

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5809 HOUSE JUDICIARY

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19.49 Complaints. (1) The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing which states the name of any person alleged to have committed a violation of this subchapter and which sets forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint and a general statement of the applicable statutes with respect to such verified complaint. If the board determines that the verified complaint does not allege facts sufficient to constitute a violation of this subchapter, it shall dismiss the complaint and notify the complainant and the accused. If the board determines that the verified complaint alleges facts sufficient to constitute a violation of this subchapter, it may make an investigation with respect to any alleged violation. If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

(2) Any state public official may request the board to make an investigation of his or her own conduct or of allegations made by other persons as to his or her conduct. Such a request shall be made in writing and shall set forth in detail the reasons therefor.

(3) Following the receipt of a verified complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis for the belief that a violation of this subchapter has been committed or that an investigation of a possible violation is warranted, the board may investigate the circumstances concerning the possible violation. Such investigation shall be initiated by a resolution of the board and shall state the nature and purpose of the investigation and the actions or activities to be investigated. No investigation of any person may be commenced until it has been authorized by the board and until the person who is the subject of the investigation has been notified of the investigation pursuant to sub. (4). If the board, during the course of an investigation, finds probable cause to believe that a violation of this subchapter has occurred, it may:

(a) If no verified complaint has been filed, make upon its motion a verified complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this subchapter and shall set forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint, a general statement of the applicable statutes with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

(b) If a verified complaint has been filed and the board finds probable cause to believe that a violation of this subchapter, other than one contained in the complaint, has occurred, it may amend the complaint, upon its own motion, to include such violations. If the complaint is so amended by the board, a copy of the amendment shall be sent to the person complained against within 48 hours.

(4) As soon as it becomes apparent to the executive director that there exists probable cause for the belief that a particular person has committed a violation of this subchapter, the executive director shall apply to the board for a resolution authorizing the investigation and, if secured, shall mail a copy of the resolution to the alleged violator together with a notice informing the alleged violator that such person is the subject of the investigation authorized by such resolution and a general statement of the applicable statutes with respect to such investigation. Service of the notice is complete upon mailing.

(5) No action may be taken on any complaint which is filed later than 3 years after a violation of this subchapter is alleged to have occurred.

19.50 Investigations. Pursuant to any investigation or hearing conducted under this subchapter, the board has the power:

(1) To require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this subchapter as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine.

(2) To administer oaths and to require by subpoena issued by it the attendance and testimony of witnesses and the production of any documentary evidence relating to the investigation or hearing being conducted. Notwithstanding s. 885.01(4), the issuance of a subpoena requires action by the board in accordance with s. 19.47(4).

(3) To order testimony to be taken by deposition before any individual who is designated by the board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. (2).

(4) To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

(5) To request and obtain from the department of revenue copies of state income tax returns and access to other appropriate information under s. 71.11(4)(c) regarding all persons who are the subject of such investigation.

19.51 Probable cause of violation. (1) At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this subchapter has occurred. If the board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that there is probable cause for believing that a violation of this subchapter has been committed, its preliminary findings of fact and conclusions may contain:

(a) A recommendation for criminal prosecution which shall be referred to the district attorney in whose jurisdiction the alleged violation occurred, and, if the district attorney fails to commence a prosecution within 30 days, to the attorney general, who may then commence a prosecution; or

b) An order setting a date for hearing before the board to determine whether a violation of this subchapter has occurred. Such order shall be served upon the accused. A hearing ordered under this paragraph shall be commenced within 30 days of the date it is ordered unless the accused petitions for and the board consents to a later date. Prior to any hearing ordered under this paragraph, the accused is entitled to full discovery rights including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

(2) The board shall inform the accused or his or her counsel of exculpatory evidence in its possession.

(3) If the board makes a recommendation for criminal prosecution under sub. (1), the district attorney to whom the recommendation is made shall, within 30 days of the receipt of such recommendation, make a decision whether to prosecute the party charged. The board shall give written notice of an referral under this subsection to the accused. The district attorney shall give written notice of the decision to the accused, the complainant and the board.

19.52 Hearing procedure. (1) Every hearing or rehearing under this subchapter shall be conducted in accordance with the requirements of ch. 227, except as otherwise expressly provided. During any investigation and during any hearing which is conducted to determine whether a violation of this subchapter has occurred, the person under investigation or the accused may be represented by counsel of his or her own choosing and the accused or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint which has been filed against him or her, to examine all documents and records obtained or prepared by the board in connection with the matter heard, to bring witnesses, to establish all pertinent facts and circumstances, to question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, and shall otherwise be able to exercise fully any pretrial discovery procedure usually available in civil actions. During any hearing conducted by the board to determine whether a violation of this subchapter has occurred, all evidence including certified copies of records which the board considers shall be fully offered and made a part of the record in the proceedings. The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence. Upon request of the accused, the board shall issue subpoenas to compel the attendance of necessary witnesses.

(2) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the board and who, in the opinion of the board, may be adversely affected thereby, may, upon request of the person or a representative of the person or upon the request of any member, appear personally before the board and testify on his or her own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at hearing.

(3) The standards of evidence and the burden of proof applicable to criminal proceedings shall apply to hearing under this section.

(4) After the conclusion of its hearing the board shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused has violated this subchapter. If a hearing examiner is appointed under s. 227.09(1) and a majority of the members of the board were not present at the hearing, the board shall not begin deliberations until after the proposed decision is served and opportunity is given for arguments.

(5) Notwithstanding s. 227.09(1), the board may appoint any qualified individual as a hearing examiner.

19.53 Findings of fact and conclusions; orders and recommendations. If the board determines that no violation of this subchapter has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that a violation of this subchapter has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

(1) In the case of a state public official in the unclassified service, a recommendation that the state public official be censured, suspended, or removed from office or employment. Such recommendation shall be made to the appropriate appointing authority who may censure, suspend, or take action to remove the official from office or employment.

(2) In the case of a legislator, a recommendation that the individual be censured, suspended, or removed from office. Such recommendation shall be made to the appropriate house.

(3) In the case of a justice or judge, a recommendation that the justice or judge be reprimanded, censured, suspended or removed from office. Such recommendation shall be sent to the supreme court and the presiding officer of each house of the legislature.

(4) In the case of a state public official liable to impeachment, a recommendation that the official be removed from office. Such recommendation shall be referred to the assembly.

(5) An order requiring the accused to conform his or her conduct to this subchapter.

(6) An order requiring the accused to forfeit not more than \$500 for each violation of this subchapter. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section which is not paid by the person against whom it is assessed.

(7) Such other recommendation or order as may be necessary and appropriate and is consistent with the intent and purposes of this subchapter.

19.54 Rehearings. (1) After the service upon the accused by the board of any decision under s. 19.53 containing an order or recommendation, the accused may apply to the board for a rehearing with respect to any matter determined in such decision as provided in s. 227.12.

(2) An application for rehearing is governed by such general rules as the board may establish. Only one rehearing may be granted by the board. No order of the board becomes effective until 20 days after it is issued, or while an application for rehearing or a rehearing is pending, or until 10 days after such application for rehearing is either denied, expressly or by implication, or the board has announced its final determination on rehearing.

19.55 Public inspection of records. (1) Except as provided in sub. (2), all records in the possession of the board are open to public inspection at all reasonable times. The board shall require an individual wishing to examine a statement of economic interests or the list of persons who inspect any statements which are in the board's possession to identify himself or herself, and if the individual is representing another person, the person which he or she represents. Such identification may be provided in writing or in person. The board shall record and retain for at least 3 years information obtained by it pursuant to this subsection. No individual may use a fictitious name or address or fail to identify a principal in making any request for inspection.

(2) Notwithstanding s. 19.35, the following records in the board's possession are not open for public inspection:

(a) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of individuals requesting such opinions or organizations on whose behalf they are requested. The board may however, make such records public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.

(b) Records obtained or prepared by the board in connection with an investigation, except that the board shall permit inspection of records that are made public in the course of a hearing by the board to determine if a violation of this subchapter has occurred. Whenever the board refers such investigation and hearing records to a district attorney, they may be made public in the course of a prosecution initiated under this subchapter.

(c) Statements of economic interests and reports of economic transactions which are filed with the ethics board by members or employes of the investment board, except that the ethics board shall refer statements and reports filed by such individuals to the legislative audit bureau for its review, and except that a statement of economic interests filed by a member or employe of the investment board who is also an official required to file shall be open to public inspection.

19.56 Honorariums, fees and expenses. (1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive, or judicial processes and proposals and issues initiated by or affecting a department.

(2)(a) Except as provided in par. (b), every official required to file who receives for a published work or for the presentation of a talk or participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$50 excluding the value of food or beverage offered coincidentally with a talk or meeting shall, on his or her statement of economic interests, report the identity of every person from whom the official receives such lodging, transportation, money or other thing during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof.

(b) Notwithstanding par. (a), an official need not report on his or her statement of economic interests concerning any compensation, reimbursement or payment which:

1. The official returns to the payor within 30 days of receipt;
2. Is paid to the official by a person identified on the official's statement of economic interests under s. 19.44(1)(e) or (f) as a source of income;
3. The official can show by clear and convincing evidence was made for a purpose unrelated to the purposes specified in sub. (1) and unrelated to the duties or responsibilities of the official's position; or
4. The official has previously reported to the board as a matter of public record.

(3) Notwithstanding s. 19.45, a state public official may receive and retain reimbursement or payment of actual and reasonable expenses for a published work or for the presentation of a talk or participation in a meeting and may receive and retain reasonable compensation if the work is published or the activity is accomplished by the official without the use of the state's time, facilities, services or supplies not generally available to all citizens of this state and, in the case of an official not holding an elective office, outside the course of his or her official duties. If a state public official receives a payment not authorized by this subchapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the department with which he or she is associated or if that is not practicable, shall return it or its equivalent to the payor or convey it to the state or to a charitable organization other than one with which he or she is associated.

19.58 Criminal penalties. (1) Any person who intentionally violates this subchapter or a code of ethics adopted or established under s. 19.45(1)(a) or (b) shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

(2) The penalty under sub. (1) does not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or employees.

(3) In this section "intentionally" has the meaning given under s. 939.23.

19.59 Codes of ethics for local government officials, employes and candidates. (1) Any county, city, village or town may adopt an ordinance establishing a code of ethics for public officials and employes of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance adopted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions covered by the ordinance.

(3) An ordinance adopted under this section may contain any of the following provisions:

(a) A requirement for public officials, employes and candidates to identify any of the economic interests specified in s. 19.44, but to no greater extent than is required under that section.

(b) A provision directing the county or municipal clerk to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any public official or employe who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Notwithstanding s. 19.35, records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of public officials and employes or former public officials and employes of the county and municipality, similar in scope to the provisions of s. 19.45, where applicable, but not more restrictive than the requirements of that section.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employes to the extent that it has authority to regulate that conduct under the constitution or other laws.

STATE PUBLIC OFFICES SUBJECT TO
THE WISCONSIN CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES

(Reflecting 1985 Wisconsin Acts 1-29)
Current as of August 15, 1985

ADMINISTRATION, DEPARTMENT OF	AMERICAN INDIAN LANGUAGE & CULTURE
Secretary	EDUCATION BOARD
Deputy Secretary	Members
Executive Assistant	ARTS BOARD
Administrative Services,	Members
Administrator	Executive Secretary
Buildings and Grounds,	AUDIT COMMITTEE, JOINT LEGISLATIVE
Administrator	Members
Emergency Government,	BADGER BOARD
Administrator	Members
State Agency Services, Administrator	BANKING, OFFICE OF THE
State Energy, Administrator	COMMISSIONER OF
State Executive Budget & Planning,	Commissioner
Administrator	Deputy Commissioner
State Facilities Management,	Banking Review Board (5)
Administrator	Consumer Credit Review
State Finance & Program Management,	Board (5)
Administrator	BOUNDARY AREA COMMISSION,
Emergency Number Systems Board	MINNESOTA-WISCONSIN JOINT
Merit Award Board, State Employees	Members (5)
Data Processing, Council on ^{1,2}	Legislative Advisory
Printing, Council on	Committee ¹
Radioactive Waste Technical	Technical Advisory
Council ^{1,2}	Committee ²
ADMINISTRATIVE RULES, JOINT	BRADLEY CENTER SPORTS AND
COMMITTEE FOR REVIEW OF	ENTERTAINMENT CORPORATION
Members ¹	Directors ²
AGING AND LONG-TERM CARE,	BUILDING COMMISSION
BOARD ON	Members ¹
Members (7)	CANVASSERS, BOARD OF STATE
AGRICULTURE TRADE & CONSUMER	Members ¹
PROTECTION, DEPARTMENT OF	CAPITOL & EXECUTIVE RESIDENCE
Board (6)	BOARD, STATE
Secretary	Members ^{1,2}
Deputy Secretary	CHILD ABUSE & NEGLECT PREVENTION
Executive Assistant	BOARD
Administration, Administrator	Members
Agricultural Resource Management,	CLAIMS BOARD
Administrator	Members ^{1,2}
Animal Health, Administrator	COMMUNITY DEVELOPMENT FINANCE
Food, Administrator	AUTHORITY
Marketing, Administrator	Members ¹ (8)
Meat Inspection, Administrator	CONSERVATION CORPS BOARD,
Trade and Consumer Protection,	WISCONSIN
Administrator	Members
Fertilizer Research Council ^{1,2}	Executive Secretary

- CREDIT UNIONS, OFFICE OF THE
COMMISSIONER OF
Commissioner
Deputy Commissioner
Credit Union Review Board (5)
- CRIMINAL JUSTICE, COUNCIL ON
Members
Executive Director
- DEBT MANAGEMENT, JOINT SURVEY
COMMITTEE ON
Members¹
- DEPOSITORY SELECTION BOARD
Members¹
- DEVELOPMENT, DEPARTMENT OF
Secretary
Deputy Secretary
Executive Assistant
Economic and Community Development,
Administrator
Housing & Community Services,
Administrator
Policy Development,
Administrator
Support Services
Tourism, Administrator
Economic Adjustment, Council for¹
Economic Development and Export,
Council on²
Economic & Community Development,
Council on
Tourism, Council on
- DEVELOPMENTAL DISABILITIES,
COUNCIL ON
Members²
- DISABILITY BOARD
Members^{1,2}
- DOMESTIC ABUSE, COUNCIL ON
Members² (9)
- EDUCATION COMMISSION OF THE STATES,
WISCONSIN DELEGATES
Members¹
- EDUCATIONAL APPROVAL BOARD
Members
- EDUCATIONAL COMMUNICATIONS BOARD
Members^{1,2}
Executive Director
Deputy Director
Public Television,
Council on
- ELECTIONS BOARD
Members (8)
Executive Secretary
- EMPLOYE OWNERSHIP BOARD
Members^{1,2}
- EMPLOYEE TRUST FUNDS,
DEPARTMENT OF
Board¹
Secretary
Deputy Secretary
Executive Assistant
Group Insurance Board¹
Teachers Retirement Board
Wisconsin Retirement Board¹
- EMPLOYMENT RELATIONS
COMMISSION
Members (3)
Executive Assistant
- EMPLOYMENT RELATIONS,
DEPARTMENT OF
Secretary
Deputy Secretary
Executive Assistant
Affirmative Action, Administrator
Classification and Compensation,
Administrator
Collective Bargaining,
Administrator
Merit Recruitment and Selection,
Administrator
Affirmative Action, Council on²
- EMPLOYMENT RELATIONS, JOINT
COMMITTEE ON
Members¹
- ETHICS BOARD
Members (6)
Executive Director
- FINANCE, JOINT COMMITTEE ON
Members¹
- FOX RIVER MANAGEMENT
COMMISSION
Members (7)
- GOVERNOR, OFFICE OF THE
Governor
Executive Secretary
Key Professional Staff
Other Employees
Alcohol & Other Drug Abuse,
State Council on^{1,2}
Alcohol & Other Drug Abuse,
Citizens Council on
Health Policy Council²
Nonstatutory Committees created
by Executive Order
- GREAT LAKES COMPACT COMMISSION
Members
- GROUNDWATER COORDINATING
COUNCIL
Members²

