

12191

HOUSE

JUDICIARY

abstract skills that develop during adolescence and early adulthood (Fischer, Yan, & Stewart, 2003).

Insert Figure 2 about here.

These complex growth patterns combined with methods from dynamic systems theory provide powerful tools for use in research on brain development and education, because they follow a common scale across domains. Skills in different domains demonstrate discontinuities along the same scale (Dawson-Tunik et al., 2005; Fischer & Bidell, 2006, in press). The results are especially strong and clear for cognitive development and learning, where research has clearly demonstrated a single common scale for skill complexity across diverse contents and with different methods for assessing patterns of change. Cognitive development moves along this scale whatever the domain, just as temperature follows one scale whether the object measured is a sick child, a glacier, a boiling pot of water, a volcano, or the surface of the sun. The complexity scale provides a useful ruler for educational assessments, applying for different domains, for learners and teachers, for tests and curricula (Bidell & Fischer, 1992; Dawson-Tunik & Stein, in press). It has proved useful even for tracking the ups and downs of learning a specific task, which is commonly called microdevelopment (Granott, Fischer, & Farziale, 2002).

Understanding the growth patterns behind the scale requires first addressing a common misconception about development. Most people assume unconsciously that development involves progression along a ladder from one stage to the next. However, children and likewise adults develop not along a ladder but along a web of many strands. The common complexity scale across domains does not mean that development occurs in ladder-like stages. Figure 3 illustrates the web for three domains of development in adolescents and young adults – mathematics, self-in-relationships, and reflective judgment (Fischer et al.,

2003). An individual constructs separate skills for each domain, including several different strands within each. All strands move along the same complexity scale, but the skills in one strand are independent of those in another. Sometimes strands differentiate into new, separate strands, and at other times they combine to form a new integrated strand. For some purposes skills in different domains such as reflective judgment and conceptions of self can be treated as simply separate, but as development proceeds, people often combine strands from different domains, connecting for example conceptions of self as a student with conceptions about how they know that something is true (the bases of knowledge – reflective judgment). In either case, the same complexity scale characterizes development along each strand, even though the strands involve separate skills. The same ruler measures the complexity, but this common ruler does not imply that all the skills are the same, any more than a common temperature reading means that a person with a given temperature contains the same heat energy as a summer day with that temperature.

Insert Figure 3 about here.

The growth cycle of skill construction appears in the web as *clusters of discontinuities* – angles, joinings, and separations of lines within the boxes marking the zones in which three new optimal levels emerge. These clusters capture changes for optimal performance, while ordinary, non-optimal performance takes place at lower points along the strands. That is, the same person in the same domain or strand shows a different developmental level depending on whether he or she is performing at optimal or functional level (as shown in Figure 2). People do not act consistently at one level, even for a familiar domain such as conceptions of self. Their skills vary in complexity from minute to minute depending on contextual support, motivation, fatigue, and other factors.

Cycles of Cognitive Development

Cognitive development moves through ten levels between 4 months of age and early adulthood. The levels from childhood to adulthood, which are most relevant for education, are summarized in Table 1. Among the simplest, most compelling evidence for the levels is the spurts and drops in performance that occur for optimal performance at specific ages. Research on arithmetic, self concepts, reflective judgment, moral reasoning, classification, conservation, and many other tasks shows these spurts and drops marking the onset of capacities to build skills at each of the levels.

Insert Table 1 about here.

In a study of concepts for arithmetic operations, adolescents demonstrated spurts under optimal conditions for three levels – single abstractions, abstract mappings, and abstract systems (Fischer, Kenny, & Pipp, 1990). Students between 9 and 20 years of age from diverse schools as well as a university in a mid-Western American city performed a set of arithmetic problems, such as $7 + 7 + 7 = 21$, $3 \times 7 = 21$, $5 + 9 = 14$, and $14 - 9 = 5$. They then answered questions that required them to explain the operations of addition, subtraction, multiplication, and division, and then the relations between the pairs of operations, such as addition and multiplication, or addition and subtraction. What is multiplication, and how do the problems that were calculated fit the definition of multiplication? How does multiplication relate to addition, and how do the problems involve that relation? Students first did the calculations and offered the explanations under low-support conditions, simply answering the questions on their own. Then they were provided with good, prototypic answers to the questions about the operations (high support), which they were asked to explain in their own terms. At the end of the session they were told that they would return in two weeks to do the problems again, and they should

think about the questions. When they returned, they again did the problems and answered the questions first with low support and then with high support.

Students showed dramatic jumps in performance under optimal conditions at specific ages, as shown in Figure 4 for mappings relating pairs of arithmetic operations. The spurts were especially abrupt in the second session, two weeks after the first one, when students had not only high support but also days to practice and think about the questions. Students were asked to explain the relations between addition and subtraction, addition and multiplication, multiplication and division, and subtraction and division (two versions of each question for a total of eight tasks). When they were simply asked, without any support or practice (Session 1 No Support), they showed very low levels of performance – near zero until age 16 and reaching only 32 percent correct at age 20. However, when they were given support (Session 1 Support), their performance jumped sharply between 15 and 17 years. The opportunity to think about the problems for two weeks led to an even more abrupt spurt, from 6 percent at age 15 to 88 percent at age 16 (Session 2 Support). This study was the first test of a spurt predicted solely from dynamic skill theory without any prior evidence, and Figure 4 shows that the finding was strong and unambiguous.

Insert Figure 4 about here.

Besides the spurt for mappings, the graph also shows another developmental phenomenon with strong educational relevance – *later-level consolidation*: A new kind of skill, such as relations of arithmetic operations or concepts for determining truth, emerges at one level; but it is only consolidated to produce consistent performance at a later level several years later, when the various components can be coordinated and interconnected. In the arithmetic study, the two curves showing spurts both leveled out for a few years after 16 and then spurted again to even better performance at about age 20. Such a second spurt occurs

commonly in cognitive development, reflecting the emergence of the next level, which in this case is abstract systems (Ab3). When a new level emerges, performance jumps above zero, but it typically jumps to much less than perfect performance. For example, with reflective judgment (explaining the bases of knowledge in complex dilemmas), students' performance jumped to only about 50 percent correct with the first emergence of a level (Kitchener, Lynch, Fischer, & Wood, 1993). Only five years later, with emergence of the next level, did performance approach 100 percent.

The series of discontinuities in cognitive growth define a 10-level *developmental scale* – three levels of sensorimotor actions plus the seven levels in Table 1. In addition, a different set of methods have produced independent evidence of the same scale of seven levels in Table 1. Theo Dawson (Dawson & Wilson, 2004; Dawson-Tunik et al., 2005) pioneered this research, using Rasch analysis to scale item difficulty in extensive data sets based on interviews, standardized tests, essays, and other written materials. Rasch scaling detected exactly the same seven-level scale in these data sets, demonstrating clustering of items by complexity level and gaps along the complexity scale between the clusters. The clustering holds even for adults, where age is not a factor in the ordering of items.

The successive levels that develop as shown in Table 1 indicate one kind of growth cycle, a recurring cluster of spurts in performance with emergence of each new cognitive level. Analogous to the growth cycle that produces successive layers of cortex through the common process of neuron generation and migration, the cognitive levels build over time based on a common growth process, producing a qualitatively new skill structure at each level.

Within these levels a second kind of growth cycle appears as well – a repetitive pattern of types of coordination of components that groups the levels into what are called *tiers*. This cycle first became evident in research when coders made common errors that mixed up, for

example, a 5-year-old's simple relations of concrete roles with the more abstract relations of a 15-year-old (Fischer & Elmendorf, 1986). Five-year-olds relate roles of mother with child or of doctor with patient, as when they tell stories with standard specific interactions between mother and child. Fifteen-year-olds relate instead broad, abstract roles of mother with child or doctor with patient. They describe the mother and child roles in society, for example, instead of limiting themselves to a specific, prototypical mother-child interaction. This combination of similarity and difference reflects a repetitive cycle of skill levels, a tier.

In general, development moves through at least three repetitive cycles from early infancy to adulthood. In each cycle or tier, a child or adult first controls a single unit of behavior – a single action, representation, or abstraction for the sensorimotor, representational, and abstract tiers, respectively (Fischer, 1980; Fischer & Bidell, 2006, in press). Then the person relates at least two such units to form a mapping of actions, representations, or abstractions. Next the person coordinates at least two mappings to form a system. Finally with the fourth level in a tier, the person integrates at least two systems to form a system of systems, which generates a new kind of unit: Action systems generate single representations. Representational systems generate single abstractions. Abstract systems generate single principles. (There is no evidence to date of emergence of new levels beyond single principles.) Figure 5 illustrates this cycle for the representational and abstract tiers with the metaphor of building blocks, in which the simple blocks for representations eventually create a new kind of more complex building block to begin the capacity to think abstractly. I suspect that growth cycles of this kind are pervasive in cognitive and brain development, and I will propose several cycles for brain development that by hypothesis are related to these cycles of cognitive development.

Insert Figure 5 about here.

Cycles of Cortical Development

Most research on the structure and development of the brain has focused on local, microscopic anatomy and physiology, such as how single neurons and synapses function. For connecting to education, the big picture of how the brain functions and changes with development is more obviously relevant. Although research on the brain system has been relatively sparse, it is growing rapidly, and there are sufficient findings to establish some key facts about brain development and to build initial models of cycles of brain growth (Fischer & Rose, 1994).

