

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 80/2

1685 SJ • SB 167. - SB 175

ever, dealt with post-election reports, which could not affect the election whether timely or delinquent. Pre-election reports, on the other hand, do provide the electorate with information that may affect its decision; manifestly the timeliness of those reports is critical. The *Sjostrom* court relied on this reasoning in excusing a delinquent post-report:

Where statutes governing the conduct of elections require something to be done before the election, so it might have some influence on the election's outcome, it is usually held that the time requirement is mandatory."

393 P.2d at 474. We have previously stated that election law filing deadlines are mandatory,²⁴ and therefore substantial compliance is not sufficient, absent substantial confusion or "impossibility." *Silides*, 559 P.2d at 86 (lack of clarity and impossibility warranted application of substantial compliance doctrine where one statute required that financial disclosure statement be filed in Anchorage, while other allowed declaration of candidacy to be filed in Juneau, but former statute contemplated contemporaneous filing; held: sufficient if report for Anchorage is in mail by due date). There are no allegations of substantial confusion or impossibility; the deadline for filing the report was mandatory and we agree with the Master's finding that Marshall's failure to timely file violated the election reporting statute.

[7] Another approach has been to recognize the validity of a forfeiture sanction,

²⁶ (1937). The precise issue in *Best* was whether a candidate could amend a pre-election expenditure statement after the election to "cure" the report (which was inaccurate, but timely) so as to avoid forfeiture. The court held he could. Whatever relevance *Best* holds here was eliminated by a subsequent opinion from the same jurisdiction. In *Dempsey v. Stovall*, 415 S.W.2d 419 (Ky.1967), the court held an election void for the failure to file pre-election reports until after the election, stating:

"The filing of financial reports . . . is a mandatory requirement . . . It is patent that a failure to file reports and designations required by the act until after the date of the Primary cannot be deemed compliance, substantial or strict. In this state of case it

but to construe forfeiture as not applying when violations are technical, trivial, or insubstantial, or could not have affected the election. See *State ex rel. Hampel v. Mitten*, 227 Wis. 593, 278 N.W. 431, 434 (1938). *Contra*, *Cook v. Corbett*, 251 Or. 263, 446 P.2d 179, 184 (1968). Marshall's violation, filing a pre-election report long after the election, however, cannot be characterized as trivial and thus we need not resolve at this time whether a "trivial" violation can preclude applying the forfeiture sanction.

Disclosure of campaign contributions, and to a lesser extent of expenditures, serves substantial interests, which have been ably articulated by the United States Supreme Court:

"First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voter in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light

would be to emasculate the salutary provisions of the act to permit appellee . . . to receive the benefits of the nomination obtained in flagrant violation of the law's clear provisions."

Id. at 422. The court then declared the candidate's nomination election void.

24. *Silides v. Thomas*, 559 P.2d at 85 n. 12. Accord 2A C. Sands, *Sutherland Statutory Construction* § 57.21 (4th Ed. 1973):

"Provisions of statutes governing the conduct of elections which have the purpose of securing a complete and enlightened vote or preventing fraud, where failure to comply is capable of influencing the outcome of the election, are mandatory."

of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in *Burroughs v. United States*, [290 U.S. 534, 54 S.Ct. 287, 78 L.Ed. 484] . . . Congress could reasonably conclude that full disclosure during an election campaign tends 'to prevent the corrupt use of money to affect elections.' In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice:

'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'

Third, and not least significant, record-keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

The disclosure requirements, as a general matter, directly serve substantial governmental interests." (citation and footnotes omitted).

Buckley v. Valeo, 424 U.S. 1, 66-68, 96 S.Ct. 612, 657-658, 46 L.Ed.2d 659, 715 (1976),²⁵ quoted in *Messerli v. State*, 626 P.2d 81, 85 (Alas. 1981).

Failure to file reports required before the election frustrates these purposes, and

25. See also *Brown v. Superior Court*, 5 Cal.3d 509, 96 Cal.Rptr. 584, 487 P.2d 1224, 1234 (1971) (insuring a better informed electorate, through disclosure, is a compelling state interest); *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wash.2d 503, 546 P.2d 75, 78 (1976) (the purpose of contribution disclosure is to inform the public and elected representatives of expenditures by persons whose purpose is to influence or affect government decisionmaking).

26. For example, the legislature eliminated "[a]lmost all individual penalties for enforcement." *Warren*, 543 P.2d at 741; and eliminated

"[a]ll power of the watchdog committee to delay certification of candidates or to bring

presents a most egregious violation of campaign reporting laws. The deadlines for filing are mandatory, and the plain meaning of the statute makes the forfeiture sanction applicable. The only indication that the legislature may not have meant what it plainly said is whatever guidance is inferable from the fact the statute was passed in order to preclude a vote on a substantially similar initiative. See *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). In *Warren*, this court compared the disclosure legislation with the disclosure initiative and found them substantially similar; the initiative was therefore kept off the ballot. *Id.* at 735, 739-40. The dissent pointed out various differences, including that the act eliminated many enforcement provisions found in the initiative.²⁶ Arguably this evidences a legislative intent to have a weakly enforced act; however, the statutory language is clear and must prevail over tangential inferences. Further, we noted in *Warren* that "certain violations under each measure work a forfeiture of nomination or election." 543 P.2d at 737. If the legislature intended non-strict application, it could have so provided.

The statutory forfeiture of office provision applies here by its own clear language to Marshall's election. His violation was significant. His 1980 seven-day pre-election report was not simply a few days late; rather, it was not filed until well after the election. The sanction is a perfectly valid legislative enactment,²⁷ and the fact that its

charges requiring a delay of certification . . . [and eliminated] the power of the court to declare the second highest vote-getter elected where expenditure violations were found." (footnotes omitted).

Id. at 742.

27. Numerous courts have either recognized the validity of a forfeiture sanction. see *Laborer's Educational & Political Club-Independent v. Danforth*, 561 S.W.2d 339, 344 (Mo.1977); *State ex rel. Palagi v. Regan*, 113 Mont. 343, 126 P.2d 816, 825 (1942); *State ex rel. La Follette v. Kohler*, 228 N.W. 895, 907, 910 (Wis. 1930). or have applied it to election law violations. See *Derosey v. Stovall*, 418 S.W.2d 419, 422 (Ky.1967) (failure to file pre-election report until after election compelled forfeiture).

WAINSCOTT v. OSSENKOP

Alaska 237

Cite as, Alaska, 633 P.2d 237

application may have unpleasant consequences for an otherwise duly elected official does not justify interpreting it in a manner incompatible with the plain meaning of the statute.²³

Marshall's election to the city council for the City of Fairbanks and to the assembly for the Fairbanks North Star Borough is declared void.



Robert N. WAINSCOTT, Individually and as Personal Representative for the Estate of Deborah K. Waincott, Appellant,

v.

Charles J. OSSENKOP and State Farm Fire and Casualty Company, Appellees.
No. 4476.

Supreme Court of Alaska.

Sept. 11, 1981.

Appeal was taken from the entry by the Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., of summary judgment against, and denial of summary judgment in favor of, the husband, individually and as personal representative of the estate of his daughter, in an action under an automobile policy. The Supreme Court, Rabinowitz, Chief Justice, held that: (1) for purposes of determining whether the daughter was a resident of the husband's household, and thus was within the cover-

age of the policy, was to be determined by whether the husband intended to be permanently separated from his daughter, not whether the husband intended to be permanently separated from his wife; (2) the definition of the term "his household" in the coverage provision was ambiguous; and (3) the daughter should have been found to be an additional insured since it was entirely reasonable for the husband to expect, during the interim period before the bonds of marriage had been officially dissolved and before any provisions had been made for the care and custody of the minor children of the marriage, that his policy could continue to include within its coverage those who lived within the household for which he continued to be the sole source of support, even though he had recently, and perhaps permanently, discontinued his actual physical presence there.

Reversed and remanded with instructions.

Concor, J. dissented with an opinion.

1. Insurance ⇨ 435.8(4)

In action under automobile policy wherein it was necessary to determine whether daughter was resident of husband's household, and thus covered as "additional insured," after husband and wife separated, issue was not intention of husband and wife as to whether they planned to reconcile or remain apart; rather, focus was on relationship between husband and his daughter.

2. Insurance ⇨ 435.8(4)

For purposes of determining whether daughter was resident of husband's household, and thus covered as "additional in-

primary contests, which was the situation in *Cook*).

28. We reject Marshall's argument that because the sanction has never been enforced before it cannot now be applied. Equal protection is not violated by unequal enforcement of a valid law absent a showing of intentional discrimination. *Silides v. Thomas*, 559 P.2d 40, 89 (Alaska 1977). No such showing has been made here.

Secretary of State v. McGucken, 244 Md. 70, 222 A.2d 693, 695-97 (1966) (failure to timely appoint campaign treasurer designation compelled forfeiture); *Cook v. Corbett*, 251 Cr. 263, 446 P.2d 179, 185 (1968) (false statements in ads were deliberate and material violations and compelled forfeiture), modified in *Combs v. Groener*, 256 Cr. 336, 472 P.2d 281, 282-83 (1970) (forfeiture sanction unconstitutionally infringes legislature's exclusive power to determine members' election, except as applied to

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WORK ORDER REQUEST FORM

M12- 0503

KEYWORDS: murder/juries

ASSIGNED TO Zaner

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT _____

REQUESTED FOR _____ BY _____ EXT. _____

* DELIVER TO _____ TAKEN BY _____

INSTRUCTIONS, EXPLANATIONS _____

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

TO REQUESTER

APPROVED: _____ Director, Legal Services

REVIEWED _____

IN _____ DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

Alaska State Senate
JUNEAU, ALASKA 99811

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

April 13, 1981

Mr. Jim Robison
Acting Business Manager
Alaska State District Council
of Laborers
P. O. Box 899
924 West Fifth Avenue
Anchorage, Alaska 99510

Dear Mr. *Jim* Robison:

Thank you for your letter on jury duty and time off for service.

The Senate recently passed SB 171 which, among other things, removes most of the exemptions from jury service. Under this bill, the jury pool will be expanded and working men and women will not only be shouldering the burden of service that many professionals were not previously required to bear.

Legislating pay for time off needed to fulfill jury service is an idea worth considering. I will have my staff investigate the matter to determine whether there are any unforeseen problems with such a bill.

In the meantime, I will be willing to introduce a measure by request so it has some action this session. As you know, however, the Senate is attempting to finish its business by May 15th, so I doubt that this measure could go very far this year.

Please let me know if this is amenable to you.

Sincerely,

Pat
Patrick M. Rodey
Senator

PMR/ods

David A. McDonald
Business Manager/Secretary-Treasurer

Jim Robison
President

ALASKA STATE DISTRICT COUNCIL OF LABORERS

Laborers International Union of North America, AFL-CIO

P. O. Box 899 • 924 West Fifth Avenue
Anchorage, Alaska 99510 • 907/276-1640
Telex 26-540

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March 23, 1981 MAR 25 1981

The Honorable Patrick Rodey
State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

The Laborers are negotiating a new agreement with the Associated General Contractors. One of the items suggested to be included in this agreement was a clause for the employers to pay for time off needed to serve on jury duty.

In trying to write a proposal, the obvious became apparent. Why not legislate a bill so that all Alaskans are covered for this worthwhile task and not just the few covered by a collective bargaining agreement or State and Municipal Employees.

If you would like to take on this task, I would appreciate it. If, because of your schedule, you are not able to do this, would you suggest the name of another legislator who would be interested.

Very truly yours,

Jim Robison
Jim Robison
Acting Business Manager

JR/ml

cc: Betty Jo Powers
Valdez, Local 341



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

A G E N D A

Senate Judiciary Committee Hearing

Monday, March 23, 1981
Butrovich Committee Room - 2:00 p.m.

CALL TO ORDER

LEGISLATION BEFORE COMMITTEE:

SB 171 "An Act relating to jurors and jury panels."

SCHEDULED TESTIMONY:

Grant Callow, Alaska Court System

LEGISLATION BEFORE COMMITTEE:

SB 149 "An Act relating to the regulation of bingo, raffles,
and ice pools; and providing for an effective date."

SCHEDULED TESTIMONY:

Gary Jenkins, Audit Division

~~Donna Cline, Department of Revenue.~~

ADJOURN

Bill would end jury exemption

News-Miner Bureau

JUNEAU—Doctors, lawyers and school teachers would be required to serve on juries like everyone else if a measure under consideration by the Legislature becomes law.

The bill eliminates seven professions now exempt from jury service and would require everyone to serve unless they could show "substantial hardship" to themselves or others.

The bill, authored by the House Judiciary Committee, chaired by Rep. Fred Brown, L-Fairbanks, is expected to be approved by the committee next week.

Currently, persons in seven professions can be automatically excused from jury duty. They include court officers, state and federal workers, attorneys, ministers, teachers, doctors and dentists.

"There's not really a reason for this kind of elitism to exist," said Brown.

* Sec. 4. AS 09.20.050(b) is amended to read:

(b) The jury list shall be based on a list of all persons who purchased a resident trapping, hunting or fishing license during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Fish and Game), a list of all persons who filed for a distribution of Alaska permanent fund income under AS 43.23 [A STATE INCOME TAX RETURN] during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Revenue), [AND] a list of all persons who have registered to vote in this state (to be prepared by the director of elections), and, if considered necessary by the administrative director of courts, a list of all persons who hold a valid Alaska drivers' license (to be prepared by the Department of Public Safety) [LIEUTENANT GOVERNOR]. The departments and the director of elections [LIEUTENANT GOVERNOR] shall submit their respective lists [FILES] to the Department of Administration not later than January 15 of each year. To the extent that it is available, the lists [FILES] submitted by the departments and the director of elections [LIEUTENANT GOVERNOR] shall contain the following information for each person on the list for the preceding calendar year: his first name, middle initial, and last name; his residence address as well as his mailing address, including the zip code for each; his social security number; his birth date; and the number of years and months he has been a resident of the state. The lists [FILES] submitted by the departments and the director of elections [LIEUTENANT GOVERNOR] shall be recorded on magnetic tape compatible with Department of Administration data processing equipment.

8 * Sec. 8. Notwithstanding AS 09.20.050(b) amended by sec. 3 of this Act,
9 the Department of Revenue shall furnish the Department of Administration
10 with a list of all persons who filed for a distribution of Alaska permanent
11 fund income under AS 43.23 during calendar year 1980 within 30 days of the
12 effective date of this Act.