HEALTH & SOCIAL SERVICES,
DEPARTMENT OF
Secretary
Deputy Secretary
Executive Assistant
Care and Treatment Facilities,
Administrator
Community Services,
Administrator
Corrections, Administrator
Health, Administrator
Management Services,
Administrator
Policy & Budget, Administrator
Vocational Rehabilitation,
Administrator
Parole Board, Chair
Controlled Substances Board¹
Pesticide Review Board¹
Hearing Impaired, Council for the
Mental Health, Council on
Radiation Protection Council^{1,2}
HEALTH CARE COVERAGE FOR THE
UNINSURED, COUNCIL ON
Members
HEALTH FACILITIES AUTHORITY,
WISCONSIN
Members (7)
HIGHER EDUCATIONAL AIDS BOARD
Members¹
Executive Secretary
Deputy Secretary
HISTORIC PRESERVATION
REVIEW BOARD
Members
HISTORIC SITES FOUNDATION, INC.
Directors² (1)
HISTORICAL SOCIETY
Curators^{1,2} (3)
Director
Associate Director
Historic Sites, Administrator
Museum, Administrator
Historical Markers Council¹
HOSPITAL RATE-SETTING
COMMISSION
Members (3)
Staff Director
HOSPITAL RATE-SETTING COUNCIL
Members
HOUSING AND ECONOMIC DEVELOPMENT
AUTHORITY, WISCONSIN
Members¹ (6)
Employees, nonclerical

INDUSTRY, LABOR & HUMAN RELATIONS,
DEPARTMENT OF
Secretary
Deputy Secretary
Executive Assistant
Administrative and Management Services,
Administrator
Apprenticeship and Training, Administrator
Employment & Training Services, Administrator
Equal Rights, Administrator
Job Service, Administrator
Safety & Buildings, Administrator
Worker's Compensation, Administrator
Employment & Training, Executive Director
Child Labor, Council on^{1,2}
Dwelling Code Council
Equal Rights Council
Historic Building Code Council¹
Migrant Labor, Council on¹
INLAND LAKES PROTECTION AND
REHABILITATION COUNCIL
Members² (4)
INSURANCE, OFFICE OF THE
COMMISSIONER OF
Commissioner
Deputy Commissioner
INVESTMENT & LOCAL IMPACT FUND BOARD
Members¹
INVESTMENT BOARD
Members^{1,2} (5)
Executive Director
Executive Assistant
Investment Directors
JUDGES
Supreme Court Justices (7)
Court of Appeals Judges (13)
Circuit Court Judges (198)
Municipal Judges
Law Librarian
JUDICIAL COMMISSION
Members^{1,2} (5)
JUDICIAL COUNCIL
Members^{1,2}
Executive Secretary
JUSTICE, DEPARTMENT OF
Attorney General
Deputy Attorney General
Executive Assistant
Administrative Services, Administrator
Law Enforcement Services, Administrator
Legal Services, Administrator
Crime Victims Compensation, Director
LABOR & INDUSTRY REVIEW COMMISSION
Members (3)

- LAKE MICHIGAN COMMERCIAL FISHING BOARD
Members
- LAKE SUPERIOR COMMERCIAL FISHING BOARD
Members
- LAND CONSERVATION BOARD
Members^{1,2} (2)
- LAW ENFORCEMENT STANDARDS BOARD
Members^{1,2}
- LEGISLATIVE AUDIT BUREAU
Director
Auditors
- LEGISLATIVE COUNCIL
Members¹
Executive Secretary
Expert Assistants
Law Revision Committee¹
Mining Committee^{1,2}
Native American Study Committee^{1,2}
- LEGISLATIVE FISCAL BUREAU
Director
Assistants and Analysts
- LEGISLATIVE ORGANIZATION, JOINT COMMITTEE ON
Members¹
- LEGISLATIVE REFERENCE BUREAU
Chief
- LEGISLATURE
Representatives
Senators
Chief Clerks (2)
Sergeants at Arms (2)
Non-Clerical Staff
- LIEUTENANT GOVERNOR, OFFICE OF THE
Lieutenant Governor
Administrative Assistant
- MEDICAL EDUCATION REVIEW COMMITTEE
Members^{1,2}
- MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION
Member
- MILITARY AFFAIRS, DEPARTMENT OF
Adjutant General
Deputies (2)
Aides-de-camp
- MISSISSIPPI RIVER PARKWAY COMMISSION
Secretary
- NATURAL RESOURCES, DEPARTMENT OF
Board (7)
Secretary
Deputy Secretary
Executive Assistant
Enforcement, Administrator
Environmental Standards, Administrator
Management Services, Administrator
Resource Management, Administrator
Air Pollution Control Council
Great Lakes Fish and Wildlife Resources Council²
- PERSONNEL BOARD
Members (5)
- PERSONNEL COMMISSION
Members (3)
- PESTICIDE ADVISORY COUNCIL
Members² (3)
- PHARMACY INTERNSHIP BOARD
Public Member^{1,2} (1)
Director
- POTATO INDUSTRY BOARD
Members^{1,2}
- PRISON INDUSTRIES BOARD
Members (9)
- PUBLIC DEFENDER BOARD
Members (9)
State Public Defender
Deputy
Appellate Division, Administrator
Trial Division, Administrator
- PUBLIC INSTRUCTION, DEPARTMENT OF
State Superintendent
Deputy State Superintendent
Executive Assistant
Handicapped Children and Pupil Services, Administrator
Instructional Services, Administrator
Library Services, Administrator
Management & Budget, Administrator
School Financial Resources and Management Services, Administrator
Business and Education Partnerships, Governor's Council on
Library & Network Development, Council on
- PUBLIC LANDS, COMMISSIONERS OF, BOARD OF
Members¹
- PUBLIC RECORDS AND FORMS BOARD
Members¹

PUBLIC SERVICE COMMISSION
 Members (3)
 Executive Assistant
 Accounts and Finance, Administrator
 Administrative Services, Administrator
 Engineering, Administrator
 Systems Planning, Environmental
 Review, and Consumer Analysis,
 Administrator
 Utility Rates, Administrator

RADIOACTIVE WASTE REVIEW BOARD
 Members^{1,2}

REGIONAL PLANNING COMMISSIONS
 Members^{1,2}

REGULATION & LICENSING, DEPARTMENT OF
 Secretary
 Deputy Secretary
 Executive Assistant
 Administrative Services,
 Administrator
 Business Licensure and Registration,
 Administrator
 Health Professions & Nursing,
 Administrator
 Accounting Examining Board (7)
 Architects, Professional Engineers,
 Designers and Land Surveyors,
 Examining Board of (20)
 Barbers Examining Board (7)
 Bingo Control Board (5)
 Chiropractic Examining Board (6)
 Cosmetology Examining Board (9)
 Dentistry Examining Board (8)
 Funeral Directors Examining Board (6)
 Hearing Aid Dealers & Fitters
 Examining Board (7)
 Medical Examining Board (10)
 Nursing Home Administrators
 Examining Board (9)
 Nursing, Board of (9)
 Optometry Examining Board (7)
 Pharmacy Examining Board (7)
 Psychology Examining Board (6)
 Real Estate Board (7)
 Veterinary Examining Board (7)
 Physical Therapists Examining
 Council¹
 Physician's Assistants, Council on²
 Podiatrists Examining Council¹

RETIREMENT RESEARCH COMMITTEE
 Members¹

RETIREMENT SYSTEMS, JOINT SURVEY
 COMMITTEE ON
 Member^{1,2}

REVENUE, DEPARTMENT OF
 Secretary
 Deputy Secretary
 Executive Assistant
 Administrative Services, Administrator
 Research & Analysis, Administrator
 State and Local Finance, Administrator

REVISOR OF STATUTES BUREAU
 Director

SAVINGS & LOAN, OFFICE OF THE
 COMMISSIONER OF
 Commissioner
 Deputy Commissioner
 Savings & Loan Review Board (7)

SECRETARY OF STATE, OFFICE OF THE
 Secretary of State
 Assistant Secretary of State

SECURITIES, OFFICE OF THE COMMISSIONER OF
 Commissioner
 Deputy Commissioner

SENTENCING COMMISSION
 Members
 Executive Director

SNOWMOBILE RECREATIONAL COUNCIL
 Members (15)

STATE FAIR PARK BOARD
 Members (5)
 State Fair Park Director

STATE SUPPORTED PROGRAMS STUDY,
 JOINT LEGISLATIVE
 Members¹

TAX APPEALS COMMISSION
 Members (5)

TAX EXEMPTION, JOINT SURVEY
 COMMITTEE ON
 Members^{1,2}

TECHNOLOGY DEVELOPMENT BOARD
 Members¹

TRANSPORTATION PROJECTS COMMISSION
 Members¹

TRANSPORTATION, DEPARTMENT OF
 Secretary
 Deputy Secretary
 Executive Assistant
 Motor Vehicles, Administrator
 Planning & Budget, Administrator
 State Patrol, Administrator
 Transportation Assistance, Administrator
 Transportation Districts, Administrator
 Transportation Facilities, Administrator
 Rustic Roads Board^{1,2}
 Aeronautics, Council on¹
 Highway Safety, Council on¹
 Traffic Law Enforcement, Council on¹

TRANSPORTATION, OFFICE OF THE
 COMMISSIONER OF
 Commissioner
 Deputy
 TREASURER, STATE, OFFICE OF THE
 State Treasurer
 Assistant State Treasurer
 UNIFORM LAWS, COMMISSION ON
 Members¹
 UNIVERSITY OF WISCONSIN SYSTEM
 Regents¹ (14)
 President
 Vice Presidents (5)
 Associate Vice Presidents (7)
 Assistant Vice Presidents (6)
 Eau Claire campus, Chancellor
 Eau Claire campus, Vice Chancellor
 Extension System, Chancellor
 Extension System, Vice Chancellor
 Green Bay campus, Chancellor
 Green Bay campus, Vice Chancellor
 La Crosse campus, Chancellor
 La Crosse campus, Vice Chancellor
 Madison campus Center for Health
 Sciences, Chancellor
 Madison campus Center for Health
 Sciences, Vice Chancellor
 Madison campus, Chancellor
 Madison campus, Vice Chancellor
 Milwaukee campus, Chancellor
 Milwaukee campus, Vice Chancellor
 Oshkosh campus, Chancellor
 Oshkosh campus, Vice Chancellor
 Parkside campus, Chancellor
 Parkside campus, Vice Chancellor
 Platteville campus, Chancellor
 Platteville campus, Vice Chancellor
 River Falls campus, Chancellor
 River Falls campus, Vice Chancellor

Stevens Point campus, Chancellor
 Stevens Point campus, Vice Chancellor
 Stout campus, Chancellor
 Stout campus, Vice Chancellor
 Superior campus, Chancellor
 Superior campus, Vice Chancellor
 Whitewater campus, Chancellor
 Whitewater campus, Vice Chancellor
 Laboratory of Hygiene Board^{1,2}
 VETERANS AFFAIRS, DEPARTMENT OF
 Board (7)
 Secretary
 Deputy Secretary
 Executive Assistant
 Loans, Administrator
 Veterans Services, Administrator
 VOCATIONAL, TECHNICAL & ADULT
 EDUCATION, BOARD OF
 Members¹ (9)
 Director
 Administration and Planning,
 Administrator
 Community & Manpower Education,
 Administrator
 Fire Service Training Programs,
 Council on²
 VOCATIONAL, TECHNICAL & ADULT
 EDUCATION, DISTRICT BOARDS
 Members (144)
 Directors (15)
 Deputy Directors
 Associate Directors
 Assistant Directors
 WASTE FACILITY SITING BOARD
 Members¹ (3)
 WATERWAYS COMMISSION, WISCONSIN
 Members (5)
 WOMEN'S COUNCIL
 Members^{1,2}

Bold type identifies a position an occupant of which must file a Statement of Economic Interests because of his or her holding that position.

In the case of a board or commission the number between parentheses identifies the number of officials filing Statements because of membership on that board or commission.

¹ This body includes either (1) some people who are members of this body by virtue of their holding some other public office which obliges them to file Statements of Economic Interests with the Ethics Board or (2) representatives designated by those people.

² One or more members of this body are not state public officials.

MINNESOTA SENATE

RESEARCH REPORT

SENATE COUNSEL & RESEARCH



Senate Counsel & Research

INTRODUCTION

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The concern over the conduct of public officials and employees is especially evident on the state level. In 1987 alone, legislatures in 22 states considered bills that would strengthen their state ethics laws. Two states -- New York and Virginia -- passed bills creating a code of ethics, and several other states were considering similar action at the beginning of 1988.

While the majority of the 50 states have at least some limited ethics laws dealing with the conduct of at least a small group of employees or officials, only about a dozen states have something comprehensive enough to be called a state code of ethics. This report is the result of an examination of those state codes of ethics (2), a study of model state ethics codes (3), conversations with state ethics commission officials, and a study of Minnesota's ethics laws (4).

This report outlines and summarizes what makes up a state code of ethics and looks at Minnesota's ethics laws in light of those same ingredients. The report also considers enforcement and penalties. It does not deal with campaign financing or lobbyist registration laws.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

MINNESOTA SENATE

RESEARCH REPORT

SENATE COUNSEL & RESEARCH



Senate Counsel & Research

STATE ETHICS CODES
AND MINNESOTA'S ETHICS LAWS --
A COMPARISON

by

Jill M. Schultz
Legislative Analyst

Minnesota Senate
Senate Counsel and Research
John E. Post, Director

February 1988

INTRODUCTION

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AN ETHICS CODE: THE PARTS

The easiest way to understand a state code of ethics might be to break it down into three parts: conflict of interest, financial disclosure, and revolving door prohibitions; to examine each part, and to see who is affected by each part.

A brief index for this report looks like this:

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CONFLICT OF INTEREST

What

Conflict of interest provisions generally do the following:

1. Prohibit the acceptance of gifts and additional compensation;
2. Prohibit the solicitation of things of value;
3. Prohibit the use of confidential information for personal gain;
4. Restrict an employee's or an official's appearances before his or her own agency or other agencies on personal or private business;
5. Restrict an employee's or an official's outside business interests and employment, and official acts which would affect his or her financial interests; and
6. Restrict an employee's or official's business contracts with the state.

Who

It is a lot more difficult to generalize about who is covered by conflict of interest statutes since each of the states seems to take a slightly different approach. The core group that a number of states cover is elected and appointed state officials and employees. However, some states include more people, some include fewer.

Connecticut does not cover judges, but leaves the responsibility for their conduct to the state judicial review commission. Hawaii limits coverage of its lawmakers. Wisconsin, for the most part, covers just public officials, but charges the Department of Employment Relations with covering state employees and gives the University Board of Regents the responsibility for unclassified university employees.