The first established fact about brain development – of which many scientists and educators remain unaware – is that the brain and its parts generally grow in spurts, as do other body systems (Blinkov & Glezer, 1968; Fischer & Rose, 1994; Lampl, Veldhuis, & Johnson, 1992; Noonan, Farnum, Leiferman, Lampl, Markel, & Wilsman, 2004; Thatcher, 1994). The smooth growth curves shown on pediatric charts work only for averages of many children. Individual children grow in fits and starts.

These discontinuities are evident in many different measures of brain anatomy and activity, including cortical thickness, synaptic density, cortical electrical activity, and cortical connectivity. One of the simplest characteristics that shows this pattern of spurts and drops is the energy in the electroencephalogram (EEG), which is measured by calculating the area under the curves generated by electrical activity. In a classic study Matousek and Petersen (1973) measured EEG for people between 1 and 21 years of age in Sweden. The relative energy (energy in one frequency band for a cortical region divided by energy in all bands for that region) showed highly systematic growth curves, as shown in Figure 6 for the alpha band measured in the occipital-parietal region. Growth proceeds consistently upward, but there are recurring spurts (marked by the black dots in Figure 6), plateaus, and slight drops, reminiscent

of the growth curves for development of arithmetic, reflective judgment, and other cognitive skills (Figures 1, 2, and 4). (Note that for some frequency bands (notably theta and delta) the growth curves go consistently downward, moving in similar fits and starts. Also, the form of the growth curves varies depending on the cortical region; for example, spurts during adolescence are much stronger in the prefrontal region than in the occipital region, Hudspeth & Pribram, 1992.)

Insert Figure 6 about here.

Remarkably the ages of the spurts for EEG energy correspond closely with the ages for cognitive spurts, as evident in comparisons of Figure 6 and Table 1. The correspondence is so close that it suggests a linkage between the two dynamic growth processes. This finding first inspired the simple form of the *brain growth hypothesis*: that cortical growth spurts reflect the emergence of new skill levels. However, most studies that show these spurts in brain or cognitive development measure only one – brain or cognition – not both, which means that few data exist to test whether the two in fact relate in developing individuals. Fortunately a small number of studies do measure both brain and cognitive development, and they support the brain growth hypothesis (Bell & Fox, 1994; Bell & Fox, 1996; Stauder, 1999; van der Molen & Molenaar, 1994), but clearly more research is required to test the correspondence fully.

These phenomena suggest a simple growth model of correlated successive spurts in cortical activity and cognitive capacity, but they raise questions about the nature of the brain reorganizations with each spurt as well as the relation to the cognitive reorganizations in the growth cycles shown in Figure 5. My colleagues and I have created a model of growth of cortical networks – the *network-growth hypothesis* – based on existing research, especially the findings of Thatcher (Hanlon, Thatcher, & Cline, 1999; 1992; 1994), Matousek and Petersén (1973), Hudspeth and Pribram (1990, 1992), and Somsen (Somsen, van 't Klooster, van der

Molen, van Leeuwen, & Licht, 1997). Besides EEG energy, the other most important measures from these findings involve EEG coherence, the correlation between electrical wave patterns in two regions. Correlated wave patterns indicate an active connection between two regions. Uncorrelated wave patterns indicate no active connection.

Explanation of the neural-network model requires describing the general layout of cortical areas assessed by EEG and other brain imaging techniques. Figure 7 diagrams the brain viewed from the top, with the nose marking the front of the head and the gray area indicating the prefrontal cortex, which plays an especially important role in cortical networks. The regions of the cortex are given standard names listed in the diagram: left and right hemispheres, and within each hemisphere areas called prefrontal (F), central (C), temporal (T), parietal (P), and occipital (O). Neural fibers (axons) connect parts of the cortex even across long distances, such as the frontal-parietal connections marked by the long arrows. Shorter connections are also important in neural networks, such as the prefrontal-temporal connections marked by the shorter arrows as well as connections within a cortical region, such as prefrontal-prefrontal connections (not shown). Evidence indicates that the large majority of active network connections occur within a hemisphere, as indicated by the arrows.

According to the *network-growth hypothesis*, the changes in energy shown in Figure 6 arise from developmental changes in neural networks in the brain, developments that come about through a cyclical process of rewiring and retuning networks. This growth process moves around the cortex systematically in a manner similar to that suggested by Thatcher (Hanlon et al., 1999; 1994) and illustrated in Figure 8 for the cognitive levels Rp3 and Ab1 that emerge at about 6 and 10 years. The prefrontal cortex leads the way, since empirical evidence indicates that the large majority of systematic changes with age in networks involve connections between the prefrontal cortex and other regions. Thatcher's data suggest that growth

dominates in one part of the cortex at a given time, but it undoubtedly occurs less saliently in other places as well. Also, the diagram represents the hypothesized normative pattern, but different people are likely to show different patterns in the growth cycle. Research clearly shows, for instance, differences between males and females (Hanlon et al., 1999).

Insert Figures 7 and 8 about here.

At the top of the diagram, front-back (prefrontal-occipital) connections grow more strongly than other connections as the level of representational systems Rp3 begins to develop. Gradually over several years the leading edge of growth of connections moves around the cortex, starting with the right hemisphere, where it becomes more local over time, tuning shorter connections. Halfway through the cycle, at the bottom of the diagram, the leading edge moves to the prefrontal cortex, as growth of local connections there predominate. Next it moves into the right hemisphere, starting more local and gradually moving toward longer connections until it returns to the longest, frontal-occipital connections. Here it begins the process over again, as the level of single abstractions Ab1 starts to develop. Eventually the cycle repeats, restructuring the network for the capacity of single abstractions, until eventually it completes, and the next level begins, abstract mappings Ab2.

According to the hypothesis, the network cycle corresponds to periods when particular types of learning and developmental changes occur, such as spurts in a major skill. In two studies, Martha Ann Bell has shown exactly such a relation – spurts and drops in coherence for specific cortical regions related to growth of major skills in infancy (Bell, 1998; Bell & Fox, 1996). In her ambitious study of the onset of crawling, infants who were beginning to crawl displayed high coherence connecting frontal, occipital, and parietal regions, especially in the right hemisphere. As the infants became skilled crawlers, coherence dropped. Similarly, in a case study an infant showed high frontal-temporal coherence, especially in the left

hemisphere, as she focused on babbling to produce many syllable-like sounds. The left temporal region plays an important role in language in most older children and adults.

For the minority of people who use the right hemisphere more prominently for language, the growth pattern for coherence should be different, of course. Likewise in general, individual differences in abilities and patterns of learning with age should correspond to cycle differences, based on the network-growth hypothesis. Just as infants who crawl late show a later spurt in frontal-occipital and frontal-parietal coherence, children who develop abstract thinking (Ab1 and beyond) late or learn to read late or suddenly begin to work hard at learning a sport should show parallel changes in growth of coherence in particular regions.

For cognitive development, the cycle that produces cognitive levels is nested within the wider cycle for tiers (Figure 5). Likewise, by hypothesis, the cycle for growth of networks shown in Figure 8 is nested within a larger cycle of growth of energy, coherence, and other brain characteristics that relate to tiers – the *nested network hypothesis*. For example, prefrontal energy seems to surge when a new tier emerges according to the analyses of EEG energy by Hudspeth and Pribram (1990; 1992). Also, the highest spurts in energy move around the cortex systematically, according to the evidence to date. In addition, the oscillation patterns of coherence for specific cortical connections shift in correspondence with the movement into a new cortical-network cycle (Thatcher, 1994). Presumably, as yet unspecified shifts in network connections and other brain properties co-occur with the peak shifts.

According to the nested network hypothesis, the peak energy in specific cortical regions shifts systematically as cortical network cycles change through a tier of levels, as shown in Figure 9. Note that the cortical network cycle is nested inside the peak-energy cycle in the diagram. The peak energy begins in the prefrontal cortex and then gradually moves around the cortex over long age periods as children grow new levels. The model in Figure 9 fits

reasonably with the few data that are available: Growth of peak energy moves gradually from prefrontal to occipital, parietal, central, temporal, and then back to central, parietal, occipital, and prefrontal. A reasonable hypothesis is that the first peaks (right side of the diagram) are concentrated in the right hemisphere, and the later ones in the left hemisphere; but most of the published data do not contain the information for testing this specification. This nested cycle, like the network-growth cycle in Figure 8, presumably also corresponds to particular behavioral patterns, such as focusing on some skill domain or social-emotional issue.

Insert Figure 9 about here

Cycles of Learning: Backwards Growth and Microdevelopment

The skill scale and the dynamic growth patterns that accompany it create several avenues for research on mind, brain, and education. Not only do they make possible research relating cognitive change with brain development, but they also provide a scale for measuring learning, teaching, curriculum, and other cognitive performances and products – a scale that has wide-ranging uses in educational assessment, evaluation, and practice (Dawson-Tunik & Stein, in press; Schwartz & Fischer, 2005). To illustrate this range of uses, I will focus on analysis of classroom learning as microdevelopment – growth of skill in school-related time periods, such as minutes, hours, days, and weeks during which students are supposed to learn.

When analyzed in terms of levels of constructed skill, students' performances show dynamic changes, with lots of increases and drops. These patterns of change reflect a cyclical process of skill construction, in which task characteristics interact with the student's level of expertise in the domain, among other things. The patterns also demonstrate that building of general knowledge (as opposed to learning specific "facts") is slow and hard. Much research shows that the kinds of knowledge taught in many high school and college courses – causes

of the Civil War, the concept of energy in physics, analyzing evidence for evolution, writing a convincing essay – take much longer than a semester or a year to master (Fischer et al., 2003; Salomon & Perkins, 1989).