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Offered: 2/24/82
Referred: Judiciary and
Finance

Original sponsors: Fischer, Hohman,
Stimson, et al

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 175 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act relating to standards of conduct for public
7 officials and employees; establishing a State Ethics
8 Commission; and providing for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. The purpose of AS 39.49 as enacted
11 in sec. 2 of this Act is to

- 12 (1) prescribe standards of conduct for public officials and
13 employees of the state and its municipalities;
14 (2) educate the public with respect to ethics in government;
15 (3) establish an ethics commission that will render advisory
16 opinions and enforce the provisions of AS 34.49 so that public confidence in
17 public officials will be preserved.

18 * Sec. 2. AS 39 is amended by adding a new chapter to read:

19 CHAPTER 49. ETHICS.

20 ARTICLE 1. STANDARDS OF CONDUCT.

21 Sec. 39.49.010. CONSTRUCTION. This chapter shall be liberally
22 construed to promote high standards of ethical conduct in state and
23 municipal government.

24 Sec. 39.49.020. APPLICABILITY. This chapter applies to each
25 elected or appointed public official, including an employee of a state
26 agency or a municipality. This chapter also applies to a person under
27 a personal services contract to a state agency or to a municipality.

28 Sec. 39.49.030. GIFTS. A public official may not solicit or
29 receive, directly or indirectly, a gift, whether in the form of money,

1 service, or benefit, under circumstances where it may reasonably be
2 inferred that the gift is intended to influence the performance of
3 official action or as a reward for official action.

4 Sec. 39.49.040. CONFIDENTIAL INFORMATION. A public official may
5 not use information for personal gain or disclose information that by
6 law, regulation, or ordinance is not available to members of the public
7 and which the public official acquires from official sources.

8 Sec. 39.49.050. PROHIBITIONS. A public official may not use the
9 public office to

10 (1) seek employment or contract for services for any person
11 except as provided by law; ?

12 (2) solicit or accept compensation for the performance of
13 official duties or responsibilities for any person except as provided
14 by law;

15 (3) use public time, equipment, or facilities for private or
16 business purposes for any person; CURRENTLY MAY USE AND REIMBURSE STATE - TELEPHONE

17 (4) use public time, equipment, or facilities for political
18 or campaign purposes;

19 (5) solicit, sell, or engage in a financial transaction with
20 a subordinate or a person or business that the public official inspects
21 or supervises.

22 Sec. 39.49.060. CONFLICT OF INTEREST. (a) A public official may
23 not take official action affecting

24 (1) a business or property in which the public official has
25 a financial interest; or

26 (2) a business or property for which the public official
27 acts as legal counsel, advisor, consultant, agent, or representative.

28 (b) A public official who is a legislator and who has filed a
29 report of financial and business interests under AS 39.50.020 does not

1 violate (a) of this section.

2 (c) A public official who is a member of a board, commission, or
3 committee or municipal governing body who has complied with AS 39.50.020
4 and whose participation is necessary in order to constitute a quorum
5 for official action on a matter described in (a) of this section does
6 not violate (a) of this section.

7 (d) A public official may not acquire a financial interest in a
8 business or property that may be directly involved in official action
9 by the public official.

10 (e) Except as provided in this section, a public official of the
11 state may not assist a person or business before a state agency for
12 contingent compensation in a transaction involving the state. A public
13 official who is a member of the legislature or employed in the legis-
14 lative branch of the state government may not assist a person or busi-
15 ness before a state agency for compensation. A public official who is
16 a member of the governing body of a municipality or an employee of a
17 municipality may not assist a person or business before the municipal
18 governing body or an agency of the municipality for compensation.

19 (f) A public official may not assist a person or business for
20 compensation to secure passage of a bill or ordinance or to obtain a
21 contract, claim, transaction, or proposal in which the public official
22 has participated or will participate as a public official. A public
23 official may not assist a person or business for compensation on the
24 bill, ordinance, contract, claim, transaction, or proposal before the
25 legislature, a state agency, or a municipality.

26 (g) A public official may not assist a person or business before
27 a state agency or municipality for compensation on a bill, ordinance,
28 contract, claim, transaction, or proposal involving official action by
29 the state agency or municipality over which the public official has

1 authority.

2 Sec. 39.49.070. ACTION ON CONFLICT. (a) A public official who
3 in the discharge of official duties or responsibilities is required to
4 take official action that is prohibited by this chapter and that would
5 result in a conflict of interest

6 (1) shall prepare a statement describing the matter requir-
7 ing official action and the nature of the conflict of interest with
8 respect to the official action; and

9 (2) shall deliver copies of the statement to the commission
10 and to an immediate superior or to the governor.

11 (b) On receipt of a statement prepared under (a) of this section,
12 a public official's superior or the governor shall assign the matter to
13 a public official who does not have a conflict of interest.

14 (c) The commission shall review the statement filed under (a) of
15 this section and may provide the public official with an advisory
16 opinion prepared under AS 39.49.190(a)(1).

17 Sec. 39.49.080. GOVERNMENT CONTRACTS. (a) A public official or
18 a member of the household of a public official may not be a party to or
19 have an interest in the profits or benefits of a state or municipal
20 contract or the investment of state or municipal money unless

21 (1) the contract is let by competitive bidding; or

22 (2) the contract is for necessary supplies or services for
23 the state or municipal agency that are unobtainable elsewhere at the
24 same or lower cost or they are furnished to the state or municipal
25 agency as part of a continuing course of dealing, established before
26 the public official became associated with the state or municipal
27 agency, and the transaction is conducted at arm's length, with the full
28 knowledge of the interest of the public official or a member of the
29 household, and the public official takes no part in the determinations

1 of specifications, deliberations, or decision of the agency with respect
2 to the contract.

3 (b) In the absence of bribery or a purpose to defraud, a public
4 official or a member of the household of the public official is not
5 considered to have an interest in a contract or the investment of
6 public money when the person has a limited interest [?] as shareholder or
7 creditor of the business that is the contractor on the contract in-
8 volved or that is the issuer of the security in which public money is
9 invested. A person claiming a limited interest shall file with the
10 commission and the state or municipal agency an affidavit describing
11 the limited interest before the contract is entered into.

12 Sec. 39.49.090. CONTRACTS VOIDABLE. (a) In addition to any
13 other penalty provided by law, a contract entered into by the state or a
14 municipality of the state in violation of this chapter is voidable by
15 the state or a municipality of the state.

16 (b) In an action to void a contract entered into by the state or
17 a municipality of the state in violation of this chapter, the interests
18 of innocent parties who may be damaged by the action shall be considered
19 and the action to void the transaction must be brought within 60 days
20 of a determination of a violation of this chapter.

21 Sec. 39.49.100. RESTRICTIONS ON FORMER PUBLIC OFFICIALS. (a) A
22 former public official may not use information for personal gain or
23 disclose information that by law, regulation, or ordinance is not
24 available to members of the public and that was acquired in the course
25 of official duties.

26 (b) A former public official may not within 12 months after
27 termination of employment assist a person or business for compensation
28 on a matter in which the former public official took official action as
29 a public official.

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1 (c) A former public official may not within 12 months after
2 termination of employment assist a person or business for compensation
3 on a matter involving official action by the state agency or a municipi-
4 pality of the state with which the former public official was employed.

5 (d) This section does not prohibit a state agency or a municipi-
6 pality of the state from contracting with a former public official to
7 act on a matter on behalf of the state or the municipality within the
8 periods stated in this section and does not prevent the public official
9 from appearing before a state or municipal agency under the contract.

10 Sec. 39.49.110. VIOLATION. (a) The attorney general or the
11 municipal attorney may recover the compensation, gift, or profit re-
12 ceived by a person as a result of a violation of this chapter by a
13 public official or former public official.

14 (b) An action under (a) of this section shall be brought within
15 two years of the violation.

16 Sec. 39.49.120. REPORTING CONFLICTS OF INTEREST BY MEMBERS OF
17 MUNICIPAL GOVERNING BODIES. (a) A public official who is a member of
18 a municipal governing body and is required to take an action in the
19 discharge of official duties that may cause financial benefit or detri-
20 ment to the public official, to a member of the household of the public
21 official, or to a business with which the public official is associ-
22 ated, which is distinguishable from the effects of a similar action on
23 the public generally or a broad segment of the public, shall

24 (1) prepare a written statement describing the matter re-
25 quiring action and the nature of the potential conflict; and

26 (2) deliver a copy of the statement to the presiding officer
27 of the municipal governing body.

28 (b) A member of a municipal governing body may request permission
29 to abstain from voting on the issue. This section does not prohibit a

1 member of a municipal governing body from voting on a matter that comes
2 before the municipal governing body.

3 (c) The member of a municipal governing body shall report a
4 potential conflict of interest under this section as soon as the member
5 is aware of the conflict.

6 ** Where Brownes* Sec. 39.49.130. PROTECTIONS FOR REPORTING A VIOLATION. (a) A
7 person who has knowledge that a public official has violated a standard
8 of conduct established in AS 39.49.010 - 39.49.120 may report the
9 existence of the violation to the commission.

10 (b) A public official who reports or is about to report a viola-
11 tion of the standards of conduct established in AS 39.49.010 - 39.49.120
12 is not, because of that reporting activity, subject to

- 13 (1) dismissal from office or employment;
- 14 (2) withholding of salary increases;
- 15 (3) withholding of promotions;
- 16 (4) demotion in employment status; or
- 17 (5) transfer of employment location.

18 (c) If a public official who has reported or is about to report a
19 violation of the standards of conduct established in AS 39.49.010 -
20 39.49.120 is subject to a sanction described in (b) of this section for
21 a reason other than reporting a violation of a standard of conduct
22 established in AS 39.49.010 - 39.49.120, the state agency or municipa-
23 lity shall establish by a preponderance of evidence that the sanction is
24 not imposed because the public official reported or intended to report
25 a violation of a standard of conduct established in AS 39.49.010 -
26 39.49.120.

27 (d) A person who is not a public official who reports or is about
28 to report a violation of the standards of conduct established in
29 AS 39.49.010 - 39.49.120 may not be disqualified because of that report-

open to abuse?

Down on Agency?

1 ing activity from eligibility to

2 (1) bid on contracts with an agency of the state or of a
3 municipality of the state;

4 (2) receive land under a law of the state or an ordinance of
5 a municipality;

6 (3) receive any other right or benefit to which the person
7 is entitled.

8 (e) If a person who is not a public official who has reported or
9 is about to report a violation of the standards of conduct established
10 in AS 39.49.010 - 39.49.120 may be determined as ineligible for a right
11 or benefit described in (d) of this section for a reason other than
12 reporting a violation of a standard of conduct established in AS 39.49.-
13 010 - 39.49.120, the state agency or municipality shall establish by a
14 preponderance of evidence that the sanction is not imposed because the
15 person reported or intended to report a violation of a standard of
16 conduct established in AS 39.49.010 - 39.49.120.

17 (f) A person who violates (b) or (d) of this section is subject
18 to a civil penalty of not more than \$2,000.

19 (g) A person who alleges a violation of (b) or (d) of this section
20 may bring a civil action in the superior court for appropriate injunc-
21 tive relief or actual damages or both within 90 days after the occur-
22 rence of the alleged violation of (b) or (d) of this section. The
23 court may order reinstatement, payment of back wages, reinstatement of
24 other rights or benefits including seniority rights, and other actual
25 damages as the court considers appropriate.

26 (h) A state agency or municipality shall post notices and use
27 other appropriate means to keep its employees and other persons informed
28 of their protections under this section.

29 **ARTICLE 2. STATE ETHICS COMMISSION.**

1 Sec. 39.49.150. COMMISSION ESTABLISHED. (a) There is created in
2 the Department of Administration the State Ethics Commission consisting
3 of seven members.

4 (b) The governor shall appoint the members of the commission.
5 Members of the commission are subject to confirmation by a majority of
6 the members of the legislature in joint session.

7 (c) Terms of office of the members of the commission date from
8 February 1 of the year of their appointment. The term or office of a
9 member of the commission is five years and until a successor is ap-
10 pointed and qualifies. A commission member may not serve more than one
11 term.

12 (d) A member of the commission may not

13 (1) hold or campaign for elective office;

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

16 (3) support or oppose a candidate, proposition, or question
17 or make a contribution in support of or in opposition to a candidate
18 for governor, lieutenant governor, a member of the legislature, for
19 municipal office, or for a proposition or question that appears on a
20 ballot in the state including the ballot of a municipality;

21 (4) participate in an election campaign or participate in or
22 contribute to a political party; or

23 (5) lobby or employ a lobbyist.

24 (e) Members of the commission receive compensation of \$150 a day
25 while attending commission meetings and are entitled to travel expenses
26 and per diem authorized by law for members of boards and commissions
27 under AS 39.20.180.

28 (f) The members of the commission shall elect a presiding officer.
29 Four members of the commission constitute a quorum. A vacancy does not

1 impair the powers of the remaining members to exercise the powers of
2 the commission.

3 (g) A vacancy on the commission shall be filled by the governor
4 within 30 days of the occurrence of the vacancy. The member appointed
5 shall serve for the remaining term of his predecessor.

6 (h) The governor may remove a member only for misconduct, neglect
7 of duty, or disability.

8 (i) The commission may employ an executive director and employees
9 it considers necessary. A member of the commission may not serve as
10 executive director or as an employee. The executive director and
11 employees of the commission are in the exempt service.

12 (j) The commission may delegate to its presiding officer or to
13 the executive director the authority to act in the name of the commis-
14 sion between meetings of the commission. The commission may not dele-
15 gate the power to determine violations.

16 Sec. 39.49.160. OFFICES OF THE COMMISSION. (a) The commission
17 shall establish an office in each judicial district in the state and
18 may provide for branch offices and representatives in other municipali-
19 ties. The commission may not establish more than one office in a
20 municipality. Each office shall keep on file for public inspection
21 copies of the reports filed with the commission under AS 15.13 by
22 candidates for statewide office and by candidates for legislative
23 office in that district. The offices shall maintain the forms and
24 pertinent material necessary for candidates to comply with AS 15.13.