Florida, Alabama, and Rhode Island extend their coverage to local officials and employees. Massachusetts goes even further. Its conflict of interest statutes affect appointed and elected state, county, and municipal officials; and full-time and part-time, paid and unpaid, state, county, and municipal employees.

FINANCIAL DISCLOSURE

What

Financial disclosure statements are filed annually and usually require the employee or public official to disclose the following information:

1. His or her total income and its source;
2. Amounts and sources of business income;
3. Location, description of, and sometimes value of real estate property holdings; and
4. Names of creditors to whom debts are owed over a given amount.

Some states also include:

5. Gifts received from non-relatives over a given amount;
6. Business titles, offices, or directorships held;
7. Securities held; and
8. A list of business clients from the previous year.

Most states also include the financial interests of the employee's or official's spouse in the reporting requirements and some also include the financial interests of dependent children.

Who

States' financial disclosure laws usually cover a smaller group of people than their conflict of interest statutes do. The filing of financial disclosure statements is usually required of candidates for statewide office, statewide officeholders, and state employees and public officials who are in policymaking positions or who have discretionary authority over the receipt or expenditure of state funds.

REVOLVING DOOR

What

Revolving door prohibitions are sometimes found within the body of conflict of interest statutes, but are actually restrictions on former employees and are being dealt with as a separate section in this report.

These post-employment restrictions are common even in states without a code of ethics. A 1980 study at St. Louis University School of Law revealed that 26 states had placed such restrictions on state executive branch employees. Last year alone, four states passed laws restricting the employment of public officials and/or employees after they leave public service.

Three provisions are commonly found in the revolving door statutes of states with ethics codes:

1. A former employee or official is banned from making an appearance before his or her former agency, usually for one year;
2. A former employee or official is prohibited from becoming involved in matters in which he or she participated personally and substantially as a state employee, sometimes permanently and sometimes for one year; and
3. A former employee or official is permanently prohibited from disclosing or using confidential information for personal gain, which he or she obtained as an employee.

Who

While some states apply their post-employment restrictions to the same group of employees and public officials covered by their conflict of interest statutes, this is not necessarily the case.

Connecticut covers both executive and legislative branch public officials and employees with its conflict of interest provisions, but applies post-employment restrictions only to its

executive branch. Likewise, Wisconsin exempts legislators and legislative employees from its revolving door law. Rhode Island, on the other hand, extends post-employment restrictions to both state and local employees and officials, and Massachusetts even extends one restriction to the partners of former employees or officials.

In addition to the provisions mentioned above, a number of states with ethics codes also have a narrow provision or two designed to get at a specific situation. For example, some states prohibit a public utilities commissioner from going to work for a utility directly after leaving public service. These states may also prohibit an employee who bids out state contracts from going directly to work for a firm to which he or she awarded a state contract.

OTHER PROVISIONS

Two other provisions are worth mentioning, even though they do not show up in all the state ethics codes. They are laws that prohibit nepotism and protect whistle blowers.

Some states have a section in their ethics codes that prohibits nepotism even though that was not the original intent when the language was drafted. Massachusetts' ethics code prohibits elected and appointed public officials from participating in matters in which their family members have a financial interest. Even though the special commission that drafted the law in 1962 said it was not intended to apply to nepotism, the Supreme Judicial Court of Massachusetts held in 1983 that it did. Ohio, Connecticut, Washington, and Wisconsin have a similar section in their ethics codes, and their officials feel that it can probably be interpreted in the same way.

A number of states also have whistle blower protection for employees who report violations to their superiors or their state ethics commission. In 1987, Hawaii passed a whistle blower protection act because employees were reluctant to report violations to the state ethics commission, and some who blew the whistle suffered retaliation. New York also recently strengthened its whistle blower protection law.

MINNESOTA'S ETHICS LAWS

A quick scan of the 50 states reveals that while about a dozen have a state code of ethics, many states have little or no ethics law. Minnesota falls somewhere in between, with a number of ethical conduct laws scattered throughout the statutes. The bulk of the state's ethics law can be found in the executive branch code of ethics (Minnesota Statutes, Sec. 43A.38). Another portion that affects public officials (Sec. 10A.07-10A.09) can be found in the state's ethics in government chapter. However that

chapter is primarily concerned with campaign financing and lobbyist disclosure law.

Minnesota's ethics laws fit under the three parts of a state ethics code identified earlier: conflict of interest, financial disclosure, and revolving door prohibitions. This portion of the report lists and summarizes Minnesota's laws under those three sections.

MINNESOTA -- CONFLICT OF INTEREST

Minnesota's conflict of interest laws are listed here under the six conflict of interest functions of a state ethics code identified earlier.

1. Gifts and additional compensation for official duties

Executive branch employees may not receive gifts or additional compensation for doing their work. The only gifts allowed are textbooks or gifts of "nominal value" which the Department of Employee Relations defines as "in name only." (Sec. 43A.38, Subd. 2)

Public officers or employees who request, receive, or agree to receive a benefit or reward with the understanding that it is to influence their job performance are guilty of bribery. (Sec. 609.42)

Public officers or employees may not intentionally ask for, receive, or agree to receive a fee or other compensation in excess of that allowed by law. (Sec. 609.45)

Executive branch employees may not offer, request, give, or receive money or valuables for any kind of appointment or promotion in the state civil service. (Sec. 43A.39, Subd. 1)

State employees and University of Minnesota employees involved in the state and university supply purchasing and contracting processes may not accept gifts, with several exceptions. (Sec. 15.43)

Potato inspectors may not receive additional payment. (Sec. 30.152)

Grain weighers and inspectors may not improperly perform their duties or accept money or other considerations to improperly perform their duties. (Sec. 17B.22)

Public officers or employees may not receive additional compensation from the contingent fund of an office or department. (Sec. 10.32)

2. Soliciting anything of value

Executive branch employees may not use their official positions to secure benefits, privileges, exemptions, or advantages for themselves, family members, or organizations with which they are associated. (Sec. 43A.36, Subd. 5) (5)

3. The use of confidential information for personal gain

Executive branch employees may not use confidential information for personal gain or become involved in outside activities or employment that would require them to disclose confidential information. (Sec. 43A.38, Subd. 3)

4. An employee's or an official's appearance before his or her own agency or other agencies

Executive branch employees may not appear before their own agency on someone else's behalf unless it is part of their job to do so. (Sec. 43A.38, Subd. 5)

Public officials who represent clients for a fee before any individual, board, commission, or agency with rulemaking authority must disclose that appearance to the State Ethical Practices Board within 14 days after the appearance. (Sec. 10A.08)

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

Executive branch employees may not accept employment or be a party to a contract that would affect their independence of judgment on the job. (Sec. 43A.38, Subd. 5)

Executive branch employees may not be employed by a business subject to their direct or indirect control, inspection, review, audit, or enforcement, nor perform an act other than official duties that will later be subject to their control, inspection, review, audit, or enforcement. (Sec. 43A.38, Subd. 6)

Public officials who would be required to take an official action that would substantially affect their own financial interests are required to disclose that conflict to the State Ethical Practices Board and to their immediate superior, or to the presiding officer of the Legislature, if they are lawmakers. If possible, the matter is then to be reassigned, or the official is to abstain from the action. (Sec. 10A.07)

Public Utilities Commission (PUC) members and professional employees are prohibited from having a significant interest in a public utility or regulated business. Employees of the Public Service Department may not participate in any decision or action of the PUC where they have any financial interest. Any professional employee of the commission or department must disclose any communication about future employment or benefits if received from a party involved with a commission proceeding. (Sec. 216A.035)

The Public Service Department commissioner must divest himself or herself within six months from any energy related business, including utility, coal, or petroleum suppliers or manufacturers of energy. (Provision was in Sec. 116J.07, but is now Sec. 216.07 with 1987 reorganization.)

Department of Commerce examiners may not examine a bank or financial institution in which they have a financial interest (Sec. 46.08); Department of Commerce examiners and officers may not have any interest in a financial institution other than a standard demand, trust, or savings account. (Sec. 46.09)

Public Safety or Revenue Department employees who work with liquor control functions may not have any interest in any manufacture, transportation, or sale of liquor. (Sec. 299A.02, Subd. 1)

Members and employees of the Minnesota Racing Commission may not have any interest in an entity that is licensed by or contracts with the Commission, nor may they have an interest in a race horse or bet on a race. (Sec. 240.28)

State grain inspectors, samplers, and weighers may not have any financial interest in any grain or grain product business or organization and may not be employed by any company that handles, stores, ships, purchases, or sells grain or grain products. (Sec. 17B.16)

Members of the Designer Selection Board may not have any financial interest in a designer or firm selected. (Sec. 16B.33)

6. An employee's business contracts with the state

As mentioned under the last section, executive branch employees may not be a party to a contract that will affect their independence of judgment. They also may not be involved in a private interest that directly competes with the state for the provision of services. (Sec. 43A.38, Subd.5)

Current state employees may not contract with another state agency to provide consultation services or professional or technical services. (Sec. 16B.17, Subd. 2)

Department of Transportation employees may not be directly or indirectly involved with any contract for road or bridge work or with any contract for the purchase, repair, or sale of road machinery, equipment, or supplies used. (Sec. 161.33)

MINNESOTA -- FINANCIAL DISCLOSURE

Minnesota's financial disclosure law (Sec. 10A.09) requires all public officials to file a statement of economic interest. Minnesota's disclosure requirements are less extensive than those of states with ethics codes. State officials and certain employees are required to disclose sources of earned income in excess of \$50 in any month, excluding benefits from retirement, insurance, social security, savings accounts, and alimony. They need not list amounts. They are also required to disclose securities held of which the official's share is worth \$2,500 or more and real property in Minnesota of which the official's share is worth in excess of \$2,500, excluding homestead property. The values of the securities and property are not to be disclosed. Finally, any Canadian or U.S. pari-mutuel horse racing interests of the filer or his or her immediate family members must be reported.

Those required to file financial disclosure statements in Minnesota include anyone who fits the statutory definition of "public official." (6)

MINNESOTA -- REVOLVING DOOR

Minnesota has three revolving door prohibitions:

No former commissioner or deputy commissioner may, within one year after leaving that position, appear or participate in proceedings of his or her former department or agency representing the interest of a private person. (Sec. 15.06, Subd. 9)

Neither a Public Utilities Commissioner nor a director or deputy director of the Public Service Department may accept employment or a contractual relationship with any entity subject to rate regulation by the commission for one year after job termination. (Sec. 216A.036)

Officers, judges, or employees of the Revenue Department or tax court may not represent a client with regard to any claim or proceeding pending in the department for one year following employment with the department. Similarly, these persons may never repre-

sent anyone with a claim or proceeding if they worked with that matter while employed by the department or tax court. (Sec. 271.18)

MINNESOTA --- OTHER PROVISIONS

Minnesota has no law against nepotism and just last year passed a whistle blower protection law. (Laws of Minnesota, Chapter 76; Minnesota Statutes 1987 Supplement, Sec. 181.931 to Sec. 181.935)

In addition to the types of laws usually included in a state ethics code, Minnesota also has some provisions for the proper use of state property in the workplace.

ENFORCEMENT AND PENALTIES

The enforcement of a state code of ethics is usually the responsibility of an ethics commission or board. Those commissions range from five to fifteen members who are appointed to terms ranging from four to six years. They are usually appointed by the governor, although some states also allow legislative leaders or selected constitutional officers to make some appointments.

In addition to responsibilities to issue advisory opinions and educational materials, most commissions are given the power to investigate, conduct audits, and subpoena witnesses. Most go through a two-step procedure when there is an allegation of an ethics code violation. First, the complaint is investigated to determine whether there is probable cause that a violation occurred. If it is determined there is probable cause, a hearing is scheduled to determine whether a violation occurred.

If it is determined that a violation occurred, some commissions must stop and turn their findings over to the proper authorities who have the power to issue civil and criminal penalties. Others can go ahead and issue a cease and desist order and/or levy a civil penalty.

Civil penalties vary somewhat, from not more than \$500 per violation in some states to not more than \$10,000 per violation in another state. Several states have civil penalties that range from about \$1,000 to \$2,000 maximum per violation. In addition, most states allow for civil suits for the state to reclaim any financial loss as a result of the ethics code violation. Some states may even sue for twice that amount. In states where a violation of the ethics code is a criminal violation, it usually is classified as a misdemeanor or gross misdemeanor. The maximum criminal penalty found in any of the state ethics codes examined was up to \$5,000 and three years in prison for bribery in Massachusetts, or up to \$3,000 and two years in prison for other Massachusetts code violations.

Finally, the ethics code violator may be disciplined by his or her supervisor with measures that include a demotion, suspension, removal from office, or impeachment, and in some states a cut in salary.

MINNESOTA -- ENFORCEMENT AND PENALTIES

The State Ethical Practices Board is responsible for investigating written complaints alleging violations of Chapter 10A, the ethics in government chapter, which includes those portions of interest to this report -- public officials' conflict of interest (Sec. 10A.07), representation disclosure (Sec. 10A.08), and financial disclosure (Sec. 10A.09).

The executive branch code of ethics (Sec. 43A.38) is found in the chapter of state law dealing with the Department of Employee Relations (DOER), and that department does its best to enforce it. However, the law does nothing to make it easy for DOER to enforce the ethics code; there is no clear procedure for handling violations. In fact DOER is not even included in the reporting process for a "substantial violation." (Sec. 43A.39, Subd.

A number of state ethics laws fall neither under the jurisdiction of the Ethical Practices Board nor DOER -- laws dealing with Public Service Department officials and PUC commissioners, Transportation Department employees, Commerce Department examiners and officers, Minnesota Racing Commission members and employees, Public Safety and Revenue Department employees, members of the Designer Selection Board, state grain inspectors, and state potato inspectors. While in some cases individual agencies may handle complaints of violations internally, a great deal of confusion exists over who is responsible for enforcing these laws.

The executive branch code of ethics does not list specific civil or criminal penalties, but says the violator will be subject to action "pursuant to Chapter 609," Minnesota's criminal code. That chapter says that any public officer or employee found guilty of misconduct may be sentenced to up to one year in prison and fined up to \$3,000. (Sec. 609.43)

A public official's failure to report or avoid a conflict of interest is not a crime and carries no penalty. (Sec. 10A.07 and Sec. 10A.34) Failure of a public official to report the representation of a client before a state agency carries a late filing fee of no more than \$100, accumulating at a rate of \$5 per day, and no criminal penalty. (Sec. 10A.08) A public official failing to file a financial disclosure statement is subject to the same late filing fee, but can also be charged with a misdemeanor. In addition, those public officials filing late who are not lawmakers or constitutional officers, can be suspended without pay by the Ethical Practices Board. (Sec. 10A.09)

With a few exceptions, a violation of one of the other state ethics laws scattered throughout statutes constitutes a misdemeanor or gross misdemeanor. Several exceptions worth noting are the post-employment restriction of PUC commissioners and the top two Public Service Department officials (Sec. 216A.036), bribery (Sec. 609.42), and paying a potato inspector additional money to do his or her job (Sec. 30.152). PUC commissioners and the Public Service Department officials face a civil penalty of up to \$10,000 per violation of the post-employment restriction, and those committing bribery are guilty of a felony punishable by up to 10 years in prison and a maximum \$20,000 fine, the largest penalty for any of the state's ethics laws. That same penalty is in place for anyone who pays a state potato inspector extra money for doing his or her job, because that constitutes bribery.

