeding legislature may continue to serve until a successor is appointed.

Sec. 24.60.230. VACANCIES. If a vacancy occurs in the membership of an ethics committee the presiding officer shall fill the vacancy within 30 days. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy occurs among the appointed : ember of a committee, the remaining committee members shall appoint a new member. A member of the legislature appointed to fill a vacancy shall be a member of the same political party as the member vacating the seat, if possible.

Sec. 24.60.240. STAFF. (a) Each ethics committee may hire and determine the compensation of staff of the committee. Staff members serve at the direction and at the pleasure of the ethics committee.

(b) Staff shall maintain the integrity of the functions and services of each ethics committee by refraining from joining or supporting any partisan political organization, faction or activity that would tend to undermine the essential nonpartisan nature of their functions and services. The provisions of this section do not restrict staff from expressing private opinion, registering or voting.

Sec. 24.60.250. MEETING OF THE ETHICS COMMITTEE. Each ethics committee shall meet as necessary during a legislative session and during the interim and it may meet at the request of its chair or of

three members of the committee.

Sec. 24.60.260. QUORUM. A quorum of the ethics committee consists of three members and the vote of three members is required to adopt a motion, determination, or advisory opinion of the ethics committee.

ARTICLE 3. RESPONSIBILITIES OF THE ETHICS COMMITTEE.

Sec. 24.60.300. DISCLOSURES TO THE COMMITTEE. (a) A member of the legislature and an employee of the legislature shall file with the ethics committee a report disclosing the information required by this section.

(b) The statement required by (c) of this section shall be filed with the ethics committee within 72 hours after the event described occurs if either house of the legislature is in session and within 30 days of the occurrence of the event if neither house of the legislature is in session; in no case may the information required by (c) of this section be filed more than 72 hours after the event occurred if a house of the legislature is in or comes into session during the 72 hour period.

(c) Each member of the legislature and each person employed by a member of the legislature shall file a statement with the ethics committee listing the information required by this subsection:

(1) a description of each contract with the state or an agency of the state or with a municipality of the state in which the member of the legislature or a person employed by a member of the legislature has acquired an interest;

(2) a description of each gift with an aggregate value in excess of $100 in each calendar year to the member of the legislature or to a person employed by a member of the legislature; as used in this paragraph;

(A) one or more gifts shall be cumulated from the particular donor during the calendar year to determine aggregate value; and

(B) hospitality in a restaurant or other place of public accommodation or in a home, not associated with overnight accommodations, is not a gift;

(C) a gift from a husband, wife, mother, father, grandparent, grandchild, sister, brother, uncle, aunt, nephew, niece and similar step-relatives need not be disclosed;

(3) a description of transportation not involving common carriers accepted in the course of official business;

(4) a description of each fee or honorarium and, when in excess of $100, compensation or reimbursement not paid by an agency of the legislature or a committee of the legislature for travel or expenses received for attending or participating in a meeting;

(5) a description of each financial transaction involving more than $500 between two or more members of the legislature, two or more persons employed by a member of the legislature, or between a member of the legislature and a person employed by a member of the legislature.

Sec. 24.60.310. COMPLAINTS. (a) A person who believes a violation of this chapter has occurred may file a sworn, confidential complaint with the appropriate ethics committee. The staff of an ethics committee may recommend that the ethics committee initiate a confidential investigation.

(b) If an ethics committee determines there is an adequate basis for believing that a violation has occurred, it shall order the staff to undertake a confidential investigation.

(c) The staff of an ethics committee shall complete a

confidential investigation expeditiously considering the complexity of the underlying facts, the workload of the ethics committee, the reasonable and proper protection of reputations, and the public interest.

(d) If the staff of an ethics committee concludes after affording notice and an opportunity for a private hearing to the individual against whom the complaint was filed that the acts or practices charged have occurred and that the acts or practices may constitute a violation of this chapter, the staff shall report its confidential findings and recommendations to the ethics committee.

(e) The ethics committee shall offer the individual in relation to whom the confidential findings and recommendations have been reported by the staff an opportunity to respond to the findings and recommendations and a hearing. The ethics committee may adopt the findings and recommendations of its staff as its own findings or may modify or reject the findings or recommendations.