25 (b) Reports required by AS 15.13, AS 24.45, or AS 39.50 shall be
26 filed directly with the commission's central office. The commission
27 shall insure that copies of reports by statewide and legislative candi-
28 dates in each senate district are forwarded promptly to the appropriate
29 district office.

1 (c) The commission shall insure that copies of reports filed by
2 candidates for municipal office are made available for public inspec-
3 tion in the municipality.

4 Sec. 39.49.170. DUTIES OF THE COMMISSION. The commission shall

5 (1) develop and provide all forms for the reports and state-
6 ments required to be made under this chapter, AS 15.13, AS 24.45, and
7 AS 39.50;

8 (2) prepare and publish a manual setting out uniform methods
9 of bookkeeping and reporting for use by persons required to make reports
10 and statements under AS 15.13, AS 24.45, and AS 39.50 and otherwise
11 assist candidates, groups, and individuals in complying with the re-
12 quirements of AS 15.13, AS 24.45, and AS 39.50;

13 (3) receive and hold open for public inspection reports and
14 statements required to be made under AS 15.13, AS 24.45, and AS 39.50
15 and upon request, furnish copies at cost to interested persons;

16 (4) compile and maintain a current list of filed reports and
17 statements;

18 (5) prepare a summary of reports filed with the commission
19 and make copies of this summary available to interested persons at
20 their actual cost;

21 (6) notify by registered or certified mail, all persons who
22 are delinquent in filing reports and statements required to be made
23 under AS 15.13, AS 24.45, or AS 39.50;

24 (7) report to the attorney general within 60 days the names
25 of all persons and groups who have failed to comply with reporting
26 requirements of law;

27 (8) examine, investigate, and compare reports, statements
28 and actions required by this chapter, AS 15.13, AS 24.45, and AS 39.50
29 and report to the attorney general the names of persons or groups that

1 the commission has substantial reason to believe have violated this
2 chapter, AS 15.13, AS 24.45, or AS 39.50;

3 (9) prepare and publish an annual report to the legislature
4 concerning the activities of the commission, the effectiveness of this
5 chapter, AS 15.13, AS 24.45, and AS 39.50, their enforcement by the
6 attorney general, and recommendations and proposals for change;

7 (10) adopt regulations necessary to implement and clarify
8 this chapter, AS 15.13, AS 24.45, and AS 39.50, subject to the pro-
9 visions of the Administrative Procedure Act (AS 44.62).

10 Sec. 39.49.180. LEGAL COUNSEL. (a) The commission may retain or
11 employ legal counsel.

12 (b) Upon request, the attorney general shall provide legal advice
13 and representation to the commission without charge.

14 (c) If, in the opinion of the commission, the public interest
15 warrants, the commission may request the chief justice of the supreme
16 court to appoint a special prosecutor to represent the commission in a
17 proceeding involving an alleged violation of a law administered by the
18 commission and to prosecute the violation.

19 Sec. 39.49.190. POWERS OF COMMISSION. (a) The State Ethics
20 Commission established under AS 39.49.150 shall administer AS 15.13,
21 AS 24.45, AS 39.50, and this chapter and may

22 (1) issue advisory opinions on the request of a public
23 official or former public official as to whether stated facts and
24 circumstances may constitute a violation of this chapter; if an advi-
25 sory opinion is not issued within 30 days after the request is filed
26 with the commission, the public official or the former public official
27 should consider that the facts and circumstances stated in the request
28 constitute a violation of this chapter; an opinion issued is binding on
29 the commission in a subsequent charge concerning the public official or

1 former public official who sought the opinion and acted in reliance on
2 it unless material facts were omitted or misstated in the request;

3 (2) accept or initiate charges concerning a violation of a
4 law administered by the commission, initiate investigations, and hold
5 hearings;

6 (3) subpoena witnesses, administer oaths, and take testimony
7 relating to matters before the commission and require the production
8 for examination of books or papers relating to a matter under investi-
9 gation before the commission;

10 (4) publish summaries of decisions and opinions under this
11 chapter with deletions in the summaries or opinions to prevent dis-
12 closure of the identity of a person involved in a decision or opinion;

13 (5) distribute its publications without cost to the public
14 and initiate programs to educate the public and public officials on
15 ethics in government employment.

16 (b) The commission may authorize its director to issue an advisory
17 opinion under (a)(1) of this section if delay would substantially
18 inconvenience the public official requesting the advisory opinion.

19 (c) A charge may be accepted by the commission and a charge may
20 be initiated by the commission on a violation of this chapter no later
21 than one year after termination of state employment by a public offi-
22 cial. This subsection does not prevent a proceeding against a person
23 who by fraud prevents discovery of a violation of the chapter.

24 Sec. 39.49.200. COMPLAINT PROCEDURES. (a) A charge concerning a
25 violation of a law administered by the commission must be in writing
26 and signed by the complainant under oath. A charge initiated by the
27 commission must be signed by three members of the commission. The
28 commission shall notify each person against whom a charge is filed and
29 afford the person an opportunity to explain the conduct stated to be in

1 violation of this chapter. The commission may investigate the charge
2 and render an advisory opinion to the public official.

3 (b) The commission shall investigate charges involving a viola-
4 tion of this chapter on a confidential basis. If the advisory opinion
5 indicates a probable violation, the person charged with a violation may
6 request a formal opinion or comply with the advisory opinion. If the
7 person charged fails to comply with the advisory opinion or if a major-
8 ity of the members of the commission determine that a violation of this
9 chapter has occurred, a copy of a complaint shall be served on the
10 person. The person has 20 days after service to reply to the complaint.

11 (c) If a majority of the members of the commission determines
12 that there is reason to believe that a violation of this chapter has
13 occurred, the commission shall set a time and place for a hearing with
14 notice to the complainant and the person charged with a violation.

15 (d) Each party may have an opportunity to (1) be heard, (2)
16 subpoena witnesses and require the production of books or papers relat-
17 ing to the proceedings, (3) be represented by counsel, and (4) have the
18 right of cross-examination. The hearings shall be held under AS 44.62.
19 A witness shall testify under oath. The commission is not bound by the
20 strict rules of evidence but the commission's determination must be
21 based on a preponderance of the evidence. Testimony and evidence taken
22 at the hearing shall be recorded.

23 (e) A determination of the commission regarding a violation shall
24 be approved by four members of the commission.

25 Sec. 39.49.210. DETERMINATIONS. (a) When the commission, after
26 hearings under AS 39.49.200(c), determines that there is sufficient
27 cause to believe that a public official removable only by impeachment
28 has violated a provision of this chapter, it shall issue a determina-
29 tion and refer the determination to the senate. The determination

1 shall contain a statement of the facts constituting the violation. If
2 within 30 days after the determination a committee of the senate has
3 not acted on the determination, the commission shall make the determina-
4 tion public. Days during which the legislature is not in session are
5 not included in the 30-day period.

6 (b) When the commission determines after hearings under AS 39.49.-
7 200(c) that there is sufficient cause to believe that a public official
8 other than a public official removable only by impeachment has violated
9 a provision of this chapter, it shall refer

10 (1) to the governor a determination concerning a public
11 official in the executive branch;

12 (2) to the proper presiding officer of the legislature or to
13 both presiding officers of the legislature a determination concerning a
14 public official in the legislative branch other than a member of the
15 legislature;

16 (3) to the chief justice of the supreme court a determination
17 concerning a public official in the judicial branch;

18 (4) to the chairman of the Board of Regents a determination
19 concerning a public official in the University of Alaska;

20 (5) to the municipal governing body a determination concern-
21 ing a public official of the municipality.

22 (c) The governor, legislature, chief justice, the Board of Regents,
23 or a municipal governing body shall notify the commission of any action
24 taken within 30 days of receipt of the determination under (b) of this
25 section. Days during which the legislature is not in session are not
26 included in the 30-day period for notification by the legislature.

27 (d) The commission may by a vote of four members issue a public
28 statement of its determination on a complaint against a former public
29 official and the attorney general may pursue remedies available to the

1 state.

2 Sec. 39.49.220. DISCIPLINARY ACTION FOR VIOLATION. (a) The
3 appointing authority may discipline, reprimand, put on probation,
4 demote, suspend, or discharge an appointed public official determined
5 to have violated this chapter.

6 (b) If an appointing authority fails to take action under (a) of
7 this section, the commission may

8 (1) discipline, reprimand, put on probation, demote, suspend,
9 or discharge the appointed public official determined to have violated
10 this chapter;

11 (2) assess a civil penalty of not more than \$5,000 against a
12 public official determined to have violated this chapter.

13 (c) The commission may assess a civil penalty of not more than
14 \$5,000 against a former public official determined to have violated
15 this chapter.

16 Sec. 39.49.300. DEFINITIONS. In this chapter,

17 (1) "business" means a corporation, partnership, or sole
18 proprietorship carrying on a business whether or not operated for
19 profit;

20 (2) "commission" means the State Ethics Commission;

21 (3) "compensation" means money, a thing of value, or economic
22 benefit conferred on or received by a person in return for services
23 rendered or to be rendered by himself for another;

24 (4) "controlling interest" means an interest in a business
25 that is sufficient in fact to control whether the interest is greater
26 or less than 50 percent;

27 (5) "dependent" means a person who

28 (A) receives more than half of his support from the
29 public official;

1 (B) is not the spouse, ward, or minor child of the
2 public official;

3 (6) "employment" means services performed for compensation;

4 (7) "financial interest" means an interest held by an indi-
5 vidual or the spouse, minor child, or dependent of an individual that
6 is

7 (A) an ownership interest in a business;

8 (B) a creditor interest in an insolvent business;

9 (C) employment;

10 (D) prospective employment for which negotiations have
11 begun;

12 (E) an ownership interest in real or personal property;

13 (F) a loan or other debtor interest;

14 (G) a directorship or officership in a business;

15 (8) "gift"

16 (A) means any payment to the extent that consideration
17 of equal or greater value is not received;

18 (B) includes but is not limited to

19 (i) a loan, loan guarantee, forgiveness of a loan,
20 payment of a loan by a third party, or an enforceable promise
21 to make a payment except when full and adequate consideration
22 is received;

23 (ii) the purchase of tickets for travel or for
24 entertainment events; and

25 (iii) the granting of discounts or rebates for goods
26 or services not extended to the public generally;

27 (C) does not include

28 (i) informational or promotional materials, includ-
29 ing but not limited to books, reports, pamphlets, calendars

1 or periodicals; however, payments for travel or reimbursement
2 for expenses may not be considered "informational material";

3 (ii) food and beverages consumed in places of
4 public accommodation;

5 (9) "limited interest" means

6 (A) an equity interest in not exceeding five percent of
7 the outstanding shares of a corporation not traded on a public
8 exchange;

9 (B) an equity interest in not exceeding five percent of
10 the outstanding shares of a corporation traded on a public exchange
11 unless the commission establishes a lower percentage by regula-
12 tion; or

13 (C) an interest as a creditor in not exceeding five
14 percent of the total indebtedness of a corporation or other organi-
15 zation;

16 (10) "matter" means a judicial or administrative proceeding,
17 an investigation preparatory to a judicial or administrative proceeding,
18 an application, or a contract or claim under a contract, involving a
19 state agency or a municipality of the state;

20 (11) "member of his household" means

21 (A) a person who is the spouse, child, ward, dependent,
22 or parent of a public official;

23 (B) the child, ward, dependent, or parent of the spouse
24 of a public official, and who shares the common residence of a
25 public official; or

26 (C) a person who is the child, ward, dependent, or
27 parent of a public official or of the spouse of a public official,
28 and over whose financial affairs and holdings the public official
29 has legal or actual control, whether or not they share a common

1 residence;

2 (12) "municipality" includes

3 (A) a city or borough of any class;

4 (B) a municipality unified under AS 29.68.240 - 29.68.-

5 440;

6 (C) a school district or a regional educational atten-
7 dance area;

8 (13) "official action" means a decision, recommendation,
9 approval, disapproval, or other action, including inaction, that
10 involves discretion;

11 (14) "public official" means a member of the legislature, the
12 governor and lieutenant governor, a justice of the supreme court, a
13 judge of the court of appeals, of the superior court, or of the district
14 court, appointed officers and employees of a state agency, elected and
15 appointed officers and employees of a municipality of the state, and a
16 person under a personal services contract to a state agency or to a
17 municipality of the state;

18 (15) "state agency" means a department, board, board of
19 regents, commission, council, committee, subcommittee, institution,
20 office, corporation, authority or organization in the executive, legis-
21 lative, or judicial branch of the state government, advisory or other-
22 wise, and includes the University of Alaska and public corporations
23 having a separate and independent legal existence.

24 * Sec. 3. AS 24.45.021(a) is amended to read:

25 (a) This chapter shall be administered by the State Ethics [ALASKA
26 PUBLIC OFFICES] Commission created under AS 39.49.150(a) [AS 15.13.-
27 020(a)].

28 * Sec. 4. AS 39.25.110 is amended by adding a new paragraph to read:

29 (27) the executive director and staff of the State Ethics

*EXEMPT
EMPLOYEES*

1 Commission;

2 * Sec. 5. AS 39.50.020(b) is amended to read:

3 (b) The governor, lieutenant governor, members of the legis-
4 lature, and candidates for these offices, judicial officers, each
5 commissioner, head or deputy head of, or director of a division within,
6 a department in the executive branch, assistant to the governor or
7 chairman or member of a commission or board required to report under
8 this chapter, shall file the statement with the State Ethics [ALASKA
9 PUBLIC OFFICES] Commission. Municipal officers, and candidates for
10 elective municipal office, shall file with the municipal clerk or other
11 municipal official designated to receive their filing for office. All
12 statements required to be filed under this chapter are public records.

13 * Sec. 6. AS 39.50.050(a) is amended to read:

14 (a) The State Ethics [ALASKA PUBLIC OFFICES] Commission created
15 under AS 39.49.150(a) [AS 15.13.020(a)] shall administer the provisions
16 of this chapter. The commission shall prepare and keep available for
17 distribution, standardized forms on which the reports required by this
18 chapter shall be filed.

19 * Sec. 7. AS 39.50.200(a)(4) is amended to read:

20 (4) "commission" means the State Ethics [ALASKA PUBLIC
21 OFFICES] Commission created under AS 39.49.150(a) [AS 15.13.020(a)];

22 * Sec. 8. AS 44.62.330(a)(39) is amended to read:

23 (39) State Ethics [ALASKA PUBLIC OFFICES] Commission.