SUMMARY

Minnesota does not have a state code of ethics, but when its various ethics laws are considered as a whole, they contain the three elements of a state ethics code -- conflict of interest, financial disclosure, and revolving door prohibitions. The biggest difference between what Minnesota has in place and a state code of ethics is comprehensiveness and enforceability. While most state codes of ethics cover at least state employees and public officials, the majority of Minnesota's ethics laws cover only the executive branch. States with ethics codes usually have one agency -- such as an ethics commission -- to enforce their code. In Minnesota, the Ethical Practices Board and the Department of Employee Relations have been given responsibility for portions of the state's ethics law, but confusion exists over who is responsible for enforcing other portions. Finally, while state ethics commissions can usually rely on enforcement procedures set up for them in law, there is very little language providing for the enforcement of Minnesota's ethics laws.

ENDNOTES

1. National Journal, "Grass-Roots Graft"; August 1, 1987; pages 1962-1967.
2. This report involved close study of ethics codes in Alabama, Connecticut, Florida, Hawaii, Kansas, Massachusetts, Ohio, Oregon, Rhode Island, and Wisconsin. It also included the examination of ethics law in a number of other states.
3. This report involved the examination of model ethics legislation by the National Conference of State Legislatures, the Council of State Governments, and the National Municipal League.
4. In addition to study of the actual statutes, the report drew upon the work of Connie Nelson, Department of Employee Relations assistant to the commissioner, in "Code of Conduct for Executive Branch Employees in Minnesota: A summary of Applicable Laws and Rules," September 16, 1987.
5. The Department of Employee Relations says while there is a potential for this provision to be used to cover some cases of solicitation, it needs some clarification. It seems clear that it would cover a case where an employee asked for and secured a benefit or privilege for himself. But it is not clear that it would cover solicitation if the employee asks for something but does not receive it.
6. Minnesota state statutes define a public official in the following way:
 - (A) Member of the Legislature;
 - (B) Constitutional officer in the executive branch and the officer's chief administrative deputy;
 - (C) Member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has at least one of the following powers: (1) the power to adopt, amend, or repeal rules, or (2) the power to adjudicate contested cases or appeals;
 - (D) Commissioner, deputy commissioner, or assistant commissioner of any state department as designated under section 15.01;
 - (E) Individual employed in the executive branch who is authorized to adopt, amend, or repeal rules or adjudicate contested cases;
 - (F) Executive director of the State Board of Investment;
 - (G) Executive director of the Indian Affairs Intertribal Board;
 - (H) Commissioner of the Iron Range Resources and Rehabilitation Board;

- (I) Director of Mediation Services;
- (J) Deputy of any official listed in clauses (E) to (I);
- (K) Judge of the Workers' Compensation Court of Appeals;
- (L) Administrative law judge or compensation judge in the state's Office of Administrative Hearings or hearing examiner in the Department of Jobs and Training;
- (M) Solicitor general or deputy, assistant, or special assistant attorney general;
- (N) Individual employed by the Legislature as Secretary of the Senate, Legislative Auditor, Chief Clerk of the House, Revisor of Statutes, or a researcher or an attorney in the Office of Senate Counsel and Research; or
- (O) Member or chief administrative officer of the Metropolitan Council, Regional Transit Board, Metropolitan Transit Commission, Metropolitan Waste Control Commission, Metropolitan Parks and Open Spaces Commission, Metropolitan Airports Commission, or Metropolitan Sports Facilities Commission.

June 1985

CHAPTER 102. AND SECTION 2921.42 OF THE REVISED CODE

THE OHIO ETHICS LAW: CHAPTER 102.

Sec. 102.01 As used in Chapter 102 of the Revised Code

- (A) "Compensation" means money, thing of value, or financial benefit. "Compensation" does not include reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (B) "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency. "Public official or employee" does not include a person elected or appointed to the office of precinct ward or district committee member under section 3517.03 of the Revised Code, any presidential elector or delegate to a national convention. "Public official or employee" does not include a person who is a teacher, instructor, professor, or any other kind of educator whose position does not involve the performance of, or authority to perform, administrative or supervisory functions.
- (C) "Public agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau, or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity, that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes, does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees, and whose members are uncompensated.
- (D) "Immediate family" means a spouse residing in the person's household and an dependent child.
- (E) "Income" includes gross income as defined and used in the Internal Revenue Code of 1954, 68A Stat. [3] 26 U.S.C. 1, as now or hereafter amended, interest, and dividends on obligations or securities of any state or of any political subdivision or authority thereof, and interest or dividends on obligations of any authority, commission, or instrumentality of the United States.
- (F) "Appropriate ethics commission" means:
- (1) For matters relating to members of the general assembly, employees of the general assembly, and candidates for the office of member of the general assembly, the house or senate legislative ethics committee, depending on the house of which he is a member, by which he is employed, or for which he is a candidate, for employees of the legislative service commission, the senate legislative ethics committee;
 - (2) For matters relating to judicial officers and employees, and candidates for judicial office, the board of commissioners on grievances and discipline of the supreme court;
 - (3) For matters relating to all other persons, the Ohio ethics commission.
- (G) "Anything of value" has the same meaning as provided in section 1.03 of the Revised Code.

Sec. 102.02

- (A) Every person who is elected to or is a candidate for a state, county, or city office or the office of member of the United States congress, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office, and the director, assistant directors, deputy directors, division chiefs, or persons of equivalent rank of any administrative department of the state, the chief executive officer of each state retirement system, all members of the board of commissioners on grievances and discipline of the supreme court, the ethics commission created under section 102.05 of the Revised Code, every public official or employee who is paid a salary or wage in accordance with schedule C of section 124.15 of the Revised Code, and every other

public official or employee who is designated by the appropriate ethics commission pursuant to division (B) of this section, excluding any person elected or appointed to the office of precinct ward or district committee member under Chapter 3517 of the Revised Code, presidential elector, delegate to a national convention, city exempted village, county local and joint vocational school district boards of education, village officials and employees, township officials and employees, any physician or psychiatrist paid a salary or wage in accordance with schedule (C) of section 124.15 of the Revised Code and whose primary duties do not require the exercise of administrative discretion, and any member of a board, commission or bureau of any county or city who receives less than one thousand dollars per year for serving in such position, shall file with the appropriate ethics commission on a form prescribed by the commission, a statement disclosing:

(1) The name of the person filing the statement and each member of his immediate family and all names under which the person or members of his immediate family does business;

(2) Identification of every source of income over five hundred dollars received during the preceding calendar year in his own name or by any other person for his use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code. This division shall not be construed to require a person filing the statement who derives income from a business or profession to disclose the individual items of income that constitute the gross income of that business or profession.

(3) The name of every corporation on file with the secretary of state which is incorporated in Ohio or holds a certificate of compliance authorizing it to do business in this state, trust, business trust, partnership or association which transacts business in Ohio in which the person filing the statement or any other person for his use and benefit had during the preceding calendar year an investment of over one thousand dollars at fair market value as of the thirty-first day of December of the preceding calendar year, or the date of disposition, whichever is earlier, or in which the person holds any office or has a fiduciary relationship, and a description of the nature of the investment, office or relationship. This division does not require disclosure of the name of any bank, savings and loan association, credit union or building and loan association with which the person filing the statement has a deposit or a withdrawable share account.

(4) All fee simple and leasehold interests to which the person filing the statement holds legal title to or a beneficial interest in real property located within the state, excluding the person's residence and property used primarily for personal recreation.

(5) The names of all persons residing or transacting business in the state to whom the person filing the statement owes, in his own name or in the name of any other person, more than one thousand dollars. This division shall not be construed to require the disclosure of debts owed by the person resulting from the ordinary conduct of a business or profession or debts on the person's residence or real property used primarily for personal recreation, except that the superintendent of building and loan associations shall disclose the names of all state-chartered building and loan associations and of all service corporations subject to regulation under division (E) (2) of section 1151.34 of the Revised Code to whom the superintendent, in his own name or in the name of any other person, owes any money, and that the superintendent of banks and any deputy superintendent shall disclose the names of all state-chartered banks and all bank subsidiary corporations subject to regulation under section 1107.35 of the Revised Code to whom such superintendent or deputy superintendent owes any money.

(6) The names of all persons residing or transacting business in the state, other than a depository excluded under division (A) (3) of this section, who owes more than one thousand dollars to the person filing the statement, either in his own name or to any other person for his use or benefit. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the

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Code nor the disclosure of debts owed to the person resulting from the ordinary conduct
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(7) The source of each gift of over five hundred dollars received by the person in his
own name or by any other person for his use or benefit during the preceding calendar
year except gifts received by will or by virtue of section 2105 06 of the Revised Code or
received from parents or grandparents or received by way of distribution from any inter
vivos or testamentary trust established by a spouse or an ancestor

A person who is a candidate for elective office shall file his statement no later than the
thirtieth day before the primary special or general election at which such candidacy is
to be voted on whichever election occurs sooner except a person who is a write-in
candidate shall file his statement no later than the twentieth day before the earliest
election at which such candidacy is to be voted on A person who holds elective office
shall file his statement on or before the fifteenth day of April of each year unless he is a
candidate for office A person who is appointed to fill a vacancy for an unexpired term in
an elective office shall file his statement within fifteen days after he qualifies for office
Other persons shall file an annual statement on or before the fifteenth day of April or if
appointed or employed after such date within ninety days after appointment or
employment No person shall be required to file more than one statement for any one
calendar year with the appropriate ethics commission

The appropriate ethics commission may for a good cause extend for a reasonable
time the deadline for filing a disclosure statement under this section

A statement filed under this section is subject to public inspection at locations
designated by the appropriate ethics commission except as otherwise provided in this
section

(B) The Ohio ethics commission the house and senate legislative ethics committees
and the board of commissioners on grievances and discipline of the supreme court may
using the rule-making procedures of Chapter 119 of the Revised Code require any
class of public officials or employees under its jurisdiction and not specifically excluded
by this section whose positions involve a substantial and material exercise of
administrative discretion in the formulation of public policy expenditure of public funds
enforcement of laws and rules of the state or a county or city or the execution of other
public trusts to file an annual statement on or before the fifteenth day of April under
division (A) of this section The appropriate ethics commission shall send the public
officials or employees written notice of the requirement by the fifteenth day of February
of each year the filing is required unless the public official or employee is appointed
after such date in which case the notice shall be sent within thirty days after
appointment and the filing shall be made not later than ninety days after appointment

Disclosure statements filed under this division with the Ohio ethics commission by
members of boards commissions or bureaus of the state for which no compensation is
received other than reasonable and necessary expenses shall be kept confidential The
Ohio ethics commission shall examine each disclosure statement required to be kept
confidential to determine whether a potential conflict of interest exists for the person who
filed the disclosure statement A potential conflict of interest exists if the private interests
of the person as indicated by his disclosure statement might interfere with the public
interests he is required to serve in the exercise of his authority and duties in his office or
position of employment If the commission determines that a potential conflict of interest
exists it shall notify the person who filed the disclosure statement and shall make the
portions of the disclosure statement that indicate a potential conflict of interest subject to
public inspection in the same manner as is provided for other disclosure statements Any
portion of the disclosure statement that the commission determines does not indicate a
potential conflict of interest shall be returned immediately to the person who filed the
statement

(C) No person shall knowingly fail to file a statement that is required by this section

(D) No person shall knowingly file a false statement that is required to be filed under
this section

Sec. 102.03

(A) No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion. For twenty-four months after the conclusion of his service, a former commissioner or attorney examiner of the public utilities commission may not represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission or agency. As used in this division, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. Nothing contained in this division shall prohibit, during such period, a former public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which he was employed or on which he served. This division shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of his duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business, trust, corporation, or association in which the public official or employee or his immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of his duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or his immediate family, or a partnership, trust, business, trust, corporation, or association of which he or his immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging such sale with the clerk or secretary of the public agency, and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

Sec. 102.04

(A) Except as provided in division (D) of this section, no person elected or appointed to an office or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly, compensation other than from the agency with which he serves for any service rendered or to be rendered by him.

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personally, in any case, proceeding, application, or other matter that is before the general assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(B) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall sell or agree to sell, except through competitive bidding, any goods or services to the general assembly, or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(C) Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly, compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

(D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:

(1) The agency to which the official or employee wants to sell the goods or services or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves.

(2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year.

E) No public official or employee who files a statement or is required to file a statement under division (D) of this section shall knowingly fail to disqualify himself from any participation as a public official or employee of the agency with which he serves in any matter involving any official or employee of an agency before which a matter is pending or to which he rendered personal services was pending or of a public agency that purchased or agreed to purchase goods or services.

(F) This section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Sec. 102.05

There is hereby created the Ohio ethics commission consisting of six members, three of whom shall be members of each of the two major political parties, to be appointed by the governor with the advice and consent of the senate. Within thirty days of the effective date of this section, the governor shall make initial appointments to the commission. Of the initial appointments made to the commission, one shall be for a term ending one year after the effective date of this section, and the other appointments shall

be for terms ending two three four five and six years respectively after the effective date of this section. Thereafter terms of office shall be for six years each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term.

No person shall be appointed to the commission or shall continue to serve as a member of the commission who is subject to the provisions of section 102.02 of the Revised Code other than by reason of his appointment to the commission. Members shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties.

The commission shall meet within two weeks after all members have been appointed at a time and place determined by the governor. At its first meeting the commission shall elect a chairman and such other officers as are necessary and shall adopt rules for its procedures. After the first meeting the commission shall meet at the call of the chairman or upon the written request of a majority of the members. A majority of the members of the commission constitutes a quorum. No action shall be taken by the commission without the concurrence of a majority of the members thereof.

The commission may appoint and fix the compensation of an executive director and such other technical professional and clerical employees as are necessary to carry out the duties of the commission.

The commission may appoint hearing examiners to conduct hearings pursuant to section 102.06 of the Revised Code. The hearing examiners have the same powers and authority, in conducting the hearings as is granted to the commission. Within thirty days after the hearing the hearing examiner shall submit to the commission a written report of his findings of fact and conclusions of law and a recommendation of the action to be taken by the commission. The recommendation of the hearing examiner may be approved modified or disapproved by the commission and no recommendation shall become the findings of the commission until so ordered by the commission. Such findings of the commission shall have the same effect as if the hearing had been conducted by the commission. Hearing examiners appointed pursuant to this section shall possess the qualifications the commission requires. Nothing contained in this section shall preclude the commission from appointing a member of the commission to serve as a hearing examiner.

Sec. 102.06

The appropriate ethics commission shall receive and may initiate complaints against persons subject to Chapter 102 of the Revised Code concerning conduct alleged to be in violation of this chapter. All complaints except those by the commission shall be by affidavit made on personal knowledge subject to the penalties of perjury. Complaints by the commission shall be by affidavit based upon reasonable cause to believe that a violation has occurred.

The commission shall investigate complaints and may investigate charges presented to it and may request further information including the specific amount of income from a source from any person filing with the commission a statement required by section 102.02 of the Revised Code if the information sought is directly relevant to a complaint or charges received by the commission pursuant to this section. Such information is confidential. The person so requested shall furnish the information to the commission unless within fifteen days from the date of the request the person files an action for declaratory judgment challenging the legitimacy of the request in the court of common pleas of the county of his residence of his place of employment or of Franklin county. The requested information need not be furnished to the commission during the pendency of the judicial proceedings. Proceedings of the commission in connection therewith shall be kept confidential except as otherwise provided by this section. Before the commission proceeds to take any formal action against a person who is the subject of an investigation based on charges presented to the commission a complaint shall be filed

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Sec. 102.07

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against the person. If the commission finds that a complaint is not frivolous and there is
reasonable cause to believe that the facts alleged in a complaint constitute a violation of
section 102.02, 102.03, 102.04, or 102.10 of the Revised Code, it shall hold a hearing. If
the commission does not so find, it shall dismiss the complaint. The person against
whom the complaint is directed shall be given reasonable notice by certified mail of the
date, time, and place of the hearing, a statement of the charges and the law directly
involved, and shall be given the opportunity to be represented by counsel, to have
counsel appointed for him if he is unable to afford counsel without undue hardship, to
examine the evidence against him, to produce evidence and to call and subpoena
witnesses in his defense, to confront his accusers, and to cross-examine witnesses. The
commission shall have a stenographic record made of the hearing. The hearing shall be
closed to the public.