(f) If the ethics committee finds that the complaint and the investigation of staff do not state a violation of legislative ethics, the findings of the ethics committee remain confidential. An individual against whom a complaint was filed may request the ethics committee to publish its findings.

(g) If an ethics committee finds that the complaint and investigation of the staff as modified by the ethics committee under (e) of this section state a violation of legislative standards of conduct, the commission shall publish its determination. If requested by the attorney general, the ethics committee shall make available to the attorney general the results of its investigation in the case of published findings.

Sec. 24.60.320. ACTION ON DETERMINATION OF A VIOLATION OF LEGISLATIVE ETHICS. (a) If an ethics committee determines under

AS 24.60.310 that a violation of legislative ethics has occurred, the ethics committee may by a majority vote of the ethics committee

(1) issue a private reprimand; or

(2) recommend

(A) revocation of committee assignments;

(B) censure by the appropriate house of the legislature;

(C) expulsion by the appropriate house of the legislature;

(D) suspension or termination of the employment of a person employed by a member of the legislature.

(3) refer the matter to the attorney general for action considered appropriate by the attorney general.

(b) The attorney general may bring an action in the name of the state for the recovery of improper compensation, gift, or profit received by a member of the legislature or a person employed by a member of the legislature. The attorney general may also bring an action for the cancellation of a contract improperly entered into by a member of the legislature or a person employed by a member of the legislature; in any action brought under this subsection, the attorney general and the court shall consider the interests of an innocent party to a contract. An action to cancel a contract must be brought within 60 days of the publication of the finding that a violation of legislative ethics has occurred.

Sec. 24.60.330. ADVISORY OPINION. (a) On the written request of a member of the legislature or a person employed by a member of the legislature, the ethics commission may issue an advisory opinion concerning the propriety under legislative ethics of a matter concerning the member of the legislature or a person employed by a member of

the legislature.

(b) An advisory opinion shall be issued as soon as is practicable considering the complexity of the underlying facts, the workload of the ethics committee, the reasonable and proper protection of reputations, and the public interest.

(c) If an advisory opinion is not issued by the ethics committee within 21 days of the receipt of the request filed while the legislature is in session or within 42 days of the receipt of the request filed while the legislature is not in session, the individual requesting the advisory opinion may consider that the facts and circumstances stated in the request do not constitute a violation of legislative ethics.

(d) If the workload of the ethics committee prevents a response within the times stated in (c) this section, the staff may issue an interim opinion indicating that the facts and circumstances stated in the request for an advisory opinion may constitute a violation of legislative ethics.

(e) An interim opinion of staff and an advisory opinion of the ethics committee under this section are confidential although the individual requesting the advisory opinion may request the ethics committee to release the advisory opinion.

(f) A member of the legislature and a person employed by a member of the legislature may rely on an advisory opinion of an ethics committee received in response to a request filed by the member of the legislature or the person employed by a member of the legislature to the extent that the request included a complete and accurate statement of the matter and the person relying on the opinions follows the terms of the advisory opinion in good faith.

Sec. 24.60.340. PUBLICATION. (a) Notwithstanding a provision

of this chapter regarding the confidentiality of complaints, findings, and advisory opinions, each ethics committee shall publish weekly a report of the ethics committee in the particular journal. A summary of the information filed the preceding week under AS 24.60.300 shall be included in the weekly report in the journal. The report shall also indicate the conclusions of each ethics committee on generalized fact situations as may be of use as future guidelines for members of the legislature, employees of the legislature, and members of the public.

(b) The staff of the committee shall prepare a weekly summary of the activity of the ethics committee for inclusion in the journal, preserving as necessary the confidentiality of matters pending before the ethics committee.

ARTICLE 4. DEFINITIONS.

Sec. 24.60.900. DEFINITIONS. In this chapter,

(1) "person employed by a member of the legislature"

(A) means a person who is on the permanent or temporary staff of a member of the legislature or of a standing, joint, or special committee of the legislature;

(B) does not mean a permanent or temporary employee of an agency of the legislature established under AS 24.20 or this chapt[illegible];

(2) "ethics committee" means the ethics committee of the house of the legislature to which the member of the legislature or the member employing a person belongs.