24 * Sec. 9. AS 15.13.020, 15.13.030, 15.13.045, 15.13.122; AS 39.25.120-
25 (12); and AS 39.50.090 are repealed.

26 * Sec. 10. The terms of the members of the Alaska Public Offices Commis-
27 sion are terminated on the effective date of this Act. The initial members
28 of the State Ethics Commission shall be appointed within 30 days of the
29 effective date of this Act for the following terms:

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- (1) two members shall be appointed for a five-year term;
- (2) two members shall be appointed for a four-year term;
- (3) one member shall be appointed for a three-year term;
- (4) one member shall be appointed for a two-year term;
- (5) one member shall be appointed for a one-year term.

* Sec. 11. This Act takes effect June 1, 1982.

Committee File

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 175 (State Affairs)
Title "An Act relating to standards of conduct for public officials and employees;
Requested by Senate Judiciary Committee Date April 29, 1982
establishing a State Ethics Commission; and providing for an effective date.

II. FISCAL DETAIL

Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Enactment of this bill will undoubtedly create additional work for the department's Civil Division attorneys. We do not believe, however, that the extent of this new work will require the addition of new positions or other resources, although some re-ordering of existing workload will be necessary, from time-to-time, to accommodate the new work.

(Narrative continued on attached page.)

IV. DATE May 4, 1982

PREPARED BY Richard I. Pegues, Director, Admin. Svcs.
AGENCY Department of Law

Original: Legislative Finance
cc: Budget and Management

PHONE 465-3672

Prime Sponsor (First Legislator Named)

The department further believes that certain sections of the bill are overly broad, placing undue restrictions on lower level, non-professional or non-appointive employees, in the case of the 12 month employment prohibition. The bill also limits the state's own use of former public officials (Sec. 39.49.100). Although subsection (d) permits a state agency or municipality to contract with a former public official to act on behalf of the state or municipality, no provision has been made to allow for contracting with a former public official's new employer. This latter situation has occurred when the state required the witness testimony or special expertise of former employees when we have had to reimburse the new employer for the former public official's time spent on behalf of the state.

Section 39.49.100 appears to prohibit former state attorneys from participating in matters against the state, within 12 months after termination, even if the matter involved is unrelated to the former state attorney's work for the state. Lawyers' ethics already prohibit attorneys from participating with the opposing side in matters where they possess extra-legal knowledge as a result of their former employment.

Lastly, the effective date of Section 39.49.100 should be clarified to state whether it applies to those who terminate after the effective date, or whether it applies retroactively to anyone who terminated within 12 months of the activity proscribed.

Memorandum

Alaska Court System

RECEIVED
MAR 31 1982

TO:

Arthur H. Snowden, II
Administrative Director

Office of Administrative Director
Alaska Court System

DATE : March 30, 1982

FROM: Karla L. Forsythe
General Counsel

SUBJECT: CS for SS for SB 175:
Standards of conduct
for public officials
and employees

You asked me to review SB 175. In particular, you were concerned that the definition of state agency, when read in conjunction with other provisions of the bill, might prohibit members of various court committees from lobbying before the legislature.

Although the bill as drafted applies to the judicial branch, it does not prohibit this type of activity. Sec. 39.49.060(f) prohibits a public official from assisting a "person or business" for compensation on a bill before the legislature. I read this prohibition to apply to private persons or business, not to court officials who contact the legislature on behalf of the court.

However, two other sections pose problems for the court system. Section 39.49.100(c) provides that a former public official may not within 12 months after termination of employment assist a person or business for compensation on a matter involving official action by the state agency with which the former public official was employed. This section would prohibit a judge who retired from the bench and entered the practice of law from appearing before a court for one year. I think this is an unreasonable exclusion, and I doubt the legislature intended this result.

Pursuant to Section 39.49.210, after the State Ethics Commission investigates and determines that a public official in the judicial branch has violated this statute, the determination is referred to the Chief Justice. If he does not act within 30 days, the commission may take action, including discipline, reprimand, probation, suspension, and discharge, as well as imposition of civil penalties. This section violates separation of powers by vesting ultimate authority over court system employees in an executive commission.

I think the judicial branch should be deleted from this bill on the basis of separation of powers. Unlike state officials, judges are bound by the Code of Judicial Conduct.

Arthur H. Snowden, II
March 30, 1982

The Judicial Canons address many of the abuses which this bill seeks to present. Ethical standards for court employees who are not judicial officers are already included to some extent in the Personnel Rules, and can be expanded if necessary.

The bill passed from Senate State Affairs into Senate Judiciary on February 29. Please let me know what course of action I should pursue, if any, regarding this legislation.

Carla

KLF/jb

Code of Ethics
(state officials & employees)

SENATE BILL NO. 175, by Senators Fischer, Hohman, Stimson, Bradley, Kerttula, Rodey, Dankworth, Colletta, Parr, Kelly, Eliason and Sturgulewski. Adopts a code of ethics for state officials and employees to establish ethical standards for the avoidance of conflicts of interest, and to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety. Adds a new chapter (49) to AS 39, "Conflict of Interest and Financial Disclosure", under which is established the State Ethics Commission within the Department of Administration. Commission to consist of seven members appointed by the Governor and concurred in by the Legislature. Outlines requirements for members (may not hold an elected office, may contribute to political campaign but may not hold a party office or participate in a campaign, may not be a lobbyist). Provides for election of presiding officer, compensation, appointment of an executive director, delegation of authority, establishment of regional offices in each senate district, and outlines the powers and duties of the commission. States that the Attorney General is the legal counsel for the commission and shall advise it in legal matters arising in the discharge of duties and shall represent the commission in actions to which it is party. Provides commission may request the chief justice of the supreme court to appoint a special prosecutor in proceeding involving violation if the AG fails or refuses to prosecute the violation. Provides for initiation of investigations by the commission on its own determination or on the receipt of a sworn complaint. States that the commission shall refer to the AG general violations of the law which it determines merit prosecution, and that the AG has the responsibility for prosecutions and may request evidence from the commission. States commission may issue opinions and interpretations of the law.

Outlines requirements for financial disclosure by state officials and a candidate for state office. States that public official shall file a statement each year, and that a new official shall file for the 12 months before he became a public official. A candidate for state office shall file a statement with the director of elections for the 12 full months before he became a candidate at the time he becomes a candidate. Statements show value of economic interests of official or candidate or members of his household as indicated by categories (from Category I--\$5,000 to Category IV--\$100,000 or more). Statement shall include name, address and position sought by official or candidate, names of household members and names under which they are engaged in business; occupations and principal places of business of official, candidate of household members, name of business associated with during filing year and description and nature of business or activity; listing of all interests in real property, excluding residence which exceed \$5,000, including street address and legal description, date of acquisition or transfer and its value by category; listing of securities of \$5,000 or more; listing of bonds regardless of value (issued by state or municipality); name and address of creditor for debts in excess of \$1,000; name and address of person or business that made payments or provided gross income exceeding \$1,000, excluding securities;

SB 175, (cont'd)

the name and address of a business or governmental client or customer of a business in which the official or candidate or household member is an officer, director, or partner or has an ownership interest of more than 50 percent, if the client or customer has paid an aggregate of \$25,000 or more during the filing year. List of gifts received which exceed \$100 in value.

Outlines conflicts of interest by a state official or employee. States a state official or state employee may not use his public office for private advancement or gain; may not represent or assist person or business before a state agency in a transaction involving the state or municipality of the state in a transaction if the compensation is contingent on success to be achieved in the representation or assistance; may not represent or assist person or business for a fee or other compensation to secure passage of a bill, to obtain contract or payment of a claim, or in any other transaction or proposal if he has participated or may participate as an official or employee in the matter; may not represent or assist person or business before a state agency on a bill, contract, claim, or other transaction or proposal involving official action by the agency if he is an official or employee of the agency. Provides section does not apply to members of the legislature. States that a member of the legislature and a person appointed by the legislature or by a legislator may not represent or assist a person or business before a state agency or before an agency of a municipality for compensation or other benefit or promise of benefit. States that official, employee or member of household may not be a party to or have an interest in the profits or benefits of a state contract or the investment of state money unless contract is let by competitive bidding, contract involves not more than \$150, or contract is for supplies or services which are unobtainable elsewhere or which are furnished as part of a continuing course of dealing, established before the official or employee became associated with the agency, and the transaction is conducted at arm's length, with agency's full knowledge of interest and official or employee takes no part in determinations of specifications, deliberations or decision of agency. States official or employee may have a limited interest as shareholder or creditor. States that a state official or employee may not seek employment with or allow himself to be employed by a business which is or may be regulated by an agency in which he serves. A business may not employ an official or employee if employment violates conflict of interest in employment. States that a state official or employee may not acquire a financial interest which he has reason to believe will be directly and immediately affected by his official action or the action of the agency in which he serves. Provides for filing of a written statement by official or employee in a situation in which he is required to take an action or make a decision in the discharge of official duties that may cause financial benefit or detriment to him, a household member or

to a business with which he is associated. Provides a member of the legislature shall prepare written statement in the same manner, and states that member may request permission to abstain from voting on the issue. States that official or employee may not solicit or accept a gift or gifts having an aggregate value of \$100 or more in a calendar year. Provides official or employee may not disclose or use confidential information or information not available to the public for personal gain or benefit of for gain or benefit of another person or business if he obtained the information through his official position. Restricts use of information for two years after he ends term of office or leaves government service or employment, and states restriction on use of information supersedes a less restrictive requirement of confidentiality that may apply. States that a former state official or employee may not for two years following his term of office or his state employment assist another person or business whether or not for compensation in a transaction or in an appearance in connection with a transaction involving the state or an agency or municipality of the state in which the former state official or former state employee participated during his term of office or employment. Further states that a 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 an employee of the business may not for two years following the term of office or employment of the state official or employee assist another person in an appearance or transaction involving the state or an agency or municipality of the state in which the former official or employee participated during his term of office or state employment. Provides penalties for violation of provisions (class A misdemeanor for violation for other than requirement of financial disclosure; class B misdemeanor for violation of financial disclosure), and states that a convicted person may not be eligible for appointive office or for employment with the state or act as a paid lobbyist for a period of four years following the date of conviction, unless court reduces or suspends the period. A plea of nolo contendere is considered a conviction for purposes of the chapter. Provides for enforcement, citizen action and civil actions, and discipline (includes dismissal).

Miscellaneous amendments relating to addition of new statute references. Repeals AS 15.13.020 (Alaska Public Offices Commission); sec. 030 (Duties of the commission); sec. 045 (Investigations, hearings); sec. 122 (Legal counsel); sec. 125 (Civil penalty; late filing of required reports); AS 24.-45.141 (Regulation of Lobbying. Civil penalty: Late registration; filing of required statements or reports); AS 39.25.-12.(12)(Partially exempt service. the executive director and staff of APOC); AS 39.50 (Conflict of Interest); and AS 39.49.-400(39) (enacted in this bill, the Alaska Agricultural Action Council)--repealed as of July 1, 1984. Provides Act takes effect July 1, 1981.

Introduced February 11 and referred to State Affairs, then to Judiciary.

Appropriations
(special)
(AK Ag Action Council)

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 162, by Senators Fahrenkamp, Sackett, Bennett and Parr. (see page 115, original bill). Makes special appropriations in the amount of \$6,700,000 to the Alaska Agricultural Action Council for a small grain marketing system: \$5,700,000 for construction of a tidewater grain terminal; \$700,000 for construction of a grain sub-terminal and elevator facility between Fairbanks and Delta Junction; \$300,000 to contract for organization and operation of a marketing system to purchase and resell small grains grown in Alaska. Provides Act takes effect immediately.

Introduced February 10 and referred to Resources, then to Finance.

INTRODUCTION OF RESOLUTIONS (Senate)

Constitutional Convention Committee

SENATE CONCURRENT RESOLUTION NO. 9, by the Rules Committee by Request of the Legislative Council (for the Interim Committee on the Constitutional Convention of the Eleventh Legislature). Establishes a joint House and Senate committee concerned with the organization and procedures of a state constitutional convention. Provides for appointment of three members of each house, appointed respectively by the Speaker and President to comprise a joint committee of the Twelfth Legislature to examine matters pertaining to the organization and conduct of constitutional conventions in Alaska. States that committee has authority both as a special and an interim committee and that work be undertaken with the full voting participation of a judge or justice of the Alaska court system appointed by the chief justice of the supreme court, the lieutenant governor, and by a person appointed by the governor. Resolves that the committee be dissolved November 30, 1982 and that its final report be submitted to the First Session of the Thirteenth Legislature not later than 1/25/83.

Introduced February 10 and referred to Judiciary, then to Finance.

COMMITTEE REPORTS (Senate)

Special Education

SENATE BILL NO. 18, (see page 10). Reported back to the Senate on February 12 by HESS with the committee recommending it be replaced with a SUBSTITUTE (HESS), and that it do pass. The substitute provides that to receive aid a district must apply to the department and outlines application requirements. States department shall project amount needed to finance state aid and shall request an appropriation from the legislature annually. Provides monies to be appropriated and if insufficient, shall be distributed pro rata among

SB 517. (cont'd)

States facility must maintain licensing to be eligible. Provides 75 percent of the grant shall be used for staff salaries and the remainder shall be used as determined appropriate by the facility to meet nutritional requirements, to purchase equipment appropriate for use by children and for staff training. Provides for issuance of regulations by Department to carry out purposes of section. Provides Act takes effect immediately.

Introduced April 24 and referred to Community & Regional Affairs, then to Finance.

Appropriations SENATE BILL NO. 518, by Senator Parr. Makes special appropriations (special) in the amount of \$4,050,000 from the general fund to the Department (Child Care Assistance) of Community and Regional Affairs to be distributed to licensed day care facilities under the Child Care Grant Program (\$4,000,000) and to be paid to municipalities for administrative costs of administering the Day Care Assistance Program (\$50,000). Provides unexpended and unobligated portions of the appropriations lapse into the general fund June 30, 1982. Provides Act takes effect on the effective date of SB 517.

Introduced April 24 and referred to Community & Regional Affairs, then to Finance.