If upon the basis of the hearing the commission finds based upon a preponderance
of the evidence that the facts alleged in the complaint are true and constitute a violation
of section 102.02, 102.03, 102.04, or 102.10 of the Revised Code, it shall report its
findings to the appropriate prosecuting authority for proceedings in prosecution of
violations of Chapter 102 of the Revised Code and to the appointing or employing
authority of the accused.

If the commission does not find based upon a preponderance of the evidence that the
facts alleged in the complaint are true and constitute a violation of section 102.02,
102.03, or 102.04 of the Revised Code, or if the commission has not scheduled a
hearing within ninety days after the complaint is filed or has not finally disposed of the
complaint within six months after it has been heard, it shall dismiss the complaint and
upon the request of the accused person make a public report of the finding, but in such
case all evidence and the record of the hearing shall remain confidential unless the
accused person also requests that the evidence and record be made public. Upon
request by the accused person, the commission shall make the evidence and the record
available for public inspection.

The commission or a member of the commission may administer oaths and the
commission may issue subpoenas to any person in the state compelling the attendance
of witnesses and the production of relevant papers, books, accounts, and records. The
commission shall issue any such subpoena upon the request of an accused person.
Section 101.42 of the Revised Code shall govern the issuance of such subpoenas
insofar as applicable. Upon refusal of any person to obey a subpoena or to be sworn or
to answer as a witness, the commission may apply to the court of common pleas of
Franklin county under section 2705.03 of the Revised Code. The court shall hold
proceedings in accordance with Chapter 2705 of the Revised Code. The commission or
the accused person may take the depositions of witnesses residing within or without the
state in the same manner as prescribed by law for the taking of depositions in civil
actions in the court of common pleas.

At least once each year, the Ohio ethics commission shall report on its activities of
the immediately preceding year to the majority and minority leaders of the senate and
house of representatives of the general assembly. The report shall indicate the total
number of complaints received, initiated, and investigated by the commission, the total
number of complaints for which formal hearings were held, and the total number of
complaints for which formal prosecution was recommended by the commission. The
report shall also indicate the nature of the inappropriate conduct alleged in each
complaint and the governmental entity with which any employee or official that is the
subject of a complaint was employed at the time of the alleged inappropriate conduct.

All papers, records, affidavits, and documents upon any complaint inquiry or
investigation relating to the proceedings of the commission shall be sealed and are
private and confidential, except as otherwise provided in this section.

Sec. 102.07

No member, employee, or agent of the Ohio ethics commission, board of
commissioners on grievances and discipline of the supreme court, or senate or house
legislative ethics committee shall divulge any information or any books, papers, or

documents presented to the commission, house or senate legislative ethics committees or board of commissioners on grievances and discipline without the consent in writing of the appropriate ethics commission, unless such books, papers, or documents were presented at a public hearing, except as provided in section 102.06 of the Revised Code.

Sec. 102.08

The Ohio ethics commission, the board of commissioners on grievances and discipline of the supreme court, and the house and senate legislative ethics committees may recommend legislation relating to ethics, conflicts of interest, and financial disclosure and render advisory opinions with regard to questions concerning these matters for persons for whom it is the appropriate ethics commission. When the appropriate ethics commission renders an advisory opinion relating to a special set of circumstances involving ethics, conflicts of interest, or financial disclosure under Chapter 102 or section 2921.42 of the Revised Code, the person to whom the opinion was directed or who was similarly situated may reasonably rely upon such opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from his office or position of employment for a violation of Chapter 102 or section 2921.42 of the Revised Code based on facts and circumstances covered by the opinion if the opinion states there is no violation of Chapter 102 or section 2921.42 of the Revised Code. The appropriate ethics commission shall provide a continuing program of education and information concerning the provisions of Chapter 102 and section 2921.42 of the Revised Code and other provisions of law pertaining to ethics, conflicts of interest, and financial disclosure.

Sec. 102.09

(A) The secretary of state and the county board of elections shall furnish to each candidate for elective office who is required to file a financial disclosure statement by section 102.02 of the Revised Code a financial disclosure form, and shall notify the appropriate ethics commission, within fifteen days of the name of the candidate, and of the subsequent withdrawal, disqualification, or death of the candidate. The candidate shall acknowledge receipt of the financial disclosure form in writing.

(B) The secretary of state and the county board of elections shall furnish to each person who is appointed to fill a vacancy for an unexpired term in an elective office and who is required to file a financial disclosure statement by section 102.02 of the Revised Code a financial disclosure form, and shall notify the appropriate ethics commission within fifteen days of being notified of the name and position of the public official and the date of appointment. The person shall acknowledge receipt of the financial disclosure form in writing.

(C) The public agency or appointing authority that employs, appoints, or promotes any public official or employee who, as a result of such employment, appointment, or promotion, is required to file a financial disclosure statement by section 102.02 of the Revised Code shall, within fifteen days of the employment, appointment, or promotion, furnish the public official or employee with a financial disclosure form, and shall notify the appropriate ethics commission of the name and position of the public official or employee and the date of employment, appointment, or promotion. The public official or employee shall acknowledge receipt of the financial disclosure form in writing.

(D) The clerk of the senate and executive secretary of the house of representatives shall distribute to every member of his respective house prior to the first day of February a copy of the form for filing the financial disclosure statement under section 102.02 of the Revised Code. The member shall acknowledge his receipt in writing.

(E) Within fifteen days after any public official or employee begins the performance of his official duties, the public agency with which he serves or the appointing authority shall furnish him a copy of Chapter 102 and section 2921.42 of the Revised Code, and may furnish such other materials as the appropriate ethics commission prepares for distribution. The official or employee shall acknowledge their receipt in writing. The requirements of this division do not apply at the time of reappointment or reelection.

Sec. 102.10

No employee, officer, or board member of any of the five state retirement systems shall knowingly solicit or accept money, or gifts from any person doing business with or

legislative ethics committees without the consent in writing papers or documents were on 102.06 of the Revised Code

is or grievances and discipline ethics committees may st and financial disclosure taining these matters for When the appropriate ethics a set of circumstances under Chapter 102 or the opinion was directed or opinion and shall be immune a from his office or position of 42 of the Revised Code if the opinion states there is sed Code The appropriate ducation and information 142 of the Revised Code and rest and financial disclosure

tions shall furnish to each a disclosure statement in form and shall not; the ame of the candidate and of candidate The candidate n writing tions shall furnish to each term in an elective office by section 102.02 of the the appropriate ethics orting authority of the name ant. The person shall ng oys appoints or promotes idment appointment of t by section 102.02 of the appointment or promotion sure form and shall not; n of the public official or mption. The public official or ure form in writing he house of representatives or to the first day of a statement under section e his receipt in writing ee begins the performance s of the appointing authority 2 of the Revised Code and ommission prepares for e receipt in writing. The appointment or reelection

state retirement systems person doing business with or

soliciting the business of any of the retirement systems No person doing business with or soliciting the business of a retirement system shall knowingly offer or give money or gifts to any employee officer or board member of any of the retirement systems

Sec. 102.99

- (A) Whoever violates division (C) of section 102.02 of the Revised Code is guilty of a misdemeanor of the fourth degree
- (B) Whoever violates division (D) of section 102.02 section 102.03 102.04 or 102.07 of the Revised Code is guilty of a misdemeanor of the first degree
- (C) Whoever violates section 102.10 of the Revised Code is guilty of a misdemeanor of the fourth degree

Sec. 101.34

- (A) There are hereby created a house legislative ethics committee and a senate legislative ethics committee to serve each house of the general assembly Each committee shall be composed of six members three each from the two major political parties and each member shall serve on each committee during his term as a member of that general assembly The members of each committee shall be appointed by the speaker of the house and the president of the senate and the minority leaders of each house A vacancy in either committee shall be filled for the unexpired term in the same manner as an original appointment The members of each committee shall meet and proceed to recommend an ethics code not later than thirty days after the first day of each session of the general assembly
- (B) Each legislative ethics committee
 - (1) Shall recommend a code of ethics which is consistent with law to govern all members and employees of each respective house of the general assembly, and all candidates for the office of member of such house
 - (2) May receive and hear any complaint which alleges a breach of any privilege of the appropriate house or misconduct of any member employee or candidate or any violation of the appropriate code of ethics
 - (3) May obtain information with respect to any complaint filed pursuant to this section and to that end may enforce the attendance and testimony of the witnesses and the production of books and papers
 - (4) May recommend whatever sanction is appropriate with respect to a particular member employee or candidate as will best maintain in the minds of the public a good opinion of the conduct and character of members and employees of the general assembly
 - (5) May recommend legislation to the general assembly relating to the conduct and ethics of members and employees of and candidates for the general assembly
 - (6) Shall act as an advisory body to the general assembly and to individual members candidates and employees on questions relating to possible conflicts of interest
 - (7) Shall provide for the proper forms on which the statement required pursuant to section 102.02 of the Revised Code shall be filed and instructions as to the filing of the statement

Reference:

- Sec 1.03 Definition of anything of value
- Sec 3.04 Governor may remove or suspend appointee
- Sec 101.75 Resolution of disputes liability for false statement
- Sec 124.34 Removal of public officials and employees

OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION: CHAPTER 2921.

- 2921 01 Definitions
- 2921 02 Bribery
- 2921 03 Intimidation
- 2921 04 Intimidation of crime victim or witness
- 2921 11 Perjury
- 2921 12 Tampering with evidence
- 2921 13 Falsification
- 2921 21 Compounding a crime
- 2921 22 Failure to report a crime or knowledge of a death
- 2921 23 Failure to aid a law enforcement officer
- 2921 24 Disclosure of confidential information
- 2921 25 Disclosure of peace officer's home address
- 2921 31 Obstructing official business
- 2921 32 Obstructing justice
- 2921 33 Resisting arrest
- 2921 34 Escape
- 2921 35 Aiding escape or resistance to authority
- 2921 36 Illegal conveyance of weapons or prohibited items onto detention facility or institution
- 2921 37 Arrest powers of detention facility chief
- 2921 41 Theft in office; restitution; withholding of retirement benefits
- 2921 42 Having an unlawful interest in a public contract
- 2921 43 Soliciting or receiving improper compensation
- 2921 431 Soliciting improper contributions
- 2921 44 Dereliction of duty
- 2921 45 Interfering with civil rights
- 2921 51 Impersonating a peace officer or private policeman

Sec. 2921.01 As used in sections 2921 01 to 2921 45 of the Revised Code

(A) "Public official" means any elected or appointed officer or employee or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and including without limitation legislators, judges, and law enforcement officers.

(B) "Public servant" means any of the following:

(1) Any public official.

(2) Any person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor, or consultant.

(3) A candidate for public office, whether or not he is elected or appointed to the office for which he is a candidate. A person is a candidate for purposes of this division if he has been nominated according to law for election or appointment to public office, or if he has filed a petition or petitions as required by law to have his name placed on the ballot in a primary, general, or special election, or if he campaigns as a write-in candidate in any primary, general, or special election.

(C) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

(D) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

INISTRATION: CHAPTER 2921.

(E) "Detention" means arrest or confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be delinquent or unruly or detention for extradition or deportation. Detention does not include supervision of probation or parole nor constraint incidental to release or bail.

(F) "Detention facility" means any place used for the confinement of a person charged with or convicted of crime or alleged or found to be delinquent or unruly.

Sec. 2921.42

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

death

(2) Authorize, or employ the authority or influence of his office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which he, a member of his family, or any of his business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

(3) During the term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission, or board of which he was a member at the time of authorization and not let by competitive bidding or let by competitive bidding in which his is not the lowest and best bid.

items onto detention

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

ement: benefits
act
on

(5) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding when required by law and which involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public servant, member of his family, or any of his associates shall not be considered as having an interest in a public contract or the investment of public funds when all of the following apply:

liceman

(1) The interest of such person is limited to owning or controlling shares of the corporation or being a creditor of the corporation or other organization, which is the contractor on the public contract involved or which is the issuer of the security in which public funds are invested.

f the Revised Code
officer or employee or agent of
a temporary or permanent
ges, and law enforcement

(2) The shares owned or controlled by such person do not exceed five per cent of the outstanding shares of the corporation, and the amount due such person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization.

(3) Such person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving his exact status in connection with the corporation or other organization.

unction including without
master, arbitrator, advisor, or

(C) This section does not apply to a public contract in which a public servant, member of his family, or one of his business associates has an interest when all of the following apply:

s elected or appointed to the
ate for purposes of this division if
appointment to public office, or if
have his name placed on the
campaigns as a write-in

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved.

(2) The supplies or services are unobtainable elsewhere for the same or lower cost or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public servant's becoming associated with the political subdivision or governmental agency or instrumentality involved.

elective or appointive post in a
of which he directs, conducts,
any level of responsibility
ore a legislative, judicial
authorized to take evidence
ee hearing examiner
or a deposition in connection

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions.

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public servant, member of his family, or business associate, and the public servant.

takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract

(D) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A) (1) or (2) of this section is a felony of the fourth degree. Violation of division (A) (3), (4), or (5) of this section is a misdemeanor of the first degree.

(E) As used in this section, "public contract" means any of the following:

(1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either.

(2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

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Published By
The Ohio Ethics Commission
The Atlas Building
8 East Long Street, Suite 210
Columbus, Ohio 43215-0560
(614) 466-7090

HB

435

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 22, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 435

HOUSE BILL NO. 435

PUBLIC OFFICERS AND EMPLOYEES

"An Act relating to the definition of 'public servant' in the criminal code."

RECOMMENDATIONS:

- be replaced with (15 HB 435 (SA)) the same title
 have attached amendment(s) a new title
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
 zero fiscal note _____
 zero with analysis (Dept/Law)

- fiscal note(s) _____
 zero fiscal note(s) _____
 zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

David Guley

James Stender

H. G. ...

...

	Do Not Pass	No Rec	Amend

W. C. ...
Chairman's Signature

Item 3

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Rep. H.A. "Red" Boucher
Chairman, House State Affairs Committee

FROM: Rep. Max F. Gruenberg, Jr.
Co-chairman, House Judiciary Committee *MFG*

DATE: January 30, 1990

SUBJECT: Scheduling of HB 435

The House Judiciary Committee has introduced HB 435. The bill would amend the definition of the term "public servant" in the criminal code, to correct a deficiency noted by the Alaska Court of Appeals in the case of State v. Mullins.

In Mullins, an employee of a firm hired by the State to provide counselling services at a State prison was charged with accepting a bribe of \$25,000 to write a favorable report on an inmate. The court ruled that the charge must be dismissed because the employee was not a "public servant" as defined by the criminal code.

HB 435 would close this loophole in current law. The bill is ready for hearing, and I would appreciate your scheduling it at the first opportunity.