The skill scale provides a method for measuring performance and learning across all these tasks and in any other domain and thus makes possible the assessment of any performance on a single metric as well as the comparison of performances across domains and tasks on that metric. In research on students learning over several months (middle school science students learning about magnetism, graduate students learning how to use a computer for statistical analysis, etc.) we found that learning occurs in recurring waves or scallops (Granott, 2002; Schwartz & Fischer, 2005; Yan & Fischer, 2002): A student starts with a low level of understanding a task or performance, such as using the computer to do a statistical analysis, and gradually builds up the skill in one situation, moving from actions to representations or from representations to abstractions, as shown in Figure 10. But the understanding collapses because of a change in the situation or for any of a hundred reasons. The student then builds up the understanding again and sustains it briefly, but once more it collapses. This process repeats itself many times as the student learns a new skill or understanding, producing what is called a scalloping pattern in learning.

Insert Figure 10 about here.

The collapses do not indicate difficulties. Instead they are normal and required, reflecting the need to build and rebuild a skill with variations so that the person can eventually sustain it in the face of changes in context and state. Commonly, mastering a task requires moving down to primitive levels of representations of even actions (similar to those of infants) as shown in Figure 10, so that the person can figure out the action characteristics of the task or situation. The human capacity to move down to such elementary levels provides enormous

flexibility for intelligent adaptation, because people can learn new patterns of sensorimotor action required for success in a different kind of task. Moving to a low cognitive level for a new task comprises an essential part of intelligence.

The scalloping pattern only occurs some of the time in learning situations, however. It reflects the midpoint in the learning process, as shown in Figure 11. When students are novices – not familiar or comfortable with tasks that they need to do – their performance is even more variable than that in Figure 10 (Yan & Fischer, 2002). Instead of building to a higher level skill over several activities, any relatively complex skill that they build quickly falls apart. Their performance vacillates up and down chaotically, as in the upper growth curve in Figure 11. As they acquire some knowledge of the task, they move from this chaotic pattern to the intermediate pattern of scalloping (the middle curve in Figure 11 and the curve in Figure 10), where they can sustain a higher level skill for a longer time but are still subject to abrupt, periodic collapse. After working at the task for some time (typically months or even years), they become experts who can sustain a stable, high level performance, as shown in the lower curve in Figure 11. Experts often require an initial period of exploring the task to understand its properties (“figure it out”) before reaching a stable level, which leads to a gradual rise in level, as shown in the curve. Also, they occasionally encounter some event that leads to a drop in complexity level, which is typically shortlived.

Insert Figure 11 about here.

In this way, learning involves not monotonic growth to higher levels of understanding but an extended cyclical process, in which a student repeatedly builds and rebuilds a performance. He or she moves from chaotic variation in skill level to repeated, gradual rebuilding of a skill (scalloping) and eventually to a relatively stable level of expertise. This analysis provides one example of how the skill complexity scale can illuminate learning and

other educational activities. Perhaps it will also become possible to analyze brain activity as learning progresses, to ask how changes in brain activity relate to degree of skill and expertise. It is possible that some of the brain growth cycles described earlier will be evident as learning progresses in microdevelopment.

Moving from Growth Cycles to Educational Implications

The research relating cognitive developmental cycles and scaling to educational assessment is but one of many instances in which cognitive science findings contribute straightforwardly to educational research and practice. Connections between the cycles of brain development and education, however, are farther from fruition. Eventually research directly connecting brain growth cycles with patterns of learning will illuminate the processes of learning, especially differences across individuals and contexts. For example, by hypothesis, differences in cortical network cycles relate to differences between children in both motivation to learn and effectiveness of learning in specific domains, such as spatial reasoning, mathematics, and literacy.

At present, however, efforts to link brain development research to education raise serious concerns because of carelessness and excess in "application" (chapter by Bruer, Fischer et al., 2006). Journalists, educators, and even brain scientists too readily leap from a brain research finding to an "implication" for education – which is typically nothing more than seat-of-the-pants speculation. An important case of this kind of excess and its dangers took place in the 1970s and 1980s, when a few scientists uncovered the first evidence of head growth spurts (Epstein, 1974) and then brain activity growth spurts (Fischer & Rose, 1994; John, 1977). Within a few years some scientists and educators were leaping to conclusions wholly unwarranted by the data, such as that students could not learn anything new during plateau periods between brain growth spurts. They recommended to a number of school

districts that curricula be changed to introduce no new concepts during the normative age periods of brain growth plateaus, because no new learning would occur then, they asserted (Epstein, 1978; Fischer & Lazerson, 1984). The cognitive evidence, including data on school performance and learning, never supported this speculation, but a number of school systems in North America took the recommendations seriously because the proponents claimed that they came from brain science. Several of us fought against these specious claims for several years until finally the troublesome efforts faded away.

Another common error has been to leap from evidence of critical periods in brain development – a limited window of time during which a specific experience shapes brain function – to implications about when people can and cannot learn to speak, read, do arithmetic, etc. (Bailey, Bruer, Symons, & Lichtman, 2001; Snow & Hoefnagel-Hohl¹²). These claims too represent illegitimate conclusions that are not supported by careful research evidence.

Researchers and educators in mind, brain, and education need to use normal scientific caution in drawing conclusions for educational practice. That includes refraining from leaps to educational implications from brain research until there is direct evidence assessing learning and performance – evidence that links brain to behavior and behavior in turn to practice. For example, there is great promise that cycles of brain and cognitive growth will illuminate learning and educational practice, providing powerful new tools for analyzing students' learning patterns and differences and optimizing educational interventions. Already the research on cognitive growth cycles is bearing fruit in assessing and comparing learning patterns across domains and individuals as well as relating them to teaching and curriculum. However, the current state of knowledge does not allow direct extrapolation from brain growth cycles to educational practice. Building links among mind, brain, and education requires building

Children's Health Encyclopedia

Cognitive Development

Definition

Cognitive development is the construction of thought processes, including remembering, problem solving, and decision-making, from childhood through adolescence to adulthood.

Description

It was once believed that infants lacked the ability to think or form complex ideas and remained without cognition until they learned language. It is now known that babies are aware of their surroundings and interested in exploration from the time they are born. From birth, babies begin to actively learn. They gather, sort, and process information from around them, using the data to develop perception and thinking skills.

Cognitive development refers to how a person perceives, thinks, and gains understanding of his or her world through the interaction of genetic and learned factors. Among the areas of cognitive development are information processing, intelligence, reasoning, language development, and memory.

Historically, the cognitive development of children has been studied in a variety of ways. The oldest is through intelligence tests, such as the widely used Stanford Binet Intelligence Quotient (IQ) test first adopted for use in the United States by psychologist Lewis Terman (1877-1956) in 1916 from a French model pioneered in 1905. IQ scoring is based on the concept of "mental age," according to which the scores of a child of average intelligence match his or her age, while a gifted child's performance is comparable to that of an older child, and a slow learner's scores are similar to those of a younger child. IQ tests are widely used in the United States, but they have come under increasing criticism for defining intelligence too narrowly and for being biased with regard to race and gender.

In contrast to the emphasis placed on a child's native abilities by intelligence testing, learning theory grew out of work by behaviorist researchers such as John Watson (1878-1958) and B. F. Skinner (1904-1990), who argued that children are completely malleable. Learning theory focuses on the role of environmental factors in shaping the intelligence of children, especially on a child's ability to learn by having certain behaviors rewarded and others discouraged.

Piaget's Theory of Cognitive Development

The most well-known and influential theory of cognitive development is that of French psychologist Jean Piaget (1896-1981). Piaget's theory, first published in 1952, grew out of decades of extensive observation of children, including his own, in their natural environments as opposed to the laboratory experiments of the behaviorists. Although Piaget was interested in how children reacted to their environment, he proposed a more active role for them than that suggested by learning theory. He envisioned a child's knowledge as composed of schemas, basic units of knowledge used to organize past experiences and serve as a basis for understanding new ones.

Schemas are continually being modified by two complementary processes that Piaget termed assimilation and accommodation. Assimilation refers to the process of taking in new information by incorporating it into an existing schema. In other words, people assimilate new experiences by relating them to things they already know. On the other hand, accommodation is what happens when the schema itself changes to accommodate new knowledge. According to Piaget, cognitive development involves an ongoing attempt to achieve a balance between assimilation and accommodation that he termed equilibration.

At the center of Piaget's theory is the principle that cognitive development occurs in a series of four distinct, universal stages, each characterized by increasingly sophisticated and abstract levels of thought. These stages always occur in the same order, and each builds on what was learned in the previous stage. They are as follows:

- **Sensorimotor stage (infancy):** In this period, which has six sub stages, intelligence is demonstrated through motor activity without the use of symbols. Knowledge of the world is limited, but developing, because it is based on physical interactions and experiences. Children acquire object permanence at about seven months of age (memory). Physical development (mobility) allows the child to begin developing new intellectual abilities. Some symbolic language abilities are developed at the end of this stage.
- **Pre-operational stage (toddlerhood and early childhood):** In this period, which has two sub stages, intelligence is demonstrated through the use of symbols, language use matures, and memory and imagination are developed, but thinking is done in a non-logical, non-reversible manner. Egocentric thinking predominates.
- **Concrete operational stage (elementary and early adolescence):** In this stage, characterized by seven types of conservation (number, length, liquid, mass, weight, area, and volume), intelligence is demonstrated through logical and systematic manipulation of symbols related to concrete objects. Operational thinking develops (mental actions that are reversible). Egocentric thought diminishes.
- **Formal operational stage (adolescence and adulthood):** In this stage, intelligence is demonstrated through the logical use of



Asthma
How to prevent and treat an asthma attack



symbols related to abstract concepts. Early in the period there is a return to egocentric thought. Only 35 percent of high school graduates in industrialized countries obtain formal operations; many people do not think formally during adulthood.