Appropriations SENATE BILL NO. 519, by Senators Colletta, Mulcahy, Kerttula, Dankworth, Stimson, Rodey, Fischer, Sturgulewski and Bradley. Makes (special) special appropriations for Little League teams for capital improve- (Little League field improve- field improve- ments) ments to fields and facilities: \$240,000 for payment as a grant to the Municipality of Anchorage to be divided equally among various neighborhood areas of the city for capital improvements to fields and facilities; \$40,000 for payment to the Matanuska-Susitna Borough to be divided equally between the Wasilla and Mat Valley Little League teams for capital improvements to fields and facilities; \$20,000 for payment as a grant to the Kodiak Island Borough to be divided equally among the Kodiak Little League teams for capital improvements to fields and facilities. Provides Act takes effect immediately.

Introduced April 24 and referred to Community and Regional Affairs, then to Finance.

Code of Ethics SPONSOR SUBSTITUTE FOR SENATE BILL NO. 175, by Senators Fischer, (state offi- Hohman, Stimson, Bradley, Kerttula, Rodey, Dankworth, Colletta, cials & em- Parr, Kelly, Eliason and Sturgulewski. (original bill page 219). ployees) Incorporates provisions contained in Senate Bill No. 336 (page 561) as well as provisions of the original bill. Provides the purpose of the bill relating to ethics is to prescribe standards of conduct for public officials of the state and its municipalities and to establish an ethics commission to render advisory opinions and enforce the provisions of the bill so that public confidence in public officials will be preserved.

Adds new chapter to Title 29 relating to Ethics. Applicability section states: "This chapter applies to each elected or appointed public official, including an employee of the state, a state agency or a municipality. This chapter also applies to a person under a personal services contract to a state agency or to a municipality."

SSSB 175. (cont'd)

Outlines standards of conduct in relation to accepting of gifts, use or disclosure of confidential information, conflicts of interest, and fair treatment. Provides for action to be taken for a conflict of interest. Prohibits public official or a member of his household from having an interest in the profits or benefits of a state or municipal contract or an investment of state or municipal money. States that a contract entered into by the state or a municipality is voidable if entered into in violation of provisions of the chapter. Restricts former public officials for use of information which is not available to members of the public and which was acquired in the course of official duties. Provides a member of municipal governing bodies shall report conflicts of interest.

Establishes the State Ethics Commission in the Department of Administration to administer statutes dealing with Conflict of Interest, Regulation of Lobbying and State Election Campaigns. Provides Commission may issue advisory opinions upon request of public or former public official as to whether stated facts and circumstances may constitute a violation, accept or initiate charges concerning violations, initiate investigations and hold hearings, subpoena witnesses and take testimony relating to matters before the commission and require the production for examination of books or papers relating to a matter under investigation before the commission; publish summaries of opinions of decisions, and distribution of publications and initiation of programs to educate the public. Further sections deal with complaint procedures, determinations and disciplinary action for violation.

Technical amendments relate to the deletion of language relating to the Alaska Public Offices Commission and replacing it with the State Ethics Commission. Repeals provisions of AS 15.13 (State Election Campaigns): sec. 020 (Alaska Public Offices Commission), sec. 030 (Duties of the Commission), sec. 045 (Investigations, hearings), and sec. 122 (Legal counsel). AS 39.25.120(12) (Partially exempt service. "(12) the executive director and the staff of the Alaska Public Offices Commission."). AS 39.50.090(a) - (e) (Conflict of Interest. Prohibited Acts). Provides for terms of the members of the State Ethics Commission and terminates members of APOC. Provides Act takes effect July 1, 1981.

Introduced April 21 and referred to State Affairs, Judiciary, then to Finance.

Hunting &
Fishing License & Tag
Fees

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 275, by Senator Kerttula by Request. (See page 435, original bill). Relates to the compensation of persons collecting hunting and fishing license and tag fees, amending section of the Fish & Game Code relating to the fee for issuance of licenses and tags (AS 16.05.390) providing a person is entitled to be compensated at a rate of \$50 per year or \$1 per license or tag sold during the year (was entitled to keep five percent of the fee or a fee of 25 cents, whichever is greater). Provides person transmit proceeds on the last day of each month, deleting "except the amount authorized to be retained".

Introduced April 20 and referred to Resources, then to Finance.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1982

SUBJECT: Standards of conduct -- CSSSSB 175 (SA)
(Work Order No. 12-2676)

TO: Senator Vic Fischer
Chairman, Senate State
Affairs Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

You have asked for a brief sectional analysis of CSSSSB 175 (SA).

Bill Section 1 contains the legislative findings and purpose.

Bill section 2 establishes a new chapter AS 39.49 concerned with "ethics".

(1) The chapter replaces the Alaska Public Offices Commission with the new State Ethics Commission. The provisions of AS 15.13 that established the commission are repealed; the new provisions that replace them are found at secs. 39.49.150 - 39.49.220. There is for some of the sections (e.g., secs. 150, 160, 170, 180) a resemblance toward the provisions of AS 15.13 that are repealed. The remaining provisions, i.e., secs. 190 - 220 are new and establish new procedures for the review and determination of those matters that come before the commission.

(2) The chapter establishes specific "standards of conduct" for the public officials covered by the bill. Because ch. 39.49 is more specific, AS 39.50.090 ["Prohibited Acts"] is repealed.

(3) In this bill, the term "public official" is more expansive than the similar term found in AS 39.50. It

includes each elected or appointed public official and includes an employee of the state or a municipality. It also applies to a person under a "personal services contract to a state agency or to a municipality" [Sec. 20; sec. 300(14)].

(4) Areas covered in Article 1 on "standards of conduct" are gifts [Sec. 30], confidential information [Sec. 40], prohibitions relating to the use of the public office [Sec. 50], prohibited "official action" if a conflict of interest is present [Sec. 60], action to be taken if a conflict of interest arises [Sec. 70], government contracting as it affects the public official [Sec. 80], the voidability of contracts entered into in violation of ch. 39.49 [Sec. 90], restrictions on business activities of former public officials [Sec. 100], the ability of the attorney general and municipal attorneys to recover a compensation, gift, or profit obtained as a violation of ch. 39.49 [Sec. 110], a specific section relating to conflicts of members of municipal governing bodies [Sec. 120], and a whistleblowers' protection section [Sec. 130].

(5) The sections dealing with the procedures by which the ethics commission will review and adjudicate complaints that violations of law have occurred are found starting at Sec. 200.

(6) While I do not believe that any substantive law is contained within the definitions section at Sec. 300, the section is quite significant and should be reviewed.

Starting at bill section 3 are conforming amendments to provisions of existing law relating to lobbying [Sec. 3], to the state personnel act [Sec. 4], to AS 39.50 [Secs. 5 - 7], and to the Administrative Procedures Act, AS 44.62. [Sec. 8].

Bill section 9 lists the sections repealed. The AS 15.13 references are to the provisions establishing APOC and its procedures. The AS 39.25.120(12) reference eliminates the provision locating the commission staff in the partially exempt service; see bill section 4 for its replacement. Bill section 10 terminates the appointments of the APOC commissioners and provides for the initial terms of the members of the ethics commission.

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SECTION BY SECTION OVERVIEW
CSSSSB 175 (State Affairs)
Work Draft

<u>Section</u>	<u>Title</u>	<u>Summary Statement</u>
1	Findings and Purpose	Statement of legislative intent
2		
39.49.010	Construction	This chapter is to be liberally construed to promote ethical conduct in state and municipal government.
39.49.020	Applicability	Applies to all elected and appointed officials including any state employee of the three branches of government and any municipal employee. Also applies to a person under a personal services contract to a state agency or municipality.
39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.
39.49.040	Confidential Information	A public official is prohibited from using information for personal gain. The public official is also prohibited from disclosing information which is not public information and which the public official acquires from official sources.
39.49.050	Fair Treatment	Specifically states what action is prohibited by a public official
39.49.060	Conflict of Interest	Spells out what constitutes a conflict of interest
39.49.070	Action on Conflict	Outlines the procedures a public official must take in the event of a personal conflict of interest
39.49.080	Government Contracts	Specifies the instances in which the public official or member of her/his household can contract with the state or municipality
39.49.090	Contracts Voidable	The state or municipality may void a contract if the contract entered into violates a provision of this chapter. States that the interest of innocent parties shall be considered in an action to

void a contract, and that the action must also be brought within 60 days after a violation is determined.

- 39.49.100 Restrictions on Former Public Officials A former public official is prohibited from
- 1) using information for personal gain that was acquired in the course of her/his official duties;
 - 2) disclose information not available to the public acquired during the course of her/his official duties;
 - 3) may not assist anyone for compensation on a matter in which she/he personally participated as a public official; and
 - 4) for twelve months after termination of employment from assisting anyone for compensation on matters before the state agency or municipality where she/he was employed.
- 39.49.110 Violation Establishes a two-year statute of limitations for prosecution of a public official or former public official
- 39.49.120 Reporting Conflicts of Interest by Members of Municipal Governing Bodies This section outlines the procedures for members of municipal governing bodies to follow when a conflict of interest exists.
- 39.49.130 Protections for Reporting a Violation "Whistleblower statute" to protect state and municipal public officials for reporting a violation of the ethics code
- 39.49.150 Commission Established Establishes a seven member State Ethics Commission in the Department of Administration appointed by the governor and confirmed by the legislature. Term is five years with a 1 term limitation. Also outlines the qualifications and compensation for members. Gives the Commission the authority to hire an executive director and staff.
- 39.49.160 Offices of the Commission Establishes an office in each senate district but limits one office to each municipality. Campaign, financial disclosure and lobbyists' reports are to be filed in the Commission's central office. The reports are public information.
- 39.49.170 Duties of the Commission Outlines the duties of the Commission

Committee Minutes
Senate State Affairs Committee

Anchorage, Alaska
10-27-81, 3:00 p.m.

Members Present: Sen. Fischer, Chair
Sen. Stimson

Hearing: Ethics legislation--all sites teleconference

Committee Calendar: Including, but not confined to SSSB 175, "An Act relating to a standard of conduct for public officials and employees; establishing a State Ethics Commission and providing for an effective date."

Witnesses:

Anchorage: Roger H. Gay, representing self
c/o P. O. Box 3-4103 ECB, Anchorage, Ak. 99501

Philip W. L. Cox, representing self
1556 Garden St., Anchorage, Ak. 99504

Theda Pittman, Alaska Public Offices Commission
610 C St., #211, Anchorage, Ak. 99501

John Durkin, representing self
Box 8-752, Anchorage, Ak. 99504

Jan Bomhoff, FREE Committee
4033 N. Point Dr., Anchorage, Ak. 99502

Jan Faiks, FREE Committee
816 N. Bragaw St, Apt. 3, Anchorage, Ak. 99504

Proceedings:

Senator Fischer opened the meeting on ethics legislation, and welcomed the single teleconference participant in Sitka.

Roger Gay provided testimony on SSSB 175. He conducted a section by section analysis of the bill, beginning with the Findings and Purpose section (Section I). He stated that he saw no need to establish a bureaucracy to set up a code of ethics as there is already a code: the U. S. and state constitutions which those sworn into office have sworn to uphold. He cited a loophole he perceived in 39.49.190(1) of SSSB 175, which he said nullifies any protection this legislation may offer the citizen, namely a provision stating that the commission may ignore requests for an advisory opinion under certain circumstances. He proposed new language for this section: "Upon request an opinion must be issued within 30 days" or the violation would be assumed. Roger stated that the power to insure faithful execution of public duties rests with the governor, rather than the legislature. He cited

the Alaska Constitution, Article III, Sec. 16.

Senator Fischer made reference to the governor executing laws passed by the legislature. The legislature has the power to revise the laws if they don't work. The governor can't enforce laws with respect to the legislature, the judiciary, or municipal officials. He inquired if Roger Gay was opposed to enactment of a code of ethics.

Roger Gay responded that the U. S. and Alaska constitutions are adequate guidelines which public officials are sworn to uphold, in response to which Sen. Fischer stated that the constitution is silent on certain points of criminal behavior, as is the law. Enactment of this law, Sen. Fischer stated, addresses the gross abuse of power by public officials (i.e. dealing for one's self-interest). Roger Gay stated that he felt this code of ethics is good, and that the ethics commission is good, with the exception of the "loophole" he previously mentioned. He persisted in his point about the ethics commission overlapping the responsibility of the governor.

Sen. Fischer pointed out that a representative of the Attorney General's office testified on the legislation at an earlier hearing, and that no mention was made at that time of powers of the governor being usurped. He also stated that performance in accordance with the constitution was not the focus of this commission, and that other bodies were responsible for dealing with constitutional violations. With respect to Roger Gay's comments on 39.49.190, Sen. Fischer stated that he questioned the due process of producing an opinion within 30 days or assuming guilt of the party in question.

Philip Cox related some of his experiences of the abuse of power by public officials over the years, some of them in conjunction with his operation of a driving school in Anchorage. He stated a need for a people's ombudsman, having had an unsatisfying experience in the ombudsman's handling of a complaint he filed against a driving school he stated was operated using state cars, forms, and equipment. He related an incident which took place in the mid-70's when he reported a perceived safety violation to OSHA, and again was dissatisfied with the handling of his complaint. Mr. Cox stated that "if a person ignores something which he should pay attention to, and just collects his check, that's unethical." He related his experience with the city assembly and zoning violations which he felt the assembly did not respond correctly to, and also touched on experiences with the local (Anchorage) school board in relation to teachers' retirement accounts. Mr. Cox related all of these things to build a case for ethics legislation. He stated his support for "anything along the line of establishing an ethics commission." His dissatisfaction with the handling of his complaints filed with the state and municipal ombudsman offices led him to support the concept of a "people's ombudsman".

Theda Pittman, of the Alaska Public Offices Commission, stated that the APOC would provide all the support they could in developing the ethics legislation. She pointed out that there are 151 municipalities and 21 REAAs with which the APOC must contend, and that whatever agency will administer the proposed legislation will be dealing with

the biggest election in the state's history in the period between July 1 and December 1 of 1982. She pointed out some of the complications confronting the APOC in carrying out their work. In many municipalities the correct reports are not on file, or are not completely filled out, or for some reason are not retained in the municipality. The APOC is not funded for the massive education effort which would be required to bring municipalities into conformity with the law. SSSB 175 (which would set up an ethics commission which would absorb the existing APOC) if passed, Theda Pittman stated, should be effective 1-1-83 or 7-1-83 for the state level and one year later for municipalities. She also stated that the fiscal note for the legislation would need revision as it no longer reflected the actual costs associated with the coming 1982 election.