DEPARTMENT OF LAW

Proposed Amendments to HB 435
February 5, 1990

Page 1, line 16, following "person," delete "who participates":

Insert ",or employee of a person, participating"

Page 1, line 17, following "request":

Delete "or"

Insert "of, the"

Page 1, line 17, following "of":

Insert ",or under contract with"

Page 1, lines 19 - 22, following "instrumentality":

Delete all material

Page 1, lines 28 - 29, following "(D)" and page 2, lines 1 - 8:

Delete all material

Page 2, line 9:

Delete "(E)"

Page 2, lines 10 - 11:

Delete "(A) - (D) [(A) - (C)]"

Insert "(A) - (C)"

PROPOSED AMENDMENTS TO AS 11.81.900(b)(48):

(B) a person, or employee of a person, participating
[WHO PARTICIPATES] as an advisor, consultant, or assistant at the
request of, the direction of, or under contract with the state, a
municipality or other political subdivision of the state, or any
other governmental instrumentality;

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Item 5?
POUCH Y STATE CAPITOL
UNEAU ALASKA 99811
907 465 1800

MEMORANDUM

November 3, 1989

SUBJECT: Bill amending definition of "public servant"
(Work Order No. 6-1706)

TO: Representative Max Gruenberg, Jr.

FROM: John B. Gaguine *JBG*
Legislative Counsel

Enclosed you will find a bill that amends the definition of "public servant" in Title 11, the criminal code. This bill is necessary to alter the result of the Alaska Court of Appeals' decision in State v. Mullin, 778 P.2d 233 (1989), a copy of which is attached. There the court held that the state could not prosecute an employee of a counseling firm that under contract with the Department of Corrections was treating incarcerated sex offenders when the employee allegedly solicited and received \$25,000 from an offender to render a favorable progress report on the offender. Because ambiguous criminal statutes must be interpreted in favor of the accused, the court said, the definition of "public servant" in AS 11.81.900(b)(48) could not be applied to the employee, since she did not work for the state and was not directly contracting with the state.

The bill would make two changes in the definition. First it would broaden subsection (B) - defining "public servant" as "a person who participates as an advisor, consultant, or assistant at the request or direction of the state" - to include the employees of a person who advises, consults or assists. (The term "person" is defined in AS 11.81.-900(b)(39) as including, when appropriate, an organization; AS 11.81.900(b)(37) broadly defines "organization".) Mullins' attorney implied, *id.* at 234, that she would have no defense if subsection (B) had incorporated employees of an advisor, consultant, or assistant, and I think this position may be right. However, because the terms in (B) are rather vague, I also added a new subsection (D), which specifically applies to individuals in Mullins' position - persons, entities or employees of entities which are per-

Representative Max Gruenberg

Page 2

November 6, 1989

forming government services under contract or are administering state or local grants.

The change in (B) and the new subsection (D) will largely overlap. However, because (B) is imprecise and because I can conceive of some circumstances where (B) would apply and (D) would not - say where a person not in government was informally advising the governor or some other high official - I believe it is appropriate to make both changes.

This proposed change would affect a number of statutes within Title 11, and likely would affect several statutes outside of that title, since a court would probably look to the Title 11 definition if a question of interpreting "public servant" in those non-Title 11 statutes arose. Several Title 11 statutes criminalize conduct by public servants: AS 11.41.520(a)(4) (extortion); 11.41.530(a)(4) (coercion); 11.56.110 (receiving a bribe); 11.56.120 (receiving unlawful gratuities)(the charge involved in Mullins); 11.56.370 (permitting an escape); 11.56.850 (official misconduct); and 11.56.860 (misuse of confidential information). Other Title 11 statutes criminalize activities taken against public servants: AS 11.46.550 (offering a false instrument for recording); 11.56.100 (bribery); 11.56.210 (unsworn falsification); 11.56.610 (tampering with physical evidence); and 11.56.830 (impersonating a public servant). The non-Title 11 statutes that use the term are AS 05.15.200 (criminalizing making a false statement to a public servant for a game-of-chance permit), AS 12.36.090 (defining "peace officer" as public servant with power to maintain order or make arrests), and AS 36.10.200 - 36.10.210 (civil and criminal penalties for unsworn falsification about local hire meant to mislead public servant). I do not believe that the change in definition creates problems for any of these statutes.

If I may be of further assistance, please advise.

JBG:lmb
L8/012

Enclosure

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	Court of Appeals No. A-2701
Appellant,)	Trial Court No. 4FA-S88-1924CR
)	
v.)	<u>O P I N I O N</u>
)	
CHRISTINE MULLIN,)	
)	
Appellee.)	[No. 953 - August 11, 1989]

Appeal from the District Court of the State of Alaska, Fourth Judicial District, Fairbanks, Christopher E. Zimmerman, Judge.

Appearances: Robert C. Anderson, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Grace Berg Schaible, Attorney General, Juneau, for Appellant. Dick L. Madson, Law Office of Dick L. Madson, Fairbanks, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

Christine Mullin was charged with four counts of receiving unlawful gratuities, in violation of AS 11.56.120(a), which provides:

A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant

- (1) solicits a benefit, regardless of value; or
- (2) accepts or agrees to accept a benefit having a value of \$50 or more.

"Public servant" is defined in AS 11.81.900(b)(48):

"[P]ublic servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

- (A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;
- (B) a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality;
- (C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;
- (D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) through (C) of this paragraph, but who does not occupy the position.

The trial court granted Mullin's motion to dismiss the complaint on the grounds that Mullin was not a public servant within the purview of AS 11.56.120. The state appeals from the order of dismissal. We affirm.

At the time of the alleged offense, Mullin was employed by Fairbanks Treatment Associates (FTA) as a counselor. Fairbanks Treatment Associates was under contract with the State of Alaska to provide counseling services to inmates enrolled in the Sex Offender Treatment Program at the Fairbanks Correctional Center (FCC).

As a counselor, Mullin provided counseling services to inmates in the Sex Offender Treatment Program, maintained case notes recording the content of the counseling sessions and her impressions and recommendations, and contributed to reports made for participants in the

program. The criminal complaint filed against Mullin charged that Mullin solicited and agreed to accept a benefit having a value of more than \$50 from FCC inmate Arthur Smith. Specifically, the state alleged that Mullin offered to render a favorable progress report for Smith, who faced an upcoming hearing before the parole board, in exchange for \$25,000.

The state argues that Mullin was a public servant within paragraph (B) of the definition: "a person who participates as an advisor, consultant, or assistant at the request or direction of the state" Mullin contends that the omission from this definition of employees of persons participating as advisors or consultants indicates the legislature's intent not to include someone in her position within the statute.

This is a case of first impression in Alaska. We have not previously been called upon to interpret the term "public servant" as it is used in AS 11.56.120.

The state urges us to follow the federal cases interpreting 18 U.S.C. § 201, the federal bribery statute. That statute prohibits "public officials" from accepting anything of value in return for being influenced in the performance of their official duties. The statute defines "public official" as follows:

Member of Congress, Delegate, or Resident Commissioner . . . or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

18 U.S.C. § 201(a)(1).

In Dixon v. United States, 465 U.S. 482 (1984), the Supreme Court held that the executive director and rehabilitation coordinator of a

nonprofit organization designated by the City of Peoria to administer and distribute federal block grant funds were public officials for the purposes of 18 U.S.C. § 201. The Court found that the defendants had been acting "for or on behalf of" the United States in an official function, Dixon, 465 U.S. at 497, notwithstanding the fact that they had no direct contractual relationship with the United States Government. The Court reasoned that:

[T]he proper inquiry is not simply whether the person had signed a contract with the United States or agreed to serve as the Government's agent, but rather whether the person occupies a position of public trust with official federal responsibilities.

Dixon, 465 U.S. at 496. The Court found that by accepting the responsibility for distributing federal funds, the defendants had "assumed the quintessentially official role of administering a social service program established by the United States Congress." Dixon, 465 U.S. at 497. Four justices dissented from the Court's opinion on the grounds that "[t]he rule of lenity demands that 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.'" Dixon, 465 U.S. at 501 (O'Connor, J., dissenting) (quoting Rewis v. United States, 401 U.S. 808, 812 (1971)).

A case more closely analogous to the present case is United States v. Ricketts, 651 F.Supp. 283 (S.D.N.Y. 1987), aff'd, 838 F.2d 1204 (2d Cir. 1987). Ricketts was the house manager of Chrysalis, a halfway house that contracted with the Federal Bureau of Prisons, pursuant to a federal statute, to house federal inmates. Ricketts, 651 F.Supp. at 284. After finding that "[d]efendant's position is closely analogous to that of a prison guard, who is unquestionably a public official," the court held that Ricketts was a "public official" under the definition in 18 U.S.C. § 201.

The helpfulness of these cases is limited because of the differences between 18 U.S.C. § 201(a)(1) and the applicable Alaska statutes. In the federal statute, "public official" is defined to include "person[s] acting for or on behalf of the United States." The definition of "public servant" in AS 11.81.900(b)(48) does not contain similarly broad language. The legislative commentary to AS 11.81.900(b)(48) does indicate the legislature's intent to adopt a broad definition of "public servant." The commentary states:

The term "public servant" is defined broadly to include not only every category of government or public officer, but every employee of every such office or agency, every person retained to perform some government service and every person who, though not having yet assumed his official duties, has been selected to become a public servant.

The definition has been drafted to make it clear that those serving "political subdivisions" and "governmental instrumentalities" within the state are public servants. Coverage is also intended to reach persons who serve governmental instrumentalities and political subdivisions of the state in advisory or consultative capacities.

The words "whether compensated or not" have been added to insure that the bribery statutes cover individuals who are serving in a compensatory position as well as those serving without pay. The gist of the offense is the intent to influence the course of public administration. The public servant functioning gratuitously can be as effective in corrupting governmental process as the paid functionary.

Witnesses and jurors are excluded from the definition. Bribery and bribe receiving of and by such persons is covered in Article 4 of the Chapter.

Commentary on the Alaska Revised Criminal Code, Senate Journal Supplement No. 47 at 69-70 (June 12, 1978).

Like the statute itself, the commentary is ambiguous. Mullin may or may not be included in the phrase "every person retained to perform some government service." It is not clear whether this refers only to

those actually retained by the government, or whether it refers as well to those retained by private employers to do work for the government. Thus, we cannot determine from the commentary whether a person retained in a non-supervisory position by a private organization contracting with the government is a public servant.

Mullin cites cases from other jurisdictions in which bribery statutes similar to our own have been interpreted narrowly. One of these cases, State v. Pinckney, 276 N.W.2d 433 (Iowa 1979), is not directly on point. The statute involved prohibited the acceptance of gratuities only by "public officers," rather than by all public employees. The court held that Pinckney, a liquor properties manager from the Iowa Beer and Liquor Control Department, could not be prosecuted under the statute because he was only a public employee, not a public officer. The holding and reasoning in Pinckney are not applicable to the Alaska statute, which does not distinguish between "officers" and other public servants.

Mullin also cites Bailey v. People, 617 P.2d 549 (Colo. 1980), which interprets the Colorado statute prohibiting bribery of a public servant. The Colorado statute defines "public servant" as

any officer or employee of government, whether elected or appointed, and any person participating as an advisor, or consultant, engaged in the service of process, or otherwise performing a governmental function

Colo. Rev. Stat. § 18-8-101(3) (1973). "Government" is defined in the same statute:

"Government" includes any branch, subdivision, institution, or agency of the government of this state or any political subdivision within it.

Colo. Rev. Stat. § 18-8-101 (1973).

The issue in Bailey was whether an employee of the Colorado Springs Urban Renewal Effort (CURE), a corporate body created under the

authority of the Colorado Urban Renewal Law, was a public servant. The court held that the CURE employee was not a public servant, because CURE did not come within the definition of government in section 18-8-101(1). The court followed the rule cited by the dissenting justices in Dixon, that criminal statutes are to be strictly construed in favor of the accused. Since the language "any corporation" was not included in the statutory definition of government, the court held that CURE employees were not "public servants" performing a "governmental function" on behalf of a "government." Bailey, 617 P.2d at 551.

We are persuaded by the reasoning of the Colorado Supreme Court in Bailey. The rule that ambiguities in criminal statutes are to be narrowly read and strictly construed against the state is well established in Alaska. See, e.g., Newsom v. State, 726 P.2d 561, 563 (Alaska App. 1986); State v. R.H., 683 P.2d 269, 280 (Alaska App. 1984); Dailey v. State, 675 P.2d 657, 661 (Alaska App. 1984). Judge Zimmerman correctly applied that rule in this case. The language of AS 11.81.900(b)(48) does not make it clear whether someone like Mullin, an employee of a private organization contracting with the state to provide services to prison inmates, is a "public servant." Although the legislative commentary to the statute indicates that the definition is intended to be a broad one, it does not specifically address positions such as Mullin's. This ambiguity in the statutory definition of "public servant" must be strictly construed in favor of the defendant. The district court did not err in ruling that Mullin was not a public servant within the definition in AS 11.81.900(b)(48).

The order dismissing the complaint against Mullin is AFFIRMED.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 2/21/90

The JUDICIARY Committee considered:

HB 435

HOUSE BILL NO. 435

PUBLIC OFFICERS AND EMPLOYEES

"An Act relating to the definition of 'public servant' in the criminal code."

RECOMMENDATIONS:

- be replaced with HB 435 (Judiciary) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Dept of Invt 2/90
- zero fn/analysis Dept. Law

SIGNING DO PASS

Peter Jan

Cliff Davidson

Elis

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Terry Masten</u>		<input checked="" type="checkbox"/>	

Peter Jan / Max Kuenberg
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 435 (Jun)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the definition of "public servant" in the criminal code."
Sponsor: House Judiciary
Requestor: House State Affairs

Agency Affected: Department of Law
BRU: Prosecution
Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96

REVENUE	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96

FUNDING: (Thousands of Dollars)

GENERAL FUND	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Date: February 5, 1990
Approved by Commissioner: Douglas B. Bailly, Attorney General Date: February 5, 1990
Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 435

This bill amends AS 11.81.900(b)(48) to include an employee of a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality, within the criminal code's definition of a public servant.

The amendment also includes a person, or an employee of the person, who has entered into a contract with the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, to carry out services funded in whole or in part by public money, within this definition.

The bill is in response to a recent Alaska Court of Appeals decision, in State v. Mullin, where the court found that an employee of a firm paid from a publicly-funded contract was not covered under the statutory definition of a public servant. The Department of Law has suggested alternative language to correct this problem and to avoid an overly broad definition that the department believes is contained in the current version of the bill. In any event, the bill seeks to clarify existing law, and it will therefore not have a fiscal impact on the department.

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 435 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the definition of 'public ser-
7 vant' in the criminal code."

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

9 * Section 1. AS 11.81.900(b)(48) is amended to read:

10 (48) "public servant" means each of the following, whether
11 compensated or not, but does not include jurors or witnesses:

12 (A) an officer or employee of the state, a municipal-
13 ity or other political subdivision of the state, or a govern-
14 mental instrumentality of the state, including legislators,
15 members of the judiciary, and peace officers;

16 (B) a person acting [WHO PARTICIPATES] as an advisor,
17 consultant, or assistant at the request of, the [OR] direction
18 of, or under contract with the state, a municipality or other
19 political subdivision of the state, or another [A] governmental
20 instrumentality; in this subparagraph "person" includes an em-
21 ployee of the person;

22 (C) a person who serves as a member of the board or
23 commission created by statute or by legislative, judicial, or
24 administrative action by the state, a municipality or other
25 political subdivision of the state, or a governmental instrumen-
26 tality;

27 (D) a person nominated, elected, appointed, employed,
28 or designated to act in a capacity defined in (A) - (C) of this
29 paragraph, but who does not occupy the position;

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the definition of "public servant" in the criminal code."
 Sponsor: House Judiciary
 Requestor: House State Affairs

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 5, 1990
 Approved by Commissioner: Douglas E. Bailly, Attorney General Date: February 5, 1990
 Agency: Department of Law

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS CSHB 435(SA)
HOUSE 2/12/90For Bill/Resolution No. HB 435

This bill amends AS 11.81.900(b)(48) to include an employee of a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality, within the criminal code's definition of a public servant.