The most significant alternative to the work of Piaget has been the information-processing approach, which uses the computer as a model to provide new insight into how the human mind receives, stores, retrieves, and uses information. Researchers using information-processing theory to study cognitive development in children have focused on areas such as the gradual improvements in children's ability to take in information and focus selectively on certain parts of it and their increasing attention spans and capacity for memory storage. For example, researchers have found that the superior memory skills of older children are due in part to memorization strategies, such as repeating items in order to memorize them or dividing them into categories.

Infancy

As soon as they are born, infants begin learning to use their senses to explore the world around them. Most newborns can focus on and follow moving objects, distinguish the pitch and volume of sound, see all colors and distinguish their hue and brightness, and start anticipating events, such as sucking at the sight of a nipple. By three months old, infants can recognize faces; imitate the facial expressions of others, such as smiling and frowning, and respond to familiar sounds.

At six months of age, babies are just beginning to understand how the world around them works. They imitate sounds, enjoy hearing their own voice, recognize parents, fear strangers, distinguish between animate and inanimate objects, and base distance on the size of an object. They also realize that if they drop an object, they can pick it up again. At four to seven months, babies can recognize their names.

By nine months, infants can imitate gestures and actions, experiment with the physical properties of objects, understand simple words such as "no," and understand that an object still exists even when they cannot see it. They also begin to test parental responses to their behavior, such as throwing food on the floor. They remember the reaction and test the parents again to see if they get the same reaction.

At 12 months of age, babies can follow a fast moving object; can speak two to four words, including "mama" and "papa"; imitate animal sounds; associate names with objects; develop attachments to objects, such as a toy or blanket; and experience separation anxiety when away from their parents. By 18 months of age, babies are able to understand about 10-50 words; identify body parts; feel a sense of ownership by using the word "my" with certain people or objects; and can follow directions that involve two different tasks, such as picking up toys and putting them in a box.

Toddlerhood

Between 18 months to three years of age, toddlers have reached the "sensorimotor" stage of Piaget's theory of cognitive development that involves rudimentary thought. For instance, they understand the permanence of objects and people, visually follow the displacement of objects, and begin to use instruments and tools. Toddlers start to strive for more independence, which can present challenges to parents concerned for their safety. They also understand discipline and what behavior is appropriate and inappropriate, and they understand the concepts of words like "please" and "thank you."

Two-year-olds should be able to understand 100 to 150 words and start adding about ten new words per day. Toddlers also have a better understanding of emotions, such as love, trust, and fear. They begin to understand some of the ordinary aspects of everyday life, such as shopping for food, telling time, and being read to.

Preschool

Preschoolers, ages three to six, should be at the "preoperational" stage of Piaget's cognitive development theory, meaning they are using their imagery and memory skills. They should be conditioned to learning and memorizing, and their view of the world is normally very self-centered. Preschoolers usually have also developed their social interaction skills, such as playing and cooperating with other children their own age. It is normal for preschoolers to test the limits of their cognitive abilities, and they learn negative concepts and actions, such as talking back to adults, lying, and bullying. Other cognitive development in preschoolers are developing an increased attention span, learning to read, and developing structured routines, such as doing household chores.

School Age

Younger school-age children, six to 12 years old, should be at the "concrete operations" stage of Piaget's cognitive development theory, characterized by the ability to use logical and coherent actions in thinking and solving problems. They understand the concepts of permanence and conservation by learning that volume, weight, and numbers may remain constant despite changes in outward appearance. These children should be able to build on past experiences, using them to explain why some things happen. Their attention span should increase with age, from being able to focus on a task for about 15 minutes at age six to an hour by age nine.

Adolescents, ages 12 through 18, should be at the "formal operations" stage of Piaget's cognitive development theory. It is characterized by an increased independence for thinking through problems and situations. Adolescents should be able to understand pure abstractions, such as philosophy and higher math concepts. During this age, children should be able to learn and apply general information needed to adapt to specific situations. They should also be able to learn specific information and skills necessary for an occupation. A major component of the passage through adolescence is a cognitive transition. Compared to children, adolescents think in ways that are more advanced, more efficient, and generally more complex. This ability can be seen in five ways.

First, during adolescence individuals become better able than children to think about what is possible, instead of limiting their thought to what is real. Whereas children's thinking is oriented to the here and now—that is, to things and events that they can observe directly—adolescents are able to consider what they observe against a backdrop of what is possible; they can think hypothetically.

Second, during the passage into adolescence, individuals become better able to think about abstract ideas. For example, adolescents find it easier than children to comprehend the sorts of higher-order, abstract logic inherent in puns, proverbs, metaphors, and analogies. The adolescent's greater facility with abstract thinking also permits the application of advanced reasoning and logical processes to social and ideological matters. This is clearly seen in the adolescent's increased facility and interest in thinking about interpersonal relationships, politics, philosophy, religion, and morality.

Third, during adolescence individuals begin thinking more often about the process of thinking itself, or metacognition. As a result, adolescents may display increased introspection and self-consciousness. Although improvements in metacognitive abilities provide

important intellectual advantages, one potentially negative byproduct of these advances is the tendency for adolescents to develop a sort of egocentrism, or intense preoccupation with the self.

A fourth change in cognition is that thinking tends to become multidimensional, rather than limited to a single issue. Whereas children tend to think about things one aspect at a time, adolescents can see things through more complicated lenses. Adolescents describe themselves and others in more differentiated and complicated terms and find it easier to look at problems from multiple perspectives. Being able to understand that people's personalities are not one-sided or that

Cognitive development	
Age	Activity
One month	Watches person when spoken to.
Two months	Smiles at familiar person talking. Begins to follow moving person with eyes.
Four months	Shows interest in bottle, breast, familiar toy, or new surroundings.
Five months	Smiles at own image in mirror. Looks for fallen objects.
Six months	May stick out tongue in imitation. Laughs at peekaboo game. Vocalizes at mirror image. May act shy around strangers.
Seven months	Responds to own name. Tries to establish contact with a person by cough or other noise.
Eight months	Reaches for toys out of reach. Responds to "no."
Nine months	Shows likes and dislikes. May try to prevent face-washing or other activity that is disliked. Shows excitement and interest in foods or toys that are well-liked.
Ten months	Starts to understand some words. Waves bye-bye. Holds out arm or leg for dressing.
Eleven months	Repeats performance that is laughed at. Likes repetitive play. Shows interest in books.
Twelve months	May understand some "where is...?" questions. May kiss on request.
Fifteen months	Asks for objects by pointing. Starting to feed self. Negativism begins.
Eighteen months	Points to familiar objects when asked "where is...?" Mimics familiar adult activities. Know some body parts. Obeys two or three simple orders.
Two years	Names a few familiar objects. draws with crayons. Obeys found simple orders. Participates in parallel play.
Two-and-a-half years	Names several common objects. Begins to take interest in sex organs. Gives full names. Helps to put things away. Peak of negativism.
Three years	Constantly asks questions. May count to 10. Begins to draw specific objects. Dresses and undresses doll. Participates in cooperative play. Talks about things that have happened.
Four years	May make up silly words and stories. Beginning to draw pictures that represent familiar things. Pretends to read and write. May recognize a few common words, such as own name.
Five years	Can recognize and reproduce many shapes, letters, and numbers. Tells long stories. Begins to understand the difference between real events and make-believe ones. Asks meaning of words.

SOURCE: Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, 5th ed. and Child Development Institute, <http://www.childdevelopmentinfo.com>.

social situations can have different interpretations depending on one's point of view permits the adolescent to have far more sophisticated and complicated relationships with other people.

Finally, adolescents are more likely than children to see things as relative, rather than absolute. Children tend to see things in absolute terms—in black and white. Adolescents, in contrast, tend to see things as relative. They are more likely to question others' assertions and less likely to accept facts as absolute truths. This increase in relativism can be particularly exasperating to parents, who may feel that their adolescent children question everything just for the sake of argument. Difficulties often arise, for example, when adolescents begin seeing their parents' values as excessively relative.

Common Problems

Cognitive impairment is the general loss or lack of development of cognitive abilities, particularly autism and learning disabilities. The National Institutes of Mental Health (NIMH) describes learning disabilities as a disorder that affects people's ability to either interpret what they see and hear or to link information from different parts of the brain. These limitations can show up in many ways, such as specific difficulties with spoken and written language, coordination, self-control, or attention. Such difficulties extend to schoolwork and can impede learning to read or write or to do math. A child who has a learning disability may have other conditions, such as hearing problems or serious emotional disturbance. However, learning disabilities are not caused by these conditions, nor are they caused by environmental influences such as cultural differences or inappropriate instruction.

Parental Concerns

As of 2004 it is widely accepted that a child's intellectual ability is determined by a combination of heredity and environment. Thus, although a child's genetic inheritance is unchangeable, there are definite ways that parents can enhance their child's intellectual development through environmental factors. They can provide stimulating learning materials and experiences from an early age, read to and talk with their children, and help children explore the world around them. As children mature, parents can both challenge and support the child's talents. Although a supportive environment in early childhood provides a clear advantage for children, it is possible to make up for early losses in cognitive development if a supportive environment is provided at some later period, in contrast to early disruptions in physical development, which are often irreversible.