Sen. Fischer made reference to previous testimony provided by Theda Pittman and Rich Listowski in Juneau to the effect that smaller communities should be able to opt out, and inquired if that were still their position.

Theda Pittman responded that 75 of 150 municipalities have had votes, and half of those have opted out. She stated that there were problems in getting the municipalities to understand the opt-out provisions.

Sen. Fischer suggested working with the Dept. of Community and Regional Affairs on this problem as they have expertise in outreach to 2nd class municipalities. Theda Pittman confirmed that they had done some work with C & RA in this regard.

Sen. Stimson inquired whether the APOC had discussed the expansion of their responsibilities, and what the general attitude was.

Theda Pittman responded that the APOC had not "sat down and addressed SSSB 175 as a whole," but that they would try to do so at their November meeting. The legislation would reconstitute the present APOC or add a 4th statute to its present responsibilities, including adjudicatory requirements. The APOC consists of five citizen commissioners, and Theda Pittman stated that the APOC was not presently handling the three statutes for which it is already responsible.

John Durkin, representing himself, provided testimony on the ethics legislation, and stated that he has followed the conflict of interest and ethics developments ever since 1976 when he was involved in the "Proposition 5 election affair". He stated that if the legislation before the committee were to fly it would be in joint conference committee. He made reference to Flavin's 1978 bill, HB 860, which he stated Rep. Terry Gardiner "killed in committee". He suggested that in further hearings on the ethics legislation that the committee give consideration to the legislation of other states. In addition he suggested that the membership of the commission (addressed in Sec. 10 of SSSB 175) include supreme court appointees. He expressed dissatisfaction with the quality of various APOC appointees in the past, and stressed the importance of quality appointments, and of supreme court appointees serving on the commission. He envisioned the bill would be torn up in Juneau, and stated that legislators become isolated in Juneau, that

the influx of foreign government interests beginning in 1975 affected legislation, and that lobbyists have a tremendous impact on legislation. He asked committee members how they planned to control foreign controlled corporations protecting their investments in Alaska. He advised committee members to "put some teeth in the bill" when it comes before joint conference committee, to check out the legislation Frank Flavin put together in 1978, to get other states in on it and he cited the Public Trust Doctrine, which he stated deals with a code of ethics, and was defined by the Supreme Court in 1948 in reference to the public trust of municipal, state and federal officials.

Senator Fischer then summarized for the record a statement of support for a Code of Ethics to be incorporated into the Uniform Rules of the Alaska Legislature submitted by the Gold Rush Jaycees.

Jan Faiks and Jan Bomhoff of the Anchorage Republican Women's Club FREE Committee were observing the teleconference, and Jan Faiks stated that they supported the Senate State Affairs Committee's efforts to develop ethics legislation. She further stated that "on first flush the bill (SSSB 175) looks very good". Speaking not for the FREE Committee but on her own behalf she mentioned that Common Sense for Alaska was doing an audit of personal service contracts let the latter half of 1980 by the executive branch for which the paperwork was "not in order". This sort of public interest lends its support to developing a code of ethics.

Roger Gay, who testified at the beginning of the teleconference, wished to state for the record that if his earlier suggested language for 39.49.190 was not used he wished the language to reflect that the commission should be bound to answer a request.

There was no further testimony that afternoon, and when the committee reconvened at 6:00 p.m. that evening there was no testimony offered. Sen. Fischer adjourned the meeting at 6:30 p.m.



DATE: 10-27-81
 SITE/LOCATION: Anchorage
 SPONSOR/SUBJECT: Senate State Affairs - Ethics

BROADCAST CONSENT: This teleconference may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by initialing appropriate box.

NAME/REPRESENTING	ADDRESS	PHONE	HERE TO PARTICIPATE	BROADCAST CONSENT	HERE TO PARTICIPATE
Roger H. Gay ✓	40 P.O. Box 3-4103 ECB Anc. AK. 99501	274-4756	✓	✓	✓
Philip W. L. Cox (Jr.) ✓	1556 Garden St., Anchorage 99504	274-6875	✓	✓	✓
Theda Pittman ✓	APOC 610 C # 211 99501	276-4176	✓	✓	✓
Rise Morrison	Box 387 Talkeetna AK	None			
Sloan Tom Sloan	3403 Bruce Ln.	None			✓
John Durbin ✓	Box F-752 Anch 99504	None 279-2931	✓	✓	
Nancy Bontoff ✓	4033 N. Pt. Dr. Anch. AK	243-1099			✓
Jan Jakes ✓	SRA 62F Anch. 99507	344-0454			✓
John Kabeff	816 N. Bering St. Anch 99504				



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

SENATE STATE AFFAIRS COMMITTEE MINUTES

January 26, 1982

Members Present: Sen. Fischer, Chair
Sen. Colletta
Sen. Bradley
Sen. Eliason
Sen. Stimson

Committee meeting on: Ethics legislation

COMMITTEE CALENDAR

SSSB 175 (Proposed CS for SSSB 175)
An Act relating to a standard of conduct for public officials and employees; establishing a State Ethics Commission; and providing for an effective date.

WITNESS REGISTER

Sen. Arliss Sturgulewski
Pouch V
Juneau, Alaska
465-3818

Summarized Position Statement: Shared Sen. Stimson's concerns on question of former public officials. Problem with bill being too broad; Ethics Commission should have more flexibility.

PREVIOUS ACTION

Reference Number: Hearings held in April, 1981 (4-7-81, 4-23-81) and all-sites teleconference held October, 1981 (10-27-81)

Statutory Reference: Title 39, primarily 39.49.010-39.50.200

Amendments Formally Considered: none

ACTION NARRATIVE

(reel to reel)

0007 Senator Fischer, Chair, opened the meeting at 1:40 p.m., with members Sen. Colletta, Sen. Stimson, and Sen. Eliason in attendance.

Sen. Fischer outlined the agenda, committee consideration of a proposed committee substitute for SSSB 175. He described the work the committee had devoted to the bill during the last

session and during the interim, in cooperation with the Attorney General's office, the Office of the Ombudsman, Legislative Affairs Agency Legal Services Division, and the Human Rights Commission. He then outlined the provisions of the latest committee draft of the proposed committee substitute. The purpose of the legislation is to prescribe standards of ethical conduct not only for legislators, but for all state employees and public officials, including municipal officials. This will help to insure that public confidence in public officials is preserved.

The committee has been working on the bill for a year. The original version had twelve sponsors in the Senate. The State Affairs meeting happened to fall on the same day that a member of the House made a speech on the subject of ethics in the legislature, however the meeting had been scheduled for more than a week, and is not in response to Rep. Fanning's remarks on the House floor this day.

Sen. Colletta added that the State Affairs Committee had met the first day of the legislative session and had established ethics legislation as one of its priorities, as it had been before the session began.

0086 Sen. Fischer then outlined the major provisions of the bill.

SECTION BY SECTION OVERVIEW
 CSSSSB 175 (State Affairs)
 Work Draft

<u>Section</u>	<u>Title</u>	<u>Summary Statement</u>
1	Findings and Purpose	Statement of legislative intent
2		
39.49.010	Construction	This chapter is to be liberally construed to promote ethical conduct in state and municipal government.
39.49.020	Applicability	Applies to all elected and appointed officials including any state employee of the three branches of government and any municipal employee. Also applies to a person under a personal services contract to a state agency or municipality.
39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.

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39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.

39.49.040	Confidential Information	A public official is prohibited from using information for personal gain. The public official is also prohibited from disclosing information which is not public information and which the public official acquires from official sources.
39.49.050	Fair Treatment	Specifically states what action is prohibited by a public official
39.49.060	Conflict of Interest	Spells out what constitutes a conflict of interest
39.49.070	Action on Conflict	Outlines the procedures a public official must take in the event of a personal conflict of interest
39.49.080	Government Contracts	Specifies the instances in which the public official or member of her/his household can contract with the state or municipality
39.49.090	Contracts Voidable	The state or municipality may void a contract if the contract entered into violates a provision of this chapter. States that the interest of innocent parties shall be considered in an action to void a contract, and that the action must also be brought within 60 days after a violation is determined.
39.49.100	Restrictions on Former Public Officials	A former public official is prohibited from 1) using information for personal gain that was acquired in the course of her/his official duties; 2) disclose information not available to the public acquired during the course of her/his official duties; 3) may not assist anyone for compensation on a matter in which she/he personally participated as a public official; and 4) for twelve months after termination of employment from assisting anyone for compensation on matters before the state agency or municipality where she/he was employed.
39.49.110	Violation	Establishes a two-year statute of limitations for prosecution of a public official or former public official
39.49.120	Reporting Conflicts of Interest by Members of Mu-	This section outlines the procedures for members of municipal governing bodies to follow when a conflict of interest exists.

municipal Govern-
ing Bodies

- 39.49.130 Protections for Reporting a Violation "Whistleblower statute" to protect state and municipal public officials for reporting a violation of the ethics code
- 39.49.150 Commission Established Establishes a seven member State Ethics Commission in the Department of Administration appointed by the governor and confirmed by the legislature. Term is five years with a 1 term limitation. Also outlines the qualifications and compensation for members. Gives the Commission the authority to hire an executive director and staff.
- 39.49.160 Offices of the Commission Establishes an office in each senate district but limits one office to each municipality. Campaign, financial disclosure and lobbyists' reports are to be filed in the Commission's central office. The reports are public information.
- 39.49.170 Duties of the Commission Outlines the duties of the Commission
- 39.49.180 Legal Counsel Gives the Commission the authority to hire and employ an attorney or to use the attorney general's office for legal advice and representation
- 39.49.190 Powers of Commission Incorporates the functions of the Alaska Public Offices Commission. Gives the Commission the authority to issue advisory opinions on ethics and also to initiate investigations and hold hearings.
- 39.49.200 Complaint Procedures Establishes complaint procedures and due process requirements for conducting hearings
- 39.49.210 Determinations Establishes procedures for the Commission to follow when a violation of the ethics code has been determined
- 39.49.220 Disciplinary Action for Violation Gives the appointing authority of the public official the power to discipline a public official who has violated the ethics code. If no action is taken by the appointing authority, the Commission can discipline the public official and assess a civil penalty not to exceed \$2000.

39.49.300 Definitions Self-explanatory

3 Provisions to amend sections of existing
through state law to make them consistent with this
9 bill

10 Terminates the terms of the members of the
Alaska Public Offices Commission and sets
the terms of the new members of the State
Ethics Commission.

(counter #
resumed)

0168 Sen. Fischer stated that it was his hope to move the bill quickly as possible to the Judiciary Committee.

0176 Sen. Stimson stated that he had many questions about the bill. On page 1, line 26-27, concerning personal services contracts, Sen. Stimson was curious about the policing mechanism. How far can we extend this authority?

Sen. Fischer responded that he did not foresee any legal obstacles, and that none had been foreseen by those from the AG's office and Legal Services who had worked on the legislation; presumably it would be applied by inclusion in the personal services contracts themselves.

Sen. Stimson inquired if Sen. Fischer didn't see a problem with inclusion of persons who are on short term contracts with municipalities.

Sen. Fischer stated that he saw a special need for this provision, as many persons on short-term contracts have access to opportunities to exert influence to their own personal advantage; he feels it an important inclusion.

0200 Sen. Stimson expressed curiosity about the provision for handling public officials who are impeachable as opposed to those who are not.

Sen. Fischer clarified that impeachable officials are those who are elected officials or judges (as opposed to those who are appointed).

Sen. Stimson inquired if the definition of a "public official only removable by impeachment" was clear.

Sen. Fischer responded that the Alaska Constitution specifies which state offices are impeachable, and that on the municipal level it is usually addressed in the municipal charter.

0250 Sen. Stimson asked about impeachment proceedings con-

cerning legislators.

Sen. Fischer responded that impeachment is initiated in the Senate. He stated that he has tried to avoid this proposed legislation being confused with determinations made in the case of Sen. Hohman.

Sen. Stimson stated a need to be more practical in the approach. "The situation we're in tells us there is a void---this could be a mechanism for laying out procedures."

Sen. Fischer stated that we may need a separate statute to lay out procedures for impeachment, and suggested that if there is a concern with procedures for impeachment that it be handled separately.

Sen. Stimson stated that the legislation before the committee was a vehicle for addressing violations of many kinds, and that it provided no direction to the Senate.

Sen. Fischer stated that the committee bill was not designed to deal with felonies: rape or bribery, for that matter, but with standards of ethical conduct.

0323

Sen. Stimson responded that any conduct which is inappropriate is a question of ethical conduct. He stated the committee must have something (a bill) that is completely inclusive or nothing at all.

0331

Sen. Colletta perceived problems with the legislation applying to all public and municipal officials. He referred to an ethics bill which he sponsored in 1980 which excluded "methodology", and addressed only legislative activity. He perceived problems in the work draft before the committee which he said he had not resolved for himself, and further stated that he foresaw problems arising in the Judiciary Committee (the next committee of referral). He gave a couple of examples of situations in which it is difficult to determine whether or not there is an infraction of the proposed ethics code.

Sen. Fischer stated that the bill does not address things covered by criminal statutes as there are already laws on the books for that.

Sen. Bradley stated that he, also, saw problems with the proposed legislation with respect to determining whether or not there has been an infraction of the prohibitions.

Sen. Stimson stated that he perceived "ethics" as an umbrella covering also criminal activity.

0372

Sen. Fischer stated that certain laws are general in ap-

plication and that he did not see a need to include specific criminal provisions in the bill; he does not see the role of the Ethics Commission in criminal prosecution, or in the case of violations outside the performance of official duties. He further stated that the bill did not condone activities by virtue of not mentioning them in the bill.

0462

Sen. Stimson queried, "Does that mean this only covers standards of conduct in the performance of duty?" In terms of the role of a legislator, he sees a need to talk about procedures--censure, other things besides impeachment. He would like to see procedures addressed in the legislation. If the committee is not careful, he stated, it will leave out pieces critical to the functioning of the Ethics Commission; this would be most detrimental. He pointed out problems he perceives in the sections of the draft governing what public officials (including former public officials) may and may not do, and noted the inclusion of a time frame in some subsections and the exclusion of it in others.