The amendment also includes a person, or an employee of the person, who has entered into a contract with the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, to carry out services funded in whole or in part by public money, within this definition.

The bill is in response to a recent Alaska Court of Appeals decision, in State v. Mullin, where the court found that an employee of a firm paid from a publicly-funded contract was not covered under the statutory definition of a public servant. The Department of Law has suggested alternative language to correct this problem and to avoid an overly broad definition that the department believes is contained in the current version of the bill. In any event, the bill seeks to clarify existing law, and it will therefore not have a fiscal impact on the department.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the definition
 of 'public servant'..."
 Sponsor: Judiciary Committee
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This legislation would have minimal fiscal impact on the Department of Corrections.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 02/16/90

Approved by Susan Humphrey-Barnett
 Agency: Department of Corrections

Date: 02/16/90

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 435 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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13 ity or other political subdivision of the state, or a govern-
14 mental instrumentality of the state, including legislators,
15 members of the judiciary, and peace officers;

16 (B) a person acting [WHO PARTICIPATES] as a govern-
17 mental [AN] advisor, consultant, or assistant at the request of,
18 the [OR] direction of, or under contract with the state, a
19 municipality or other political subdivision of the state, or
20 another [A] governmental instrumentality; in this subparagraph
21 "person" includes an employee of the person;

22 (C) a person who serves as a member of the board or
23 commission created by statute or by legislative, judicial, or
24 administrative action by the state, a municipality or other
25 political subdivision of the state, or a governmental instrumen-
26 tality;

27 (D) a person nominated, elected, appointed, employed,
28 or designated to act in a capacity defined in (A) - (C) of this
29 paragraph, but who does not occupy the position;

H B

4 36

HOUSE COMMITTEE REPORT

3/28

(9)
Date Referred: January 22, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/26/90

JUDICIARY

*added
3/28*

Finance

The RESOURCES Committee considered:

HB 436

HOUSE BILL NO. 436

PROTECTION OF NATIVE HUMAN REMAINS

"An Act relating to historic, prehistoric, and archeological resources."

RECOMMENDATIONS:

- be replaced with CS HB 436 (RES) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- addition: referral to the Finance Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact DNR
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>Cliff Davidson</u> DAVIDSON	<u>M. Davis</u> M. DAVIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bill Navarre</u> NAVARRE	<u>Bob Sharp</u> SHARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Bill Hand</u> HANDSON		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Carl Meunier</u> MEUNIER		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Cliff Davidson
CO- Chairman's Signature

FISCAL NOTE

cc

REQUEST:

Revision Date: 22-Mar-90 Agency Affected: Natural Resources
 Title: An Act relating to historic, prehistoric
and archeological resources. BRU: Parks & Outdoor Recreation
 Sponsor: Daividson Components: Historic Resource Mgmt
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	70.0	35.5	37.0	37.0	37.0	37.0
TRAVEL	50.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	35.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	2.0	1.5	1.5	1.5	1.5	1.5
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	157.0	82.0	83.5	83.5	83.5	83.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	157.0	82.0	83.5	83.5	83.5	83.5
FEDERAL FUNDS						
OTHER						
TOTAL	157.0	82.0	83.5	83.5	83.5	83.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 22-Mar-90

Approved by Commissioner: Tom Hauken for Lennie Gorsuch Date: 22-Mar-90
 Agency: Department of Natural Resources

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM

CSHB 436(Res) No. 1
HOUSE 3/28/90

TO: Gary Kosteko
Budget Analyst

TELEPHONE NO: 762-2630

FROM: Bob Shaw
Office of Hist. & Archaeo.

SUBJECT: HB436 Fiscal Note
Analysis for 3-16-90 Draft

Sec. 41.35.410(b) This section requires DNR to determine nature of remains and that process of determination is likely to involve travel to the field location of remains to collect information about the physical nature of the occurrence. "Further investigation" is also likely to involve travel to interview informants and research in archives and museums. Costs were estimated at 6 months archaeologist salary(\$34.5) and \$25.0 travel expenses.

Sec. 41.35.420 Dispute Resolution Committee. Expenses of this committee were estimated at \$15.0 in travel and per diem. This assumes committee members will not be reimbursed for time spent on committee duties.

Sec. 9: Disposition of Items Already Held: Costs to the Department will come from collection of information to compile a report and abstract it for distribution to tribes. Those activities will likely include travel to the field, processing of radiocarbon samples to obtain age determinations on remains, and processing of data collected. Those activities are estimated to require about 6 months archaeologist salary. Additionally, storage of remains or contractual costs for curation of remains in a museum are added expenses. Since the public will not notify DNR of burial remains in their possession unless they are notified of the existence of this requirement, we will also need to advertise the requirement statewide in newspapers, etc. Advertisement costs are estimated at 5.0. Travel and per diem costs are estimated at \$10.0, salary estimated at \$34.5, and contractual/rental costs estimated at \$30.0.

FY 1992 and FY1993 cost figures represent extensions of the above amounts. The costs for remains already held should drop out after the first year

6 February 1990

To: Members of the Committee on Natural Resources
Alaska State House of Representatives
Juneau, AK

From: David R. Yesner, Ph.D. *D.R.Y.*
Alaska Representative to the Committee on Public Archaeology,
Society for American Archaeology

Re: Repatriation Bill

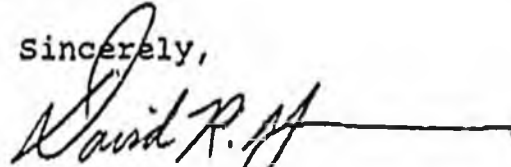
Hon. Members of the Committee on Natural Resources:

On Thursday, February 8th., the Alaska state legislature will take up a proposed bill on repatriation of human skeletal remains and funerary objects to native "tribes and cultural groups" within Alaska. The bill will apply to burials on state land and on private property that may be declared as a "state monument." It requires that all institutions must, within 30 days of passage of the act, prepare a detailed list of all human skeletal materials in their possession, and within 120 days must indicate the appropriate "tribe or cultural group" to which the remains refer, so that the appropriate group may dispose of the remains in the way they see fit. There is no definition of a "tribe or cultural group," so that it is not apparent whether simply declaring material to refer to "Eskimos" or to the Alegmiut, Malemiut, Nunamiut, Tareumiut, etc. is required. No attempt is made to provide funding for such study. Furthermore, permits must be required from the relevant native "tribe or cultural group" before any excavations may be conducted on state land, or on private land declared as a state monument, if there is even any possibility that human skeletal materials might be encountered. This presents an almost total veto power over the conduct of professional archaeology in the state, and will greatly complicate the permitting process for conducting archaeology within the state in response to federal and state requirements for cultural resource assessment and mitigation in connection with federal and state projects. It will also place great burdens on the Office of History and Archaeology, DNR, and various institutions in analyzing and assessing extant materials. In large part, the problem depends on the period of time over which it can be judged that human remains can be attributed to a particular group; there is no language in the bill to address this question. No provision is made for any length of study of materials before disposal by native groups. Nowhere in the bill is there any acknowledgment of the importance of the scientific data from human skeletal remains in helping to understand the origins and affiliation of Alaska Native groups; their ancient lifestyles, populations, health, and nutrition; or their descent through time, which has been in some cases used to justify native land claims. Finally, no provision is even made for the disposition of the materials themselves by native groups; theoretically, they may even be sold!

As the COPA representative of the state of Alaska, I would like to call your attention to the official position of the Society for American Archaeology on reburial and repatriation, a copy of which is enclosed. Briefly, the official position of the SAA is that the reburial and repatriation of human remains and associated burial goods should take place on a case-by-case basis, with the mutual agreement of native groups and professional archaeologists, rather than through the use of blanket legislation. I have also informed the Office of Governmental Relations of the SAA for their interest. At present, I request that any hearings on this bill be delayed until all interested parties have an opportunity to present their viewpoints on revisions of any contemplated legislation.

Thanks very much for your interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "David R. Yesner", with a horizontal line extending to the right from the end of the signature.

David R. Yesner
Dept. of Anthropology
University of Alaska
3211 Providence Drive
Anchorage, AK 99508

Bulletin

November 1989

Vol. 7, No. 6

OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

Reburial and Repatriation

Jeremy Sabloff, SAA president, has formed a Task Force on Reburial and Repatriation to review legislative initiatives and to advance the Society's position with the Congress and the media. Since its creation, the Task Force has worked closely with the SAA's Office of Government Relations, particularly on the historic preservation legislation, with reburial provisions, proposed by Senator Fowler and on the reburial and repatriation sections of the bill introduced by Representative Campbell. The Task Force is chaired by Keith Kintigh (Arizona St.) and includes Richard Ford (Michigan), Lynne Goldstein (Wisconsin-Milwaukee), William Lovis (Michigan St.), Vincas Steponaitis (North Carolina), and Phillip Walker (California-Santa Barbara).

The Society's position on reburial was adopted by the Executive Committee in May 1986, after a long period of study and careful consideration. This position maintains that both scientific and traditional interests in human remains are legitimate. It states that the disposition of human remains should be determined on a case-by-case basis, considering the beliefs and strength of the relationship of possible claimants to the remains and the scientific value of the remains. However, in cases where the remains are of a known individual, disposition should be determined by the closest descendants, regardless of scientific value. The statement encourages communication between scholars engaged in the study of human remains and the communities that have an affiliation with the remains.

Given the public debate concerning reburial, and because there appears to be some uncertainty within the profession about the Society's position, the SAA Statement Concerning the Treatment of Human Remains is reproduced below from the June 1986 Bulletin. Any questions or comments concerning this position should be directed to Keith Kintigh, Department of Anthropology, Arizona State University, Tempe, AZ 85287-2402.

at
pu

SAA Statement Concerning the Treatment of Human Remains

Archaeologists are committed to understanding and communicating the richness of the cultural heritage of humanity, and they acknowledge and respect the diversity of beliefs about, and interests in, the past and its material remains.

It is the ethical responsibility of archaeologists "to advocate and to aid in the conservation of archaeological data," as specified in the Bylaws of the Society for American Archaeology. Mortuary evidence is an integral part of the archaeological record of the past culture and behavior in that it informs directly upon social structure and organization and, less directly, upon aspects of religion and ideology. Human remains, as an integral part of the mortuary record, provide unique information about demography, diet, disease, and genetic relationships among human groups. Research in archaeology, bioarchaeology, biological anthropology, and medicine depends upon responsible scholars having collections of human remains available both for replicative research and research that addresses new questions or employs new analytical techniques.

There is great diversity in cultural and religious values concerning the treatment of human remains. Individuals and cultural groups have legitimate concerns derived from cultural and religious beliefs about the treatment and disposition of remains of their ancestors or members that may conflict with legitimate scientific interests in those remains. The concerns of different cultures, as presented by their designated representatives and leaders, must be recognized and respected.

The Society for American Archaeology recognizes both scientific and traditional interests in human remains. Human skeletal materials must at all times be treated with dignity and respect. Commercial exploitation of ancient human remains is abhorrent. Whatever their ultimate disposition, all human remains should receive appropriate scientific study, should be responsibly and carefully conserved, and should be accessible only for legitimate scientific or educational purposes.

The Society for American Archaeology opposes universal or indiscriminate reburial of human remains, either from ongoing

excavations or from extant collections. Conflicting claims concerning the proper treatment and disposition of particular human remains must be resolved on a case-by-case basis through consideration of the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and the strength of their relationship to the remains in question.

The scientific importance of particular human remains should be determined by their potential to aid in present and future research, and thus depends on professional judgments concerning the degree of their physical and contextual integrity. The weight accorded any claim made by an individual or group concerning particular human remains should depend upon the strength of their demonstrated biological or cultural affinity with the remains in question. If remains can be identified as those of a known individual from whom specific biological descendants can be traced, the disposition of those remains, including possible reburial, should be determined by the closest living relatives.

The Society for American Archaeology encourages close and effective communication between scholars engaged in the study of human remains and the communities that may have biological or cultural affinities to those remains. Because vandalism and looting threaten the record of the human past, including human remains, the protection of this record necessitates cooperation between archaeologists and others who share that goal.

Because controversies involving the treatment of human remains cannot properly be resolved nation-wide in a uniform way, the Society opposes any federal legislation that seeks to impose a uniform standard for

In This Issue:

Foundation For American
Archaeology
SAA Successes In Congress
Dues Crucial To SAA Future
Las Vegas Meeting
Indiana Anti-Looting Law
Teaching Archaeology

determining the disposition of all human remains.

Recognizing the diversity of potential legal interests in the material record of the human past, archaeologists have a professional responsibility to seek to ensure that laws governing that record are consistent with the objectives, principles, and formal statements of the Society for American Archaeology.

Executive Committee
The Society for American Archaeology
New Orleans, Louisiana
May 1986

(Reprinted from Bulletin 4(3):7-8, June 1986).

Foundation for American Archaeology

The fact that you are reading the SAA Bulletin tells us something about you. To begin with, you are vitally interested in archaeology and probably earn your living in the discipline in one capacity or another. Moreover, you very much want to keep up with the latest news about your Society.

You should be pleased, then, to learn that the Agnese N. Lindley Foundation in Tucson, AZ has offered the SAA a \$2,000 challenge grant for funds needed for legal fees to establish a Foundation for American Archaeology, search for a managing director and print brochures.

If you attended the National meetings held in Atlanta, you know that the SAA authorized the establishment of a Foundation for American Archaeology along the outlines presented in the March 1987 issue of the Bulletin.

The goal of the Foundation is to provide education to individuals, all levels of government that affect archaeology, and corporations concerned with archaeology. The Foundation will respond in various ways to the numerous opportunities that occur for education about issues of pothunting and concerns about reburial and the repatriation of artifacts.

There presently is no formal structure to address the many demands and opportunities to educate the public about the true nature of the discipline of archaeology. The public gets their information about archaeology from popular movies, and from sensational news accounts. The success of films and articles about archaeology indicates there is tremendous public interest in the subject which forms a natural constituency for support of archaeological research. The Foundation would tap this interest for education about the true nature of archaeology. The establishment of this

Foundation is essential, for the discipline has never faced such grave challenges nor such a receptive audience.

In order to put these ambitious plans in motion, George Gumerman was asked to chair a task force composed of Dena Dincauze, Brian Fagan, Mark Leone, William Marquardt, Stuart Strucver, and Daniel Thiel.

We are pleased to report that their efforts are bearing fruit and the challenge grant is a giant step in the right direction. What is now needed is for the SAA membership to match the \$2,000 offered by the Agnese N. Lindley Foundation. Obviously \$4,000 is only a beginning, but it is a start.

This is a modest sum. A five or ten dollar donation or more from everyone who reads this will quickly match the requisite amount. Since you have already demonstrated your interest in archaeology by the simple exercise of reading this, you will surely want to help make the Foundation a reality by contributing toward the \$2,000 challenge. You are, after all, not only contributing to your profession but, in all probability, toward your own livelihood.