When to Call the Doctor

If, by age three, a child has problems understanding simple directions or is perplexed when asked to do something simple, the parents or primary caregiver should consult a physician or pediatrician. The child may have a delay in cognitive development. Parents should also consult a healthcare professional if, after age three, their child's cognitive development appears to be significantly slower than their peers.

REVISIONS

Books

Bjorklund, David F. *Children's Thinking: Cognitive Development and Individual Differences*. Stamford, CT: Wadsworth Publishing, 2004.

Pica, Rae. *Your Active Child: How to Boost Physical, Emotional, and Cognitive Development Through Age-Appropriate Activity*. New York: McGraw-Hill, 2003.

Thornton, Stephanie. *Growing Minds: An Introduction to Children's Cognitive Development*. New York: Palgrave Macmillan, 2003.

Wadsworth, Barry J. *Piaget's Theory of Cognitive and Affective Development: Foundations of Constructivism*, 5th ed. Upper Saddle River, NJ: Allyn & Bacon, 2003.

Periodicals

Blumberg, Fran. C., and Lori M. Sokol. "Boys' and Girls' Use of Cognitive Strategy when Learning to Play Video Games." *The Journal of General Psychology* (April 2004): 151-58.

Dahl, Ronald. "Risk-Taking and Thrill-Seeking." *Behavioral Healthcare Tomorrow* (June 2004): S56-S57.

Li, Xiaoming, and Melissa S. Atkins. "Early Childhood Computer Experience and Cognitive and Motor Development." *Pediatrics* (June 2004): 1715-22.

Thurber, Christopher A. "I Am, Therefore, I Think: Explanations of Cognitive Development." *Campiny Magazine* (July-August 2003): 36-41.

Wacharasin, Chintana, et al. "Factors Affecting Toddler Cognitive Development in Low-Income Families: Implications for Practitioners." *Infants & Young Children* (April-June 2003): 175-81.

Zinner, Susan. "The Role of Cognitive Development in Pediatric Medical Decision-Making." *Global Virtue Ethics Review* (January 2004): N/A.

Organizations

Cognitive Development Society. University of North Carolina, PO 3270, Chapel Hill, NC 27599. Web site: www.cogdevsoc.org.

National Academy of Child & Adolescent Psychiatry. 3615 Wisconsin Ave. NW, Washington, DC 20016. Web site: www.aacap.org.

Web Sites

Developmental Psychology: Cognitive Development, 2004. Available online at www.psy.pdx.edu/PsycAfe/Areas/Developmental/CogDev-Child/index.htm (accessed November 9, 2004).

Piaget's Theory of Cognitive Development, 2003. Available online at (accessed November 9, 2004).

[Article by: Ken R. Wells]

cognitive development Find

Answers.com

Sports Science and Medicine: cognitive development

Development of the thought processes by which knowledge is acquired including perception, intuition, and reasoning. Compare physical development.

Science Dictionary: cognitive development
(ˌkɒɡ-nuh-tiv)

The growth of a person's ability to learn.

Wikipedia: Theory of cognitive development

The **Theory of Cognitive Development**, one of the most historically influential theories was developed by Jean Piaget, a Swiss psychologist (1896-1980). His theory provided many central concepts in the field of developmental psychology and concerned the growth of intelligence, which for Piaget, meant the ability to more accurately represent the world and perform logical operations on representations of concepts grounded in the world. The theory concerns the emergence and acquisition of schemata—schemes of how one perceives the world—in "developmental stages", times when children are acquiring new ways of mentally representing information. The theory is considered "constructivist", meaning that, unlike nativist theories (which describe cognitive development as the unfolding of innate knowledge and abilities) or empiricist theories (which describe cognitive development as the gradual acquisition of knowledge through experience), it asserts that we construct our cognitive abilities through self-motivated action in the world. For his development of the theory, Piaget was awarded the Erasmus Prize. Piaget divided schemes that children use to understand the world through four main periods, roughly correlated with and becoming increasingly sophisticated with age.

- Sensorimotor period (years 0-2)
- Preoperational period (years 2-7)
- Concrete operational period (years 7-11)
- Formal operational period (years 11-adulthood)

Sensorimotor period



According to Piaget, this child is in the *sensorimotor period* and primarily explores the world with senses rather than through mental operations.

Infants are born with a set of congenital reflexes, according to Piaget, in addition to a drive to explore their world. Their initial schemas are formed through differentiation of the congenital reflexes.

The *sensorimotor period* is the first of the four periods. According to Piaget, this stage marks the development of essential spatial abilities and understanding of the world in six sub-stages:

- The first sub-stage, known as the *reflex schema stage*, occurs from birth to six weeks and is associated primarily with the development of reflexes. Three primary reflexes are described by Piaget: sucking of objects in the mouth, following moving or interesting objects with the eyes, and closing of the hand when an object makes contact with the palm (palmar grasp). Over these first six weeks of life, these reflexes begin to become voluntary actions; for example, the palmar reflex becomes intentional grasping. (Gruber and Vaneche, 1977).
- The second sub-stage, *primary circular reaction phase*, occurs from six weeks to four months and is associated primarily with the development of habits. Primary circular reactions or repeating of an action involving only one's own body begin. An example of this type of reaction would involve something like an infant repeating the motion of passing their hand before their face. The schema developed during this stage inform the infant about the relationships among his body parts (e.g., in passing the hand in front of his eyes he develops a motor schema for moving his arm so that the hand becomes visible.) Also at this phase, passive reactions, illlilcaused by classical or operant conditioning, can begin (Gruber et al., 1977).
- The third sub stage, the *secondary circular reactions phase*, occurs from four to nine months and is associated primarily with the development of coordination between vision and prehension. Three new abilities occur at this stage: intentional grasping for a desired object, secondary circular reactions, and differentiations between ends and means. At this stage, infants will intentionally grasp the air in the direction of a desired object, often to the amusement of friends, family, younger and older siblings, grandparents, etc. Secondary circular reactions, or the repetition of an action involving an external object begin, for example, moving a switch to turn on a light repeatedly. The differentiation between means also occurs. This is perhaps one of the most important stages of a child's growth as it signifies the dawn of logic (Gruber et al., 1977). However, babies still only have a very early rudimentary grasp of this and most of their discoveries have an "accidental" quality to them in that the initial performance of what will soon become a secondary circular reaction occurs by chance; but then operant conditioning causes the initial "accidental" behavior (which was followed by an interesting pattern of stimulation) to be repeated. And the ability to repeat the act is the result of primary circular reactions established in the previous stage. For example, when the infant's hand accidentally makes contact with an object he is looking at the infant receives both visual and tactile feedback about the object; and his subsequent ability to bring his hand into contact with other objects in his field of vision is based on the primary circular reaction of bringing his hand into his field of vision. Thus the child learns (at the level of schemata) that "if he can see it then he can also touch it" and this results in a schema which is the knowledge that his external environment is populated with solid objects.
- The fourth sub-stage, called the *coordinated of secondary circular reactions stage*, which occurs from nine to twelve months, is when Piaget (1954) thought that object permanence developed. In addition, the stage is called the co-ordination of secondary circular reactions stage, and is associated primarily with the development of logic and the coordination between means and ends. This is an extremely important stage of development, holding what Piaget calls the "first proper intelligence." This stage marks the beginning of goal orientation or intentionality, the deliberate planning of steps to meet an objective (Gruber et al. 1977).
- The fifth sub stage, the *tertiary circular reactions phase*, occurs from twelve to eighteen months and is associated primarily with the discovery of new means to meet goals. Piaget describes the child at this juncture as the "young scientist," conducting pseudo-experiments to discover new methods of meeting challenges (Gruber et al. 1977).
- The sixth sub-stage, considered "beginnings of symbolic representation", is associated primarily with the beginnings of insight, or true creativity. In this stage the trial-and-error application of schemata, which was observable during the previous stage, occurs internally (at the level of schemata rather than of motor responses), resulting in the sudden appearance of new effective behaviors (without any observable trial-and error.) This is also the time when symbols (words and images) begin to stand for other objects. This marks the passage into the preoperational stage.

The role of imitation

Piaget postulated that imitative activity is the forerunner of mental symbolism.^[1] Bodily activity, imitating the action of perceived phenomena, actually builds bodily behavioral signifiers that stand for phenomena in a comparable way to that by which mental symbols will later stand for these phenomena. Such imitative formations provide the basis upon which mental symbolic activity can later build. The symbol is, according to Piaget, an internalized imitation.

For Piaget, even perception of an object is an imitative activity, the eye tracing the shape of an object is forming a pre-symbolic concept of the object. Piaget suggests that the motions experienced here may be repeated by the child in an abbreviated fashion when recalling the object; this bodily image symbolizes the object that was perceived earlier.^[2]

1. * Ginsburg and Oppier, *Piaget's Theory of Intellectual Development*, ISBN 0-13-675140-7, p. 73

2. * Ibid., pp. 72-75

Preoperational stage

The **Preoperational stage** is the second of four stages of cognitive development. By observing sequences of play, Piaget was able to demonstrate that towards the end of the second year a qualitatively new kind of psychological functioning occurs. **(Pre)Operatory Thought** in Piagetian theory is any procedure for mentally acting on objects. The hallmark of the preoperational stage is sparse and logically inadequate mental operations.