Sen. Stimson and Sen. Fischer discussed some examples, and Sen. Fischer stated that his understanding was that Sen. Stimson felt the bill should deal with more specific cases and actions.

Sen. Colletta cited what he perceived as inconsistencies in the proposed measure, and attributed the problems to the fact that the proposed bill addresses methodology. He feels that it is impossible to perfectly balance many subjective opinions as has been done in the case of this proposed bill.

0533

Sen. Colletta further stated that he had serious questions regarding the very first page of the bill, in which the Ethics Commission is given a responsibility to act upon things within a wide range of activity, however instances not spelled out in the bill are not considered to be under the purview of the Ethics Commission. The normal course of action, he said, would be to go to (the) Judiciary (branch) with a serious offense.

Sen. Fischer stated that the Commission would be issuing advisory opinions on what kinds of things constitute a violation of a prohibition. He acknowledged that there are many gray areas which cannot be covered specifically in the bill.

Sen. Stimson stated that the "former public officials" section needs clear parameters, that the committee needs to clarify "where we have areas of authority and where we don't".

Sen. Fischer stated that it needs to be done manageably.

0563 Sen. Stimson raised questions on the section "Offices of the Commission", stating that it must mean at least a dozen offices.

0587 Nancy Groszek, State Affairs Committee professional assistant, stated that the Commission would be able to contract with municipalities for office space. The concept was to provide easier access, particularly on a municipal level.

0619 Sen. Arliss Sturgulewski, a co-sponsor of SSSB 175, testified on the measure. She stated that she shared Sen. Stimson's concerns regarding former public officials. "We need to decide what the public purpose is," she stated. She cited trouble with the bill being too broad. Sen. Sturgulewski perceives problems in the present conflict of interest law. Although legislators file with the APOC information concerning their business interests, "nothing ties us into acknowledging that on the floor, or in a vote". She further stated that it is not a clear issue, and that it creates problems; she provided examples to the committee to illustrate her point. She stated that there is a need to create a way to bring potential conflicts before the body. Sen. Sturgulewski further stated that "if we are going to go into detail on what is ethical, the question of magnitude must be addressed." She added that more flexibility should be in the bill with respect to the functioning of the Ethics Commission.

(Sen. Stimson departed.)

0678 Sen. Bradley stated that he had many questions regarding the legislation, and he spoke to Sen. Sturgulewski's remarks on conflicts of interest. Sen. Bradley would like to see this area of the legislation clarified, although personally it does not present a problem for him as he has no conflicts. He stated that the bill before the committee is both too broad and too specific (depending upon the specific section under examination).

Sen. Fischer stated that the bill is designed not just to deal with the legislative branch, but with every bureaucrat, the "invisible people" who make life and death decisions. The scope of the legislation is much broader than just legislative activity. Sen. Fischer stated that the committee could continue to work on the bill, or could move it on to the Judiciary Committee and provide that committee with suggestions for proposed changes. He stated his willingness to "keep plugging away" if the members of the committee so desired.

Sen. Bradley stated, "I think we should have an ethics bill," and further that he thinks it will be hard to create one which will satisfy all of the many interested parties.

0726

Sen. Eliason suggested further examination of the areas in which the existing APOC and the proposed legislation come together, and expressed reservations about adding 16 employees to the state payroll. Sen. Eliason expressed a desire to continue work on the bill in the State Affairs Committee.

Sen. Colletta also expressed a desire to continue work on the legislation, and suggested the possibility that the State Affairs and Judiciary committees might work together on the bill.

Sen. Fischer asked that committee members provide as many specific suggestions for alternative approaches and language as they are able.

0744

Sen. Colletta stated that he had thought the legislation would address the legislative process alone...that the measure presently before the committee deals with "the whole bunch". He referred also to the APOC provision which enabled municipalities (which meet certain criteria) to opt-out, whereas the present bill has no such provision.

Sen. Fischer read a constituent public opinion message applauding efforts to pass a worthy and timely ethics bill.

Sen. Colletta reminded that the final judge of legislative action is the populous, and suggested that the Ethics Commission be given the power to determine what actions are ethical, and define its own parameters.

Sen. Fischer stated that Sen. Kerttula favored a bill which "spells out as much as possible".

0794

Sen. Colletta stated that there is a need for ethics standards and operating procedures.

Sen. Bradley cited problems with the language in the section of the bill regarding gifts. He feels that use of the word "reasonable" is a legal vulnerability, and that he does not want a commission making determinations on what is reasonable.

Sen. Fischer said, "As Sen. Colletta said, the Commission needs discretionary power to decide."

0820

Sen. Fischer adjourned the meeting at 3:40 p.m.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 14, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."
- SB 861 - "An Act relating to rights of persons who report violations of law; and providing for an effective date."
- SB 175 - "An Act relating to standards of conduct for public officials and employees; establishing a State Ethics Commission; and providing for an effective date."
- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Parr. Senators Bennett and Anderson were absent.

002 - Call to order.

009 - Chairman Rodey brought HB 194 before the committee.

042 - Mr. Stark, Department of Law, testified in favor of HB 194.

167 - Senator Anderson entered the meeting.

385 - Senator Parr moved to add "or labor force" on Page 1, Line 28. There was no objection.

441 - Senator Ray moved that on Page 5, Line 8, "on a basis that is competitive with other sources" be added after the word "service".

There was no objection. He also objected to the commission having all discretion in pay plans. He wanted some limit on the amount.

455 - Chairman Rodey directed the staff to prepare language to meet Senator Rays concerns. This language reads: On page 6, Line 4, A wage established under the pay plan may not exceed 50 percent of the minimum wage established under AS 23.10.065.

450 - HB 194 was returned to file for the language to be drafted.

465 - Chairman Rodey brought SB 861 before the committee.

478 - Jack Chenoweth, Ombudsman, testified stating that this bill should be included in Title 29.

695 - Senator Fischer testified in favor of his bill.

765 - SB 861 returned to file.

780 - Chairman Rodey adjourned due to the joint session.



Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 5, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 640 - "An Act relating to pull-tab and punchboard games; and providing for an effective date."

SB 175 - "An Act adopting a code of ethics for state officials and state employees; establishing a State Ethics Commission; repealing AS 39.50; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Bennett, Anderson, Ray, and Parr.

013 - Call to order.

018 - Chairman Rodey brings HB 640 before the committee.

022 - Don Kubley, representing CHAR, testifies in favor of HB 640 and the proposed amendment. See attached amendment.

083 - Senator Ray states that he agrees with pulltabs being legal, but not punchboards.

098 - Senator Bennett moves to adopt amendment #1. There was no objection and it was adopted.

161 - Senator Ray moves to adopt amendment #2 to remove "and punchboard games" on page 1, line 12, out of HB 640. There was no objection and it was adopted.

172 - Senator Bennett moves that HB 640 be passed from committee with individual recommendations. There was no objection. HB 640 was passed with Senator Rodey signing no recommendation, Senators Bennett, Ray, Parr, and Anderson signing do pass.

210 - Chairman Rodey brings SB 175 before the committee.

After brief discussion Senator Rodey suggests that Senator Rodey and Senator Ray form a subcommittee on SB 175 to work out discrepancies with the current bill.

Chairman Rodey adjourned the meeting at 1:50 P.M.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 11, 1981

SUBJECT: Model state conflict of interest/financial
disclosure law (Work Order No. 12-0463)

TO: Senator Vic Fischer

FROM: Richard A. Bradley *B*
Legislative Counsel

The bill was prepared from a bill draft prepared by the National Municipal League Model State Conflict of Interest and Financial Disclosure Act.

The bill establishes a new state ethics commission. It repeals the provisions of AS 15.13 that establish the Public Offices Commission and it repeals all of AS 39.50. New sections dealing with subjects in the law repealed are established.

Secs. 10 - 70 establish the new commission.

Sec. 80 establishes procedures for the commission.

Sec. 100 establishes a procedure under which complaints of violations are processed. Note that violations of the new AS 39.49, as well as AS 15.13 and AS 24.45 are covered.

Sec. 100 directs the commission to refer violations of the law to the Attorney General.

Sec. 120 establishes a concept new in Alaska though not elsewhere: The concept of advisory opinions from the commission which may be requested by state officials, candidates, and state employees.

Sec. 130 permits the commission to modify a reporting requirement.

Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1981

SUBJECT: Model state conflict of interest/financial disclosure law (Work Order No. 12-0463)

TO: Senator Vic Fischer

FROM: Richard A. Bradley *B*
Legislative Counsel

Enclosed is the bill responsive to your request.

As you will immediately note from a comparison of this bill with the bill draft prepared by the National Municipal League Model State Conflict of Interest and Financial Disclosure Act, I have taken substantial liberties with the bill.

In part this is a result of the need to conform the bill to the Alaska legislative format but an equally compelling reason for the changes is that in places the bill did not seem to represent a coherent piece of legislation. In general, I will not identify changes in the bill that represent only a change in nonsubstantive language. Where I have had such difficulty that I departed from the model draft substantially, I will try to identify the changes and indicate my reasons for the departure.

Much of the material dealing with the establishment of the commission will of course duplicate existing law, most of which is contained within AS 15.13.020 and 15.13.030. The repeal of these sections will be dealt with in the latter sections of the bill.

Sec. 1, the short title is deleted; such titles are infrequently used in Alaska.

Sec. 2 of the draft becomes bill sec. 1. Consistently with our usual style, we have put the findings into temporary law.

February 5, 1981

Sec. 3 is the definitions section. It appears at the end of this section of the bill, as Sec. 39.49.400, amplified with definitions that were buried throughout the draft bill.

Sec. 4 of the draft is broken into two parts:

(1) The commission is established; and

(2) Provisions relating to the membership of the commission are collected into a single section. Bill sec. 20(e) eliminates the requirement that the legislature concur in the removal of a member of the commission. If you wish to have language offering procedural protections to the members of the commission beyond what is contained in the bill, we may do so legally. Article III, section 26 provides that members of a regulatory or quasi-judicial board or commission "may be removed as provided by law". Under that grant, the legislature may establish simple or elaborate procedures for the removal of such an officer by the governor.

You may recall the Breeze case from several years ago. At least one of the issues that that case presented was whether the legislature could "share" the power of the governor to remove an executive officer. The Alaska Pipeline Commission law states that the legislature has to concur in a removal for it to take effect. AS 42.06.050. The governor refused to acknowledge a legislative role. The Department of Law's position at a hearing on gubernatorial authority was that the law could be as elaborate as the legislature wished but the legislature could not share the power of removal.

Joe Josephson, who was attorney for Breeze at the time, told me that he did not agree with the Department of Law's position and thought that the Supreme Court stood a good chance of agreeing with his position, based on law in other states and several law review articles discussing this issue. As you may recall, complications in the case prevented the case from going to a decision.

I am agreeable to inserting such a provision into your bill, if you wish. But I should mention that it may incur a gubernatorial veto if past practice is at all predictive of future practice.

The material in sec. 4(b) regarding the initial members is moved to the end of the bill as temporary law.

Sec. 4(c) is established as a new bill sec. 30 dealing with the presiding officer of the commission. A portion of the section is deleted as stating generally understood principles and the last sentence is restated.

Sec. 4(d) is found at sec. 40. I continued the P.O.C. compensation of \$50 per day in addition to travel expenses and per diem now found at AS 15.13.020(f). Sec. 4(e) has become sec. 50. I deleted the authority of the commission to engage its own legal counsel and in that regard I essentially continued the concepts now found at AS 15.-13.122. See bill sec. 90.

The material at draft sec. 4(g) is largely unnecessary. The requirements for public meetings are covered at AS 44.62.310. The authority of the commission exists and may be exercised at any point within the state though not, perhaps, outside the state. As suggested above, sec. 90 of the bill is derived from AS 15.13.122 but is substantially recast.

Draft sec. 5 becomes bill sec. 80; while largely recast, no substantive changes are made.

Sec. 90 is new material; it replaces draft sec. 5(d)(iii).

Draft sec. 6(a) seemed confused and wordy. I have rewritten the material and broken (a) into new subsections 100(a) - (c). Sec. 6(b) becomes sec. 100(d) and (e) and sec. 6(c) becomes sec. 110. Sec. 6(d) and (e) are eliminated as unnecessary; cf, Appellate Rule 45 of the Supreme Court Rules.

Draft sec. 7 is recast into sec. 120. Draft sec. 8 becomes sec. 130. Draft sec. 9 becomes sec. 140. The latter half of sec. 9(c) has been deleted from its location in the bill; it essentially states a definition and has been moved.

Sec. 9(d) is amended to delete the phrase "in its files" from the mandate. As I see the change, the files generated which are incredibly voluminous (as you are coming to know) need not be maintained within the offices of the commission but may be transferred to archives, etc. I also changed the date for destruction to ten years from the date on which

February 5, 1981

they were due rather than the date on which they were filed. The latter date has no meaning for records management.

Draft sec. 10 becomes sec. 150; the section adds financial disclosure requirements. I added the phrase "known to him" to sec. 150(a). The concept is contained within the existing law, AS 39.50.030(a): "to the extent that it is ascertainable by the public official or candidate". If it were not specified, it would need to be implied since while the law may require public official or candidate to disclose information regarding his financial condition, I know of no mechanism by which family members may be compelled to disclose to the public official. The result is that the public official discloses what he himself knows or what is public knowledge already as to the finances of others.

Sec. 150(b) is undoubtedly a critical section. That being the case, I may say that I have made no attempt to compare the new list with the list contained within AS 39.50.030(b) nor have I sought to prepare an ideal list.

The section uses several different words to indicate what is "done" with the information. Among these words are "shown" and "disclosed". I have substituted "reported" for them wherever found. In sec. 150(b)(9), the draft had a blank requiring legislative discretion to determine the level of equity ownership in a business entity doing \$25,000 or more business with the state during the year for reporting purposes. I have used the figure of 50 percent as a reasonable threshold.

Similarly, a threshold for the level of gifts that need to be reported is required in sec. 150(b)(10). I have used the figure of \$100 which I took from the threshold in AS 39.50.030(b). The figure may be low and "has not been adjusted for inflation". [In my own view, a public official or candidate who is for sale for \$100 does not know his own value.]

Sec. 11 has become sec. 160.

I did not delete sec. 170(b) [Draft sec. 12] though I consider it redundant to the more substantive provisions of the bill. I do consider that sec. 12(c) is completely redundant and have deleted it.