Checks of any amount should be made out to: The Foundation for American Archaeology, and sent to: Society for American Archaeology, 808 17th St, NW, Suite 200, Washington, D.C. 20006.

SAA Succeeds In Congress

by
Loretta Neumann and Kathleen Reinburg
SAA Office of Government Relations

Money and reburial have headed the list of issues Congress has been tackling over the last several months. The latter is discussed in detail by Keith Klitigh in this issue of the Bulletin (see page 1, "Reburial and Repatriation"). The following summarizes some of the issues for which the SAA has been lobbying.

SAA achieved several major successes in the fiscal 1990 appropriations for Interior and Related Agencies. In a year with tight fiscal constraints placed on legislators, the outcome for cultural resource protection programs in the federal agencies was surprisingly good. SAA sought and obtained \$18.2 million for the Forest Service cultural resource management programs. This is an increase of over \$2 million compared to last year. The Historic Preservation Fund was increased to \$32.75 million. Last year it received \$30.5 million. Special add-on funds were provided for several programs. The National Park

Service was given \$500,000 to pursue anti-looting efforts in the National Park Service and \$100,000 to begin preservation technology transfer. The Bureau of Land Management was provided \$200,000 for cultural resource law enforcement in the four corners area.

In addition, the Senate included language in the National Science Foundation appropriations report which encourages NSF to provide funds for archaeology research within the biological, behavioral and social science directorate. This is the first time that archaeology has been mentioned in the appropriations report and we hope to gain support for increases in funding of archaeology at NSF.

Senator Fowler (D-GA) introduced S. 1579, National Historic Preservation Policy Act on August 4. It would amend the National Historic Preservation Act, Historic Sites Act, Archaeological Resources Protection Act, and the Abandoned Shipwreck Act to strengthen the protection of historic heritage and resources, provide for treatment of human remains, develop training and education programs, strengthen state and tribal preservation programs, develop certification for archaeologists, and implement an artifact registration system. In addition, Senator Fowler introduced S. 1578, to create an independent historic preservation agency and national center for preservation technology. SAA worked on a number of provisions in these two bills to improve them with respect to archaeology.

The SAA testified in support of expanding the Chaco Protection System (S. 798) and establishing the Petroglyph National Monument in New Mexico (S. 286); designating the Amistad National Recreation Area in Texas (H.R. 967), reauthorizing the Bureau of Land Management programs (H.R. 828), and establishing the National Museum of the American Indian (H.R. 2668 and S. 978).

For information on these and other bills, call the Congressional Bill Status office, (202) 225-1772. To obtain copies of House bills call (202) 225-3456 or write to House Document Room, H-226 Capitol, Washington, DC 20515. For Senate bills, write to Senate Document Room, SH-804 Hart, Washington D.C. 20510.

Dues Increase Crucial to Future

The Society for American Archaeology is financially sound. Now that we have finished the long range study of the Society and have a new set of Bylaws strongly endorsed by the membership, we are in a position to build for the next decade and more. Much of the dues increase announced in the last Bulletin will go to help build

THE HRDLICKA LEGACY AND KONIAG SPIRITS

by

Gordon L. Pullar
Past President, 1983-1989
Kodiak Area Native Association

Presented at the

CIRCUM-PACIFIC PREHISTORY CONFERENCE
August 2-6, 1989
Seattle, Washington

THE HRDLICKA LEGACY AND KONIAG SPIRITS
BY
GORDON L. PULLAR

During the 1930's Ales Hrdlicka, the curator of the Division of Physical Anthropology of the U.S. Museum of Natural History at the Smithsonian Institution, removed some 812 skeletal remains of the Native people from Kodiak Island, Alaska. The majority of the skeletons were taken from the village of Larsen Bay and are currently unceremoniously stored in the Smithsonian's Museum of Natural History where they make up a portion of the 18,500 Native American skeletons the Smithsonian holds (Lowen, 1988, Preston, 1989, Spotted Elk, 1989). Intensified efforts are now underway by the Native people of Kodiak Island to have the remains of their ancestors returned to the island for reburial. The effort, led by the village of Larsen Bay and the island-wide Kodiak Area Native Association, has thus far been rebuffed by the Smithsonian that claims, just as it has in other requests, that the skeletons are needed for scientific study (Brookes, 1988).

Recent scientific evidence suggests that Native people have inhabited Kodiak Island, Alaska, for nearly 6,000 years (Jordan, 1987:4). The first contact with western Europeans came just over two hundred years ago with the sighting of Kodiak Island from a Russian ship in 1761 and the first Russian settlement there in 1783 (Hrdlicka, 1944). At the time of this first contact with the Russians, there were 65 villages on the island (Tikhmeniev,

1861, from Hrdlicka, 1944) occupied by the Koniagmiut or Koniags, the island's aboriginal people. Today, there are six Koniag villages in the Kodiak Island group. They are Akhlok, Karluk, Larsen Bay, Old Harbor, Ouzinkie and Port Lions. Additionally, the town of Kodiak contains a Native community (Davis, 1984: 199). The estimated population of Koniags on Kodiak Island today is 2,500.

The Koniag village of Larsen Bay is located on the small bay of the same name which branches off the much larger Uyak Bay on the west coast of Kodiak Island. The current population of the village is 217 (Kodiak Area Native Association, 1988 Annual Report). A large salmon cannery was built in Larsen Bay in 1888 (Roppel, 1986) and continues in operation today. The village is governed by a tribal government with an elected council. A second class municipal government was also formed under the laws of the State of Alaska. A village corporation, Nu-Nacht-Pit, Inc., was established under the Alaska Native Claims Settlement Act of 1971, but ceased to exist in 1980 when it merged with the regional corporation, Koniag, Inc.

In 1926, Ales Hrdlicka, under the auspices of the Smithsonian Institution, undertook an anthropological survey of Alaska (Hrdlicka, 1944:1). His efforts ended with the 1938 summer season. Beginning in 1931 and ending in 1937, he excavated in the village of Larsen Bay (Hrdlicka, 1944:1 & 140). His stated

purpose of these excavations "was to secure the skeletal materials which the site evidently contained." (Hrdlicka, 1944:140). The purpose of the entire Alaska survey was, in Hrdlicka's words, "to learn whatever might still be possible about the living remnants of the native populations, and to gather skeletal remains that would supplement the study of the living . . ." (Hrdlicka, 1944:1). It is quite apparent that he viewed Native people as being on the road to extinction. He would, undoubtedly be very surprised that Larsen Bay is still a thriving Native community.

While Hrdlicka's name has long been prominent in the field of physical anthropology, it appears that his formal education in anthropology was limited to four months in Paris in 1896 (Stewart, 1940:8). Hrdlicka, born in Bohemia in 1869, immigrated to New York with his father in 1882 (Stewart, 1940:4). He graduated from Eclectic Medical College in New York in 1892 and from the New York Homeopathic Medical College in 1894 (Stewart, 1940:6-7). His first actual fieldwork in anthropology came in 1899 when he was given charge of the physical and medical anthropological research on the Hyde Expedition to the American Southwest and Mexico for the American Museum (Stewart, 1940:11). In 1903, he was appointed to be in charge of the new Division of Physical Anthropology at the Smithsonian (Stewart, 1940:12, Hinsley, 1981:281).

It was while he was under the employ of the American Museum of Natural History in New York that the first stark signs appeared of what would become a lifelong relationship between Hrdlicka and the dead of Native peoples. The arctic explorer Robert Peary brought back six Eskimos to New York from Greenland and left them at the American Museum (Harper, 1986:34, Preston, 1989). Four of the six soon became ill and died and Hrdlicka, in collaboration with the famed anthropologist, Franz Boas, found the opportunity to study the same Native people both in life and in death (Preston, 1989, Harper, 1986). Hrdlicka had the four Eskimos, that he had measured and photographed in life, boiled so that their flesh could be removed from their skeletons (Preston, 1989). One of the deceased, Qisuk, was the father of Minik, who, at age eight, was one of the survivors. A fake funeral and burial was staged for the benefit of Minik and it was some years later that he made the shocking discovery of his father's skeleton on display at the museum (Harper, 1986:97). A final indignity for Qisuk was that Hrdlicka saved his brain and in 1901 published an article on it, complete with photographs, titled : "An Eskimo Brain" (Harper, 1986:97). This article was just the first of several with ghoulish titles such as "New Examples of American Indian skulls with low forehead" (1908), "Catalogue of Human Crania in the U.S. National Museum", (1925), and forty years later, "Diseases of and artifacts on skulls and bones from Kodiak

Island" (1941a) and "Artifacts on human and seal skulls from Kodiak Island" (1941b).

While Hrdlicka's work of digging up Native burials may often be referred to as archaeology, it appears that even he set himself aside from that discipline saying, "And it is hoped also that our archaeological friends will no longer stand aloof, as so often in the past, but will collaborate with us to rescue not alone the evidence of man's activities, but the precious skeletal remains encountered in their excavations of ancient historic sites." (1919). Even though archaeology was a young and developing discipline at the time of Hrdlicka's digging on Kodiak Island, his techniques of excavation were inadequate even by the standards of the time (Jordan, 1987:8).

Hrdlicka seemed to feel that lack of organized objection from the Natives implied permission to remove the remains of their dead. He also claimed that he was taking only very old remains which he reasoned the Natives would not care about anyway. He said the collecting of the skeletons was ". . . carried on with the full knowledge of the natives and often in their view with their assistance. They were told that I wanted only the old "heathen" remains in which no living person had any interest; that the bones were needed for studies and for comparisons of the development, the type, and the diseases of the old with those of the present people; and that they would be treated with all

possible consideration" (1931:125).

Once again, Hrdlicka's concepts of "old" or prehistoric certainly differed from those of professional archaeology. While archaeologists speak in terms of hundreds or thousands of years, Hrdlicka's "old" was much more recent. In one incident that took place in a Yukon River Village, that he described in two different publications, he removed the skeleton of a man buried in a grave under a Russian Orthodox cross marker. He estimated the man to have been dead for thirty years (1930:139, 1943:235). In one of the descriptions of the incident, he said, "But just as the parts were all gathered, I saw below (the grave was on a slope) an old woman who appeared to be provoked at something and was talking to herself rather loudly. On sending the Indian who accompanied me down to see what the trouble was, I learned that the old woman claimed the bones to be those of her long departed husband . . ." (1930:139). Hrdlicka then put the skeleton back and "covered as well as possible" (1943:235) which he said was "to the complete satisfaction of the old dame . . ." (1930:139). Hrdlicka obviously did not always have the permission he claimed to have.

And indeed, Hrdlicka himself published accounts of secretly stealing and concealing skeletons from interior Alaska villages. (1930b:55). He also speaks of some remains he excavated and upon opening the coffins found them to be "too fresh yet" (1930:76)

and of other cases where he did take remains that still had "soft parts". (1930b:58).

So what was Ales Hrdlicka? . . . scientist? grave robber? . . . racist? There is evidence in his writings to suggest that he had a concern for preserving the purity of the white race. In 1919, he wrote, "The paramount scientific object of Physical Anthropology is the gradual completion, in collaboration with the anatomist, the physiologist, and the chemist, of the study of the normal white man living under ordinary conditions," (1919:22). He stated further, "Associated with racial studies, but of more direct and serious concern to many nations, particularly the American, are investigations into the physical, physiological, and intellectual effects of racial mixtures on progeny. Mixture of colored races with the white are largely controllable by law and general enlightenment, and if found detrimental could be reduced to a minimum. In the United States we are confronted on the one side with the grave problem of mixture of white and negro, and on the other with that of white and Indian" (1919:24).

Further, but more subtle, evidence of Hrdlicka's attitude is found in his book, The Anthropology of Kodiak Island (1944), where he capitalizes the word "White" in white man but does not capitalize the word "Native". (P. 127, 136, 153). Also in his writings on his Alaska experiences, he praises white people,

crediting them by name, for assistance given, but does not mention many Natives by name. There is rare mention of the Native residents of the village of Larsen Bay even though he spent six summers digging there.

Hrdlicka names the site of the Larsen Bay excavations Jones Point in honor of Laura Jones, the wife of the local cannery superintendent who helped in the excavations (1932:99). In a rare mention of the local Native residents, he expressed concern for leaving some equipment behind over the winter as it would be at the "mercy of nearby mixbreeds" (1944:318). Other writings such as an article for Good Health Magazine titled, "A danger to the American people from assimilation of the colored population" (March 9, 1928) seem to confirm his belief in white superiority.

The Smithsonian has agreed to return the remains of Native American individuals to tribes if they could be identified by name or if they were taken illicitly (Adams, 1987, Lowen, 1988, Robbins, 1988). As the customs of prehistoric Koniag differed from those of western societies, there are no gravestones or burial records identifying by name those who died so long ago. Just the same, the Koniag people of today know that these are the remains of their ancestors and do not need specific names attached to them to know they must be treated with respect. To the pre-contact Koniag, death did not represent an end of interpersonal relationships as the dead were kept close by in the sealed

off siderooms of their semi-subteranean houses, called barabaras (Clark, 1984, from Merck, 1980:108).

The Smithsonian maintains that Hrdlicka had permission to remove the skeletons from Larsen Bay and that local Natives actually assisted him in the excavations (letters from A. Kaepler, Smithsonian, to Larsen Bay Tribal Council, Sept. 25, 1987 and Feb. 16, 1988). The people of Larsen Bay vigorously dispute this (letters from Larsen Bay Tribal Council President, Frank Carlson, to A. Kaepler, October 27, 1987, and April 15, 1988). Dora Aga, the matriarch of Larsen Bay, remembers Hrdlicka well. In response to the Smithsonian's claim that local Natives assisted Hrdlicka, she exclaimed, "No way! He wouldn't let nobody get near that place!" (personal interview July 18, 1989). The Smithsonian also claims that no one objected to his work at Larsen Bay (Kaepler letter, Feb. 16, 1988). This claim also infuriates Dora Aga, who said several people, including herself, objected. "I called him every name in the book," she said, "Him and I were no friends at all" (personal interview July 18, 1989).

When considering whether or not permission was given to Hrdlicka to remove skeletons from Larsen Bay, it must be asked who in the village had authority to give such permission. According to Dora Aga, there was no one with such authority. Who could have the authority to give away the remains of his or her ancestors? It must also be realized that the intimidation factor

of a group of white men from Washington, D.C. coming into a remote 1930's Alaska Native village must have been tremendous. "We were green in them days," said Dora Aga, "we didn't know anything about laws" (personal interview July 18, 1989).

Due to the stance the Smithsonian has taken on the issue of repatriation of human remains to Native groups, there may be just two options available to the Natives of Larsen Bay and Kodiak Island. One is to hope for a legislative cure. Thus far such legislation has been unsuccessful. There is, however, legislation pending in Congress that would provide some remedy. These bills are H.R. 1646, the "Native American Grave and Burial Protection Act"; H.R. 1381, the "Native American Burial Preservation Act of 1989" and H.R. 1124, the "Indian Remains Reburial Act".

Another possibility is legal action, challenging the Smithsonian's legal right to hold the remains. Steps are currently being taken by Larsen Bay Tribal Council to pursue this legal avenue with the assistance of the Native American Rights Fund, a national Native American legal advocacy organization.

The struggle of Kodiak Island's Native people to have the remains of their ancestors returned for reburial is of even greater significance than the need to respect the dead. The Native population of Alaska is undergoing an epidemic of self-destruction, including alcohol and drug abuse, family violence and suicide (AFN, 1989) and Kodiak Island is no exception. One