According to Piaget, the **Pre-Operational stage** of development follows the **Sensorimotor stage** and occurs between 2-7 years of age. It includes the following processes:

Symbolic functioning—characterized by the use of mental symbols, words, or pictures, which the child uses to represent something which is not physically present.

Centration—characterized by a child focusing or attending to only one aspect of a stimulus or situation. For example, in pouring a quantity of liquid from a narrow beaker into a shallow dish, a preschool child might judge the quantity of liquid to have decreased, because it is "lower"—that is, the child attends to the height of the water, but not to the compensating increase in the diameter of the container.

Intuitive thought—occurs when the child is able to believe in something without knowing why he or she believes it.

Egocentrism—a version of centration, this denotes a tendency of a child to only think from her or his own point of view. Also, the inability of a child to take the point of view of others. Example, if a child is in trouble, he or she might cover her eyes thinking if I cannot see myself my mom cannot either.

Inability to Conserve—Through Piaget's conservation experiments (conservation of mass, volume and number) Piaget concluded that children in the preoperational stage lack perception of conservation of mass, volume, and number after the original form has changed. For example, a child in this phase will believe that a string of beads set up in a "O-O-O" pattern will have a larger number of beads than a string which has a "OOO" pattern, because the latter pattern has less space in between Os, or that a tall, thin 8-ounce cup has more liquid in it than a wide, short 8-ounce cup (see also centration, above).

Animism The child believes that inanimate objects have "lifelike" qualities and are capable of action. Example: a child plays with a doll and treats it like a real person. In a way this is like using their imagination.

Concrete operational stage

The **Concrete operational stage** is the third of four stages of cognitive development in Piaget's theory. This stage, which follows the **Preoperational stage**, occurs between the ages of 7 and 11 years and is characterized by the appropriate use of logic. important processes during this stage are:

Seriation—the ability to arrange objects in an order according to size, shape, or any other characteristic. For example, if given different-shaded objects they may make a colour gradient.

Classification—the ability to name and identify sets of objects according to appearance, size or other characteristic, including the idea that one set of objects can include another. A child is no longer subject to the illogical limitations of animism (the belief that all objects are alive and therefore have feelings).

Decentering—where the child takes into account multiple aspects of a problem to solve it. For example, the child will no longer perceive an exceptionally wide but short cup to contain less than a normally-wide, taller cup.

Reversibility—where the child understands that numbers or objects can be changed, then returned to their original state. For this reason, a child will be able to rapidly determine that if $4+4$ equals 8, $8-4$ will equal 4, the original quantity.

Conservation—understanding that quantity, length or number of items is unrelated to the arrangement or appearance of the object or items. For instance, when a child is presented with two equally-sized, full cups they will be able to discern that if water is transferred to a pitcher it will conserve the quantity and be equal to the other filled cup.

Elimination of Egocentrism—the ability to view things from another's perspective (even if they think incorrectly). For instance, show a child a comic in which Jane puts a doll under a box, leaves the room, and then Toquinta moves the doll to a drawer, and Jane comes back. A child in the concrete operations stage will say that Jane will still think it's under the box even though the child knows it is in the drawer.

Formal operational stage

The **formal operational period** is the fourth and final of the periods of cognitive development in Piaget's theory. This stage, which follows the **Concrete Operational stage**, commences at around 11 years of age (puberty) and continues into adulthood. It is characterized by acquisition of the ability to think abstractly, reason logically and draw conclusions from the information available. During this stage the young adult is able to understand such things as love, shades of gray, logical proofs, and values. Lucidly biological factors may be traced to this stage as it occurs during puberty (the time at which another period of neural pruning occurs), marking the entry to adulthood in Physiology, cognition, moral judgement (Kohlberg), Psychosexual development (Freud), and social development (Erikson). Some two thirds of people do not develop this form of reasoning fully enough that it becomes their normal mode for cognition, and so they remain, even as adults, concrete operational thinkers [1].

General information regarding the stages

These four stages have been found to have the following characteristics:

- Although the timing may vary, the sequence of the stages does not.
- Universal (not culturally specific)
- Generalizable: the representational and logical operations available to the child should extend to all kinds of concepts and content knowledge
- Stages are logically organized wholes
- Hierarchical nature of stage sequences (each successive stage incorporates elements of previous stages, but is more differentiated and integrated)
- Stages represent qualitative differences in modes of thinking, not merely quantitative differences

Challenges to Piagetian stage theory

Piagetian accounts of development have been challenged on several grounds. First, as Piaget himself noted, development does not always progress in the smooth manner his theory seems to predict. Delays, or unpredicted gaps in the developmental progression, suggest that the stage model is at best a useful approximation. More broadly, Piaget's theory is 'domain general', predicting that cognitive maturation occurs concurrently across different domains of knowledge (such as mathematics, logic, understanding of physics, of language, etc). However, more recent cognitive developmentalists have been much influenced by trends in cognitive science away from domain generality and towards domain specificity or modularity of mind, under which different cognitive faculties may be largely independent of one another and thus develop according to quite different time-tables. In this vein, many current cognitive developmentalists argue that rather than being domain general learners, children come equipped with domain specific theories, sometimes referred to as 'core knowledge', which allows them to break into learning within that domain. For example, even young infants appear to understand some basic principles of physics (e.g. that one object cannot pass through another) and human intentionality (e.g. that a hand repeatedly reaching for an object has that object, not just a particular path of motion, as its goal). These basic assumptions may be the building block out of which more elaborate knowledge is constructed.

Post Piagetian and Neo-Piagetian stages

There are three major changes to the number of stages and their definitions. First and foremost, the half stages are now shown to be stages. Pascual Leone discovered this. Almost all Post Piagetians accept this. Second, postformal stages have been shown to exist. Kurt Fischer suggested two, Michael Commons presents evidence for four postformal stages: the systematic, metasytematic, paradigmatic and cross paradigmatic. Fischer has considered a stage suggested by Biggs and Biggs. It is a stage before the early preoperational. Commons and Richards call this stage the sentential because organisms can sequence representations of concepts.

Piagetian and post-Piagetian stage theories/heuristics

- Michael Barnes' stages of religious and scientific thinking
- Michael Lamport Commons' Model of Hierarchical Complexity
- Kieran Egan's stages of understanding
- James W. Fowler's stages of faith development
- Suzy Gablik's stages of art history
- Christopher Hallpike's stages of moral understanding
- Lawrence Kohlberg's stages of moral development
- Don Leman's theory of the origins of modern thought and drama
- Charles Radding's theory of the medieval intellectual development
- R.J. Robinson's stages of history and theory of the origins of intelligence

References

- Piaget, J. (1954). "The construction of reality in the child". New York: Basic Books.
- Piaget, J. (1977). *The Essential Piaget*. ed by Howard E. Gruber and J. Jacques Voneche Gruber. New York: Basic Books.
- Piaget, J. (1983). "Piaget's theory". In P. Mussen (ed). *Handbook of Child Psychology*. 4th edition. Vol. 1. New York: Wiley.
- Piaget, J. (1995). *Sociological Studies*. London: Routledge.
- Piaget, J. (2000). "Commentary on Vygotsky". *New Ideas in Psychology*, 18, 241-259.
- Piaget, J. (2001). *Studies in Reflecting Abstraction*. Hove, UK: Psychology Press.
- Seifer, Calvin. "Educational Psychology".
- Cole, M. et al. (2005). *The Development of Children*. New York: Worth Publishers.

BB

Further reading

- Gearv, D. C. (2004). Evolution and cognitive development. In R. Burgess & K. MacDonald (Eds.), *Evolutionary perspectives on human development* (pp. 99-133). Thousand Oaks, CA: Sage Publications. Full text

Human development: biological - psychological

Stages Infancy • Childhood • Adolescence • Adulthood • Early adulthood • Middle adulthood • Late adulthood

Development Child development • Youth development • Ageing & Senescence

Theorists-theories John Bowlby attachment • Jean Piaget cognitive • Lawrence Kohlberg moral • Sigmund Freud psychosexual • Erik Erikson psychosocial

This entry is from Wikipedia, the leading user-contributed encyclopedia. It may not have been reviewed by professional editors (see full disclaimer)

Donate to Wikimedia

Join the WikiAnswers Q&A community. Post a question or answer questions about "cognitive development" at WikiAnswers.

Get the FREE Answers.com IE Toolbar! Download Now More Info

Answers.com brilliant Go 

Add Answers to the IE7 Toolbar Search Box! Add Now!

Why Teens Are Such Impulsive Risk-takers

ScienceDaily (Nov. 8, 2007) — Teenagers and adults often don't see eye to eye, and new brain research is now shedding light on some of the reasons why. Although adolescence is often characterized by increased independence and a desire for knowledge and exploration, it also is a time when brain changes can result in high-risk behaviors, addiction vulnerability, and mental illness, as different parts of the brain mature at different rates.

Recent imaging studies in humans show that brain development and connectivity are not complete until the late teens or early twenties. Combining these observations with those of experimental research, it is becoming clear that the status of both inhibitory and excitatory brain chemical systems, and connectivity between brain regions, is unique in teenagers. The teenage brain is significantly different from both the young child and the fully mature adult. In other words, the teenage brain is not just an adult brain with fewer miles on it!

The teenage brain may be more responsive to environmental stimuli and, although this may facilitate learning rates, it may also make this group more susceptible to negative stimuli, such as stress and substances of abuse and addiction. The research presented here highlights some important new advances in understanding the unique status of the teen brain.

In new research, animals exposed to either restraint stress or social isolation during puberty did not grow as fast as their unstressed counterparts and gained the least weight during adolescence, suggesting that these two kinds of stressors add up to worsen the overall effects of stress, says Russell Romeo, PhD, of Rockefeller University in New York, now at Barnard College, also in New York.

Using a behavioral test that measures how long it takes animals to give up in an aversive situation, Romeo found that animals that experienced stress during adolescence struggled less and gave up faster, suggesting that they were experiencing greater depressive-like learned helplessness behavior. Similar to the growth rates, animals experiencing both stressors exhibited the greatest level of depressive-like behavior.

Finally, measurements of corticosterone, a stress hormone, in the blood showed that animals exposed to stress during puberty had higher levels in adulthood. "We believe that stress during puberty, and not just long periods of stress, is what leads to these changes in depressive behaviors and physiological measures, as animals that were exposed to the same amount of stress, but after puberty, showed none of these changes," Romeo says.

Many studies of adolescent boys and girls show that exposure to stress during puberty may contribute to an individual's vulnerability to depression. In an effort to model how adolescent stress exposure affects neurobehavioral function in animals, Romeo and his colleagues investigated whether physical or psychological stressors experienced during puberty—for example, one hour of restraint stress every other day or social isolation—influence growth, depressive-like behaviors, and levels of stress hormones in adulthood.

Humans suffering from typical depression have three main symptoms: weight loss, feelings of learned helplessness, and elevated levels of stress hormones. Romeo's studies in rats provide evidence that these symptoms of depression can be replicated in an animal model. They also provide a way to study stress-induced behavioral changes during adolescence and may help in the development of treatments or interventions to either prevent or reverse these behavioral and physiological problems.

Scientists also are researching how the developing brain responds differently to drugs of abuse such as stimulants and examining the periods during which adolescents are most vulnerable to addiction. Research shows that the teenage brain may be particularly vulnerable to the negative effects of drugs, including increased susceptibility to addiction later in life and emotional and behavioral difficulties, which could persist and become a lifelong disability.

A new study reveals that, with repeated binges, the drug ecstasy's effect on social behavior grows more pronounced and lasts well beyond the active effects of the drug, says Jean Di Pirro, PhD, of Buffalo State College in New York. Moreover, repeated ecstasy binges cause long-term changes in body temperature regulation and levels of the brain chemicals serotonin and oxytocin. These results also suggest that binge use of ecstasy may not produce the increase in social behavior typically described by users. Reduced social contact and altered sensory experiences, such as reduced pain sensitivity, during adolescence may have serious implications for the development of normal adult social behavior and mental health.

"Animal models show unequivocally that ecstasy produces changes in the brain, like neurotoxicity of serotonin neurons, and behavior such as increased social avoidance that far outlast the immediate effects of the drug," Di Pirro says.

In other research, scientists have found that adolescents maintain drug-related associations longer than adults, leading to a greater likelihood of relapse. Once adolescent animals learn to prefer environments previously paired with cocaine, they require 75 percent more time to lose these preferences compared with adults. These data suggest that during adolescence, drug exposure will lead to addiction that will be more difficult to treat by abstinence, says Heather Brenhouse, PhD, and her colleague S. L. Anderson, PhD, of Harvard Medical School and McLean Hospital in Belmont, Mass.

Adolescents also will resume drug-seeking behavior more strongly than adults when exposed to a small reminder dose of cocaine. Based on the adolescent's greater propensity to form strong associations with rewarding stimuli, Brenhouse says, "extended treatment that involves substitution for different rewards, such as exercise or music, may be a more appropriate approach than adult-based rehabilitation of abstinence."

"To our knowledge, this information provides the first preclinical evidence that during adolescence, drug exposure produces stronger memories for drug-paired cues and contexts than in adults. Furthermore, adolescents are more susceptible to relapse after less initial drug exposure," says Brenhouse.

In the same manner that Pavlov's famous dogs salivated in response to the sound of a bell, an addict will perform drug-seeking behaviors when he or she encounters cues previously paired with drug use. Normally, the ability to associate cues in the environment with pleasurable feelings ensures the survival of an infant, through childhood and beyond. During adolescence, however, the need arises to make one's own decisions about what associations are important and worth remembering. Drugs of abuse pose an unnaturally high degree of stimulation to the reward system and may lock in a memory for its associated cues at the expense of other information.

"Adolescents therefore appear to hold stronger memories for these rewarding events, which may make extinction treatment more difficult and relapse more probable," Brenhouse says.

"By understanding these processes during adolescence, we can identify unique targets for treatment and prevention of drug abuse and addiction during this critical stage of development," says Brenhouse. "We believe that adolescents are more predisposed to process and store reward-related information differently, and therefore will require different addiction treatment strategies than adults."

In other research, a new study shows an increase in the prevalence of frequent cannabis use among youngsters accompanied by a decrease in age of first use. Use starts at a younger age and more potent forms of the drug are now available, says Gerry Jager, PhD, of the Rudolf Magnus Institute of Neuroscience at the University Medical Center Utrecht, in the Netherlands.

Jager and her colleagues studied the consequences of frequent cannabis use during adolescence for memory, learning, and brain development, using functional magnetic resonance imaging (fMRI).

Several studies indicate that the severity of cannabis use on mental health and cognition is highly dependent on the age when cannabis use begins. The reason for this could be that 1) those who begin cannabis use early in adolescence are more likely to become heavily dependent; or that 2) the brain is still maturing and is vulnerable to persistent alterations in brain function. Thus, the effects of frequent cannabis use during adolescence could be more serious than during adulthood.

In an fMRI study, Jager's lab examined 10 boys, aged 15 to 18 years, who were regular cannabis users, with use varying from once a week up to daily, for about two years. They were compared with nine non-using peers, matched for age, IQ scores, and alcohol use. All participants had to abstain from cannabis and alcohol for at least one week prior to testing to avoid any lingering effects of the drug. This was checked by testing urine samples for the presence of drug metabolites.

Subjects performed a memory task in an fMRI scanner, which showed that all subjects activated brain areas, including parts of the frontal and temporal lobes, that are well-known for their involvement in memory and in learning, says Jager.

The cannabis users activated the same brain regions as their non-using peers and performed the task equally well. However, the adolescent cannabis users displayed higher levels of activity than the controls. With task performance being normal, this could indicate that the brain has to work harder to maintain normal performance. It is unlikely that this effect is due to any lingering pharmacological effect of cannabis, as all of the adolescents were abstinent from cannabis for at least one week prior to scanning. Nevertheless, it remains to be seen whether the increased brain activity persists after more prolonged periods of abstinence.

Other research shows that the brain systems involved in reward processing are not yet fully developed in children and adolescents and that adolescents tend to behave in a more risky and impulsive manner than adults and children, says Jessica Cohen, MA, at the University of California, Los Angeles.

Moreover, adolescents tend to be more sensitive to the differences between various amounts of reward than children are, reinforcing the finding that neural areas sensitive to rewards are more fully developed in adolescents than in children. "This may help explain why adolescents tend to engage in risky activities that may result in immediate rewards more often than children," Cohen says.

The findings come from an fMRI study involving 26 participants ranging in age from 10 to 19 years old.

The group of children ranged from 10 to 12 years old, and the group of adolescents ranged from 14 to 19 years old. All participants played a computer game while pictures were taken of their brains in an fMRI machine.

All participants displayed activity in areas in the brain called the amygdala, ventral striatum, and medial prefrontal cortex on trials when they received rewards, as compared with those when they did not. Each of those areas has been associated in previous studies with increased activity when people are rewarded. Behaviorally, adolescents were more sensitive to different reward values than children were, as demonstrated by changes in the speed of responding to stimuli associated with different rewards in adolescents but not in children. Correlations with age were conducted with the neural data to determine if there were areas of the brain that portrayed the noted increased behavioral sensitivity to reward in adolescents.

An interesting relationship was observed in the striatum, an area associated with learning and receipt of reward. Some subregions within the striatum showed age-related changes in response to greater rewards and others to smaller rewards. "These results imply that the striatum may aid reward-related learning by increasing the sensitivity to both positive and negative differences in reward value, not only by increasing sensitivity to more rewarding stimuli," says Cohen.

"Armed with the knowledge that adolescents are more sensitive to reward than younger children, yet realizing, based on previous studies, that their neural regions involved in self-control are not fully developed," says Cohen, "may help clinicians understand why adolescents engage in potentially detrimental yet appealing risky behavior, such as substance abuse, and how better to teach and encourage more adaptive behavior."

In summary, research is just beginning to shed light on how previous assumptions about the teen may be incorrect. At this time, the teenage demographic is the largest worldwide, and this population has unique educational, social, and emotional needs. Consideration of the effects of substance abuse and stress needs to take into account the possible greater consequences in the teen compared to the adult.

Much research on early brain development has translated to the field of early education, and that on the aging brain is having a major impact on developing therapeutic strategies for disorders such as dementia. However, the unique features of the teenage brain are only recently being recognized and will likely have major implications for educational and medical approaches to those in this age group.

Adapted from materials provided by Society for Neuroscience.

Need to cite this story in your essay, paper, or report? Use one of the following formats:

• APA

• MLA

Society for Neuroscience (2007, November 8). Why Teens Are Such Impulsive Risk-takers. *ScienceDaily*. Retrieved February 28, 2008, from <http://www.sciencedaily.com/releases/2007/11/071107210133.htm>

Psychologist Explains Teens' Risky Decision-making Behavior

ScienceDaily (May 31, 2007) — Meg Gerrard will be the first to admit that unraveling the adolescent mind is not an easy thing. Like most parents, she's even asked her teen daughters, "What were you thinking?" after one of them was caught in a risky behavior.

But now it's Gerrard -- an Iowa State University psychology professor -- who has tried to answer that question scientifically through analysis of research from the last 12 years on adolescent risk-taking. She was invited by the Association of Psychological Science to deliver a presentation titled "A Dual Process Approach to Adolescent Decision-Making: Applications to Cancer Risk and Prevention" at its annual convention last week in Washington, D.C.

Her analysis included research she conducted with ISU colleagues on more than 10,000 youths from across the country regarding such things as smoking, use of alcohol and/or drugs, or practicing unsafe sex. She's found that one of the biggest reasons teens are so hard to figure out is because there is an impulsive element to their behavior.

"There's actually been a series of studies we've done over the last 10 or 12 years designed specifically to ask questions about what's going through their heads, or what's not going through their heads as they're making these decisions," she said. "And what's not going through their heads is a big part of the story.

"What's novel about this research is that we've demonstrated that quite a bit of adolescent decision-making is not reasoned on -- on any level," she said. "It's not because it's motivated behavior, or they've thought about how much they want to do it. It's because they just do it."

Her presentation detailed two ways humans process information to make decisions -- a more reasoned path that leads to intention to engage in a behavior; or a more intuitive path that leads to an openness or willingness to engage in a behavior. These two modes are always active in everybody, but a situation may lead an adolescent in one direction or another. Some people are more prone to operate in a more reasoned fashion, while others are more impulsive.

According to Gerrard, prior research on adolescent risk-taking behavior has treated teens like adults and assumed that they make reasoned decisions that lead to intentions to engage in specific behaviors. But she's found that their decisions are often not planned or even premeditated. Instead, they're reactive to "risk-conducive" circumstances that usually involve friends and peers.

"Parents ask kids, 'What were you thinking?' and they say, 'I don't know.' And they really don't know what they were thinking," she said.

Gerrard said that the initial risk-taking experience will influence an adolescent's intention to repeat the behavior in the future. They do consult their conscience over risk-taking, but not always in a classic

"good vs. evil" way.

"From a kid's perspective, if you're operating in this more reasoned, thoughtful [experienced] mode -- then you have the proverbial devil and the angel over your shoulder," she said. "If you're operating in the more experiential [impulsive] mode, you don't even know the angel is there. Those things are not in your mind at all, and the devil's only saying, 'This could be interesting.'"

But the research indicates it's not just the devil that made them do it. When it comes to the impulsive mode, image is everything -- specifically distinct social images of the kind of person who engages in specific risk behaviors.

The good news, according to Gerrard, is that those images can be easily shaped so parents can steer their kids from future risky decisions.

"Kids have these images or prototypes in their heads of what kind of kid does this," she said. "There's a lot of agreement about these prototypes. They're formed very early -- we have evidence that they're formed when kids are 7 to 8 years old -- and it's not that difficult to change them. Oftentimes kids who are not willing to engage in a risk behavior are not willing because they don't have a favorable prototype [of someone engaging in that risk behavior]."

But Gerrard's study suggests that parents should really use two approaches when trying to keep kids from adopting risk behaviors.

"What I think most parents and most prevention programs try and do is get kids to think about the potential negative consequences before they engage in a behavior. That's good, but it's not enough," she said. "It needs reinforcement and you need to change how they think about people who exhibit those risky behaviors."

Gerrard hopes to change the way people think about teen risk-taking behavior through her research.

Adapted from materials provided by Iowa State University, via Newswise.

Need to cite this story in your essay, paper, or report? Use one of the following formats:

• APA

• MLA

Iowa State University (2007, May 31). Psychologist Explains Teens' Risky Decision-making Behavior. *ScienceDaily*. Retrieved February 28, 2008, from <http://www.sciencedaily.com/releases/2007/05/070531093830.htm>

Adolescent Legal Competence in Court

Adolescent Development and Juvenile Justice

One of the pillars of the American justice system is the assurance that those who stand accused of crimes be mentally competent to understand and participate in their trials. The conventional standard for competence has typically focused on the effects of mental illness or mental retardation on individuals' capacities to grasp the nature of their trials or their abilities to decide how to plead. Yet as the courts, both juvenile and adult, see increasingly younger defendants some argue that the law should also take into account adolescents' lesser capacities owing to emotional and psychological immaturity.

This brief details findings from the first comprehensive assessment of juvenile capacities to participate in criminal proceedings using measures of both trial-related abilities and developmental maturity. The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice compared the responses of youth and adults in a series of hypothetical legal situations, such as plea bargains, police interrogations, and attorney-client interactions. Responses revealed the degree to which participants understood the long-term consequences of their decisions, their ability to weigh risks, and other factors related to developmental and cognitive maturity. Findings show that a significant portion of youth, especially under age 15, are likely unable to participate competently in their own trials, either in an adult or juvenile court, owing to developmental immaturity.

It is important to note that our study examined only youths' competence to stand trial, not their criminal blameworthiness (i.e., whether someone should be held fully responsible for an offense). These are two separate issues. For example, a young inexperienced driver who accidentally skidded off the road and killed another person might be competent to stand trial for the wrongful death of another, but could be judged less than fully responsible for the death because it was accidental. Whether youths of a certain age have abilities suggesting competence or incompetence to stand trial does not tell us whether youths of that age should or should not be held as responsible as adults for their offenses.

Young Adolescents More Likely to Lack Capacities for Trial

Network researchers interviewed 1,400 individuals aged 11–24 both in juvenile detention centers and in the community at large to determine whether teens differed from young adults (aged 18–24) in their abilities relevant for competence to stand trial. Youth were interviewed in Philadelphia, Los Angeles, northern Florida, and Virginia.

Using a standard assessment tool, the study first gauged the functional abilities defined in the existing legal concept of *competence to proceed*—the ability to understand the purpose and nature of the trial process; the capacity to provide relevant information to counsel and to process that information; and the ability to apply information to one's own situation in a manner that is neither distorted nor irrational.¹ This standard is regularly applied in adult courts with mentally impaired individuals.

Findings from the assessment showed that age matters. Those aged 11–13 performed significantly worse than 14–15 year olds, who performed significantly worse than 16–17 year olds and 18–24 year olds (adults).² Interestingly, the performance of 16–17 year olds did not differ from that of the young adults (aged 18–24) (see Figure 1).

The youngest group was nearly three times more likely than youth older than 15 to be significantly impaired in reasoning and understanding, two important components of legal competence. In other words, nearly one-third of 11–13 year olds and one-fifth of 14–15 year olds had deficits that courts might see as serious enough to question their ability to proceed in a trial. These patterns varied little by race-ethnicity, gender, socioeconomic status, or region of the country.

Level of Maturity Influences Important Choices

The Network next assessed youths' emotional maturity in a legal decision-making context. The most relevant aspects of maturity in this context are the ability to take into consideration long-term consequences (future orientation), perceive and comprehend risks, deflect peer influence, and weigh whether to comply with authority figures.

Using the *MacArthur Judgment Evaluation*, a tool designed specifically for this study, researchers asked respondents to recommend the best and worst choices in three hypothetical situations: responding to police interrogation when one is guilty of a crime; disclosing information during consultation with a defense attorney; and responding to a plea agreement in exchange for a guilty plea and testimony against other defendants. Choices for police interrogation included confessing, denying the offense, or refusing to speak. Choices for the attorney consultation included full or partial disclosure, denial, or refusing to cooperate. Plea agreement options included accepting or rejecting the offer. Researchers also asked participants to identify the positive and negative consequences (or risks) of each of their recommendations, and their responses were scored according to predetermined criteria for risk appraisal. Researchers measured youth's future orientation from these responses. Finally, to assess the influence of peer pressure, youth were told to imagine that their friends had chosen a different response and were given the option of changing their answer.

In general, the youngest teens (aged 11–13) proved less mature in their decision making than older youth. Younger individuals, for example, were more likely to endorse decisions that comply with what an authority seemed to want as measured by their willingness to confess and plea bargain (see Figures 2 and 3). The proportion of youth who recommended confession decreased with age, from about one-half of the 11–13 year olds to only one-fifth of the 18–24 year olds (see Figure 2). (Few individuals in any age group chose to actively deny the offense.) The proportion who advised accepting a plea agreement declined from nearly three-fourths of 11–13 year olds to one-half of young adults (see Figure 3). Once again, the study revealed few statistically significant differences among those older than age 15.

Figure 1. Young Teens are Nearly Three Times More Likely Than Older Teens or Young Adults to be Significantly Impaired in Reasoning or Understanding of the Adjudication Process

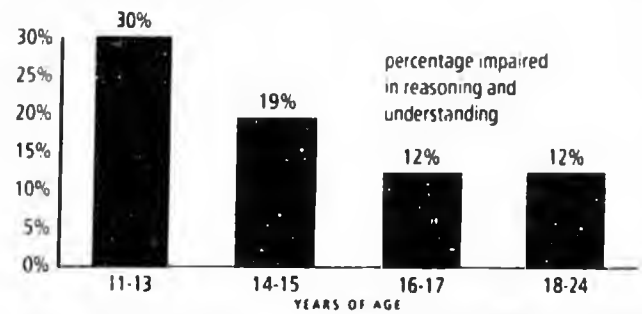


Figure 2