Draft sec. 13 has become sec. 180. I have reorganized the subsections of sec. 180(a) for clarity. The latter half of sec. 180(b) is a definition and I have moved it to the definitions section.

Draft sec. 16 has become sec. 210 and is rewritten for clarity and to conform it to the Alaska structure of government. For the same reasons, I have rewritten sec. 220.

Draft sec. 18 becomes sec. 230. It is rewritten to eliminate the definition of a "gift" from the early part of the section. That material is moved to the definitions section.

Draft sec. 20 becomes sec. 250. It is rewritten for clarity. This section should be carefully reviewed for the policy it proposes; it appears that the prohibitions on representation after the termination of employment or the term of office are somewhat draconian. Note also that it applies to members of the legislature.

Draft sec. 21 becomes sec. 260. Sec. 21(d) is revised to eliminate what I believe may be an unconstitutional restriction on election to public office. The qualifications for election to public office are established in the constitution. The general rule is that the legislature may not vary the qualifications.

Since there is no similar restriction as to appointive office or to employment, I have left the disqualification in place as to those situations.

Sec. 22 becomes sec. 270. Sec. 270(b) is rewritten for clarity and to eliminate unnecessary material. The latter part of the section constitutes a definition and the material is moved to that section. Sec. 270(c) is substantially changed by the "not less than \$10" material which seemed desirable and by the addition of the references to AS 15.13 and AS 24.25. Note that I have repealed AS 15.-13.125 and AS 24.45.141 which are sections dealing with this subject.

Sec. 24 becomes sec. 290. Sec. 290(a)(i) is eliminated; the suggested language states the usual rule. Sec. 290(c) and

February 5, 1981

(d) are eliminated as unnecessary. Secs. 26 and 27 are also eliminated as unnecessary.

I have proposed a definitions section as Sec. 39.49.400.

Sec. 400(a)(1) defines assistant to the governor essentially the same as present law; see AS 39.50.200(a)(9).

Sec. 400(a)(2) defines "business". The definition from draft sec. 3(a) was used with modifications for clarity.

The draft law appears to require that "business with which a person is associated" be also defined. I have used draft sec. 3(b) with modifications for clarity. See sec. 400(a)(3).

The definition of "candidate" is derived from the latter portion of draft sec. 9(c).

The definition of "child" is derived from AS 39.50.-200(a)(3).

The definition of "gift" is derived from draft sec. 18(a).

The definition of "limited interest" is derived from the latter part of sec. 13(b).

The definition of "member of household" from the draft bill sec. 3(e) was extensively modified for clarity; it used the word "person" very obscurely.

I may also say that the reach of the section is extraordinarily broad and you may wish to review it to determine whether you wish to go that far. Part of the difficulty with the definition will arise from any implementation of the concept. If it is ever charged that a person has failed to report information regarding a member of the household [who may not live in the common residence of the reporting state official], sec. 400(a)(C), it will be very difficult to determine that fact without an extensive investigation that may approach the edges of a constitutional right of privacy.

The definition of "official action" is from draft sec. 22(b).

Senator Vic Fischer
Page 7
February 5, 1981

The definition of "parent" is derived from AS 39.50.200(a)(7).

The definition of security is derived from AS 45.55.130(12).

I used the draft's definition of "state employee" with modifications that seemed reasonable. And finally I abandoned the draft definition of "state official" and returned to AS 39.50.200(a)(1) for the definition. The draft's definition did not qualify as a useful definition and would have generated more heat than light.

The remaining sections of the bill deal with the repeal of the sections in AS 15.13 that establish the commission, the repeal of AS 39.50, and the implications these actions have for existing statutory sections that reference AS 39.50. Because there are essentially no subtleties to these amendments, I have not analyzed them.

If I can assist further, please advise.

RAB:ljb

Enclosure



TESIMONY
FOR THE
STATE AFFAIRS COMMITTEE

CODE OF ETHICS

OCTOBER 27, 1981

ACTIVITY AREAS

- Personal Dynamics
- Leadership "
- Spiritual "
- Youth Assistance
- Human Improvement
- Criminal Justice
- Fund Raising
- Family life
- Economics
- Environment
- Health
- Safety
- Energy
- Communications
- Publications
- Governmental Affairs

On November 1, 1979 the Gold Rush Jaycees presented to the legislators of Alaska. among others, a suggested Code of Ethics for elected officials.

We again welcome this opportunity to convey to this State Affairs Committee our interests in and concerns for the character and image our various elected officials portray and exhibit.

We want our elected officials to be responsible and accountable. Most peoples ethical standards of conduct often exceeds those required by law. Ethics are simply not acquired immediately upon entering a specific arena. They are carried around by us constantly.

Elected officials will be ethical when they conform to the rules of good conduct expected of them by the public and peers. Behavior should be above reproach so it will not reflect adversely upon their office or restrict their efficiency and independence.

STANDING COMMITTEES

- FINANCE
- MEMBERSHIP PROGRAM
- COM. RELATIONS
- PUBLICATIONS
- RECOGNITION

Constituencies often demand from their officials not what is ethical and moral, but rather what is expedient and good for them. Therefore, compliance with these canons will help to assure mutual confidence, trust, respect, and responsible ideals.

We recommend that a Code of Ethics be incorporated into the Uniform Rules of the Legislature as well as the Administration.

SPECIAL COMMITTEES

- ELECTION
- C P G

Gold Rush Jaycees--2

We also recommend that a State Board of Ethics be established for oversight and enforcement

We support from the Second Session of the Eleventh Legislature SCR 57 (By the Rules Committee--Proposing an Amendment to the Uniform Rules adopting a legislative code of ethics).

We also support from the First Session of the Twelfth Legislature SSSB 175 (By Fischer Bradley, Colletta, Kelly, Sturgulewski, et al)--An Act adopting a Code of Ethics for state officials and state employees, establish a State Ethics Commission repealing AS 39.50, and providing for an effective date.

The Jaycees, a leadership training organization, believes that government should be of laws, rather than men. We appreciate this opportunity to express our views.

Larry Hayden
Project Chairman
Box 4-815
Anchorage, Alaska 99509

A handwritten signature in black ink, appearing to read "L. Hayden", with a long horizontal line extending to the right.

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

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October 27, 1981

Senate State Affairs Committee

Public Hearing on SB 336 and SSSB 175

My name is Theda S. Pittman and I am the Executive Director of the Alaska Public Offices Commission. The purpose of this statement is to reaffirm the willingness of the Alaska Public Offices Commission and its staff to provide all possible technical assistance you desire in your deliberation of proposed legislation on ethics.

Beyond that, my remarks are limited to a specific concern about the effective date of any ethics legislation that may pass, especially if it is broadly applicable to 151 municipalities and the 21 REAAS without any option for local exemption via the ballot.

In considering effective dates, please be aware that between July 1, and December 31, 1982, any agency responsible for both AS 15.13, Campaign Disclosure, and a newly-passed ethics law -- regardless of whether it is the five member Alaska Public Offices Commission as constituted presently or a newly formed seven member body as proposed by SSSB 175 -- will be struggling with the largest election campaign in Alaska's history. That fact alone will have substantial

impact or how soon implementation of any new statute is achievable in practical terms.

The existing financial disclosure law, AS 39.50, is presently in effect in 101 municipalities. In comparison to an ethics law, AS 39.50 is relatively simple — it requires annual Conflict of Interest Statements to be filed with the municipal clerk. The Commission's experience shows that in a number of municipalities the required statements, correctly completed, are not on file with the municipal clerk. Each year, the Commission receives Conflict of Interest Statements from municipal clerks who have not comprehended that the Statement should be retained locally for filing. Many of the Statements that come to our attention in that fashion are virtually blank. Even had they been on file locally, a member of the public who reviewed them would not find the information such Statements are required to contain. A major reason for this deficiency is that the Commission simply has not been funded for the massive Statewide information/education effort that would be required to bring 100 municipalities into compliance or to keep them in compliance year after year.

Since SSSE 175 does bring municipalities of every size under the ethics law, as well as a larger number of State officials than covered by AS 39.50, you might wish to consider staggered effective dates such that municipalities would not be affected as soon as State government. ?

If passed by the 12th Legislature, an ethics law should not be applicable on the State level until either January 1, or July 1, 1983, and on the municipal

level a full year or more after that. Some sectors of the public will have high expectations about the impact of an ethics law on the conduct of State and municipal government. Realistic effective dates would do much to allay unreasonable expectations about the ability of the responsible agency to do a good job of implementing a new law.

Finally, the Commission's staff did prepare a Fiscal Note dated May 5, 1981, for SSSB 175 and we will review it in light of the FY 83 Detailed Budget Request submitted just recently; the Fiscal Note may need some revision.

Thank you for the notice about this hearing and the opportunity to present these brief comments. In closing, allow me to reiterate the Commission's willingness to assist in anyway possible and to mention that the Commission will be meeting November 18 through 20, 1981, should you have specific questions you wish the members to address. In turn, I will certainly let you know should they wish to provide you with more detailed comments on this far-reaching legislation.

Sheda S. Pittman
10/27/81

Ethics legislation not top priority item 1/15/82

by Dave Carpenter
Times Juneau Bureau

Juneau — Interrupting the struggle over Alaska's oil megabucks for the past couple of legislative sessions has been a sporadic call to establish formal ethical standards for public officials.

This year, despite the brouhaha over the recent bribery conviction of Sen. George Hohman, D-Bethel, the cry by lawmakers to create an ethics code or commission is surprisingly muted. In fact, an ethics bill appears nowhere among the priorities of House and Senate leaders.

"When I get up in the morning, I know the difference between right and wrong," Senate Finance Committee Co-chairman Ed Dankworth said in an interview in his Capitol office this week. "I don't need anybody to write it down for me."

Former state ombudsman Frank Flavin, among others, feels differently.

"If everybody knew what was right and wrong, we wouldn't need a

code," said Flavin, an Anchorage attorney here on a business trip. "Unfortunately, it doesn't work that way."

The only ethics statutes currently on the books in Alaska are the conflict of interest law, which Flavin calls "limited," and criminal law.

During five years as the official watchdog of state government, Flavin encountered many instances of public officials abusing their positions, he says — cases of people blocking business competitors in their roles as state board members, setting themselves up for jobs for after their government stints, using public equipment for private purposes, and the like.

Public support began mounting for an ethics code for legislators, if not non-elected officials, about two years ago in the wake of a controversy involving alleged influence-peddling by former Anchorage Sen. Bill Sumner (the issue was never resolved).

(See ETHICS page 4)

Ethics

(Continued from page A-1)

It grew stronger with a handful of subsequent legislative controversies: sharply criticized contracting practices, state funding of a trip to Europe for a group of Bethel youths, the "midnight" contracts for \$700,000 awarded by Hohman at the end of his Legislative Council chairmanship and later rejected, and the scandal that resulted in Hohman's Superior Court conviction three weeks ago for bribery.

Limited contracting and rules reforms were made by the 1981 Legislature, but an ethics code was not among the changes.

Extensive ethics legislation is sitting in committees in each house. Both would define legal no-nos for public officials and give a state panel the authority to mete out civil penalties (maximum \$2,000 fines) to violators as well as recommend action to be taken by their employers or supervisory agencies.

The House legislation, HB 153, was revamped and given "teeth" with Flavin's aid in a series of hearings last year in the House Judiciary Committee. It has lain in House Finance since a month before the coup that flip-flopped the House leadership last June and has been assigned to a subcommittee chaired by Rep. Joe Chuckwuk, D-Dillingham.

The Senate bill, SB 175, unlike the House version would create a seven-member State Ethics Commission instead of handing the ethics responsibilities to the Alaska Public Offices Commission.

Senate State Affairs Chairman Vic Fischer, D-Anchorage and the prime sponsor of the 18-page bill, conducted a teleconference hearing

on it last October and plans to unveil revised legislation at a committee meeting next week.

Ethics commission members would be appointed by the governor and confirmed by the Legislature.

The bill would apply to all state and local government officials, elected or not, and to government contractors, and is intended to "promote high standards of ethical conduct in state and municipal government."

Among its provisions:

— A public official may not use or attempt to use his or her position to use state time, equipment or facilities for personal or business purposes.

— A former public official may not, within a year after leaving employment, work for pay on any matter specifically addressed during his or her employment.

— Employees could not be disciplined for "blowing the whistle" on state officials.

A current Alaska statute protects "whistleblowers" who communicate public records or information. The new proposal, based on a Michigan statute, would be much broader.

Both bills face the imposing task of hurdling substantial legislative apathy — or at least a lack of enthusiasm at present.

"We're interested in further legislative reform . . . but we haven't identified ethics legislation specifically as a priority," said House Speaker Joe Hayes.

The Anchorage Republican said he adamantly opposes incorporating an ethics commission into the often-criticized public offices commission — a point that could snag the bill even if it clears the Senate.

"It (ethics) should be a constant thing that we're evaluating," added House Rules Chairman Jack Fuller,

D-Nome. "But with the desperate need of getting out in 104 days (a House leadership target), I don't think we can spend the time on it."

Even those who backed the legislation last year are quiet about the subject early in the 1982 session. House Democrats put a lot of work and public words into the effort before falling from power, but the now-minority caucus has not broached the subject.

"The problem is we've been working hand to mouth," said Minority Leader Fred Brown, D-Fairbanks. As Judiciary chairman last year, Brown backed the bill and so did the two Republicans on the panel — Charles Anderson of Anchorage and Randy Phillips of Eagle River.

"Things are still coming up."

On the Senate side, Rules Chairman Tim Kelly, R-Anchorage, expresses support for an ethics code but was unaware of the status of the Senate legislation. And the two top Senate powers — Dankworth and President Jay Kerttula, D-Palmer — said they have no burning desire to pass it. Both stressed that the Hohman case involves criminal law.

"Frankly, ethical conduct and proper respect for the law and morality is the responsibility of every member individually," said Kerttula. "Ethics is very difficult to police . . ."

"There are some things that it would take a representative of the good Lord himself to determine."

A burst of legislative support for ethics legislation could push it through before the 12th Legislature is history. But Flavin expressed doubt that anything will pass unless a key lawmaker makes it a priority.

"It takes a lot of work to put something as detailed as that through," he said, "and I don't know if anybody is that committed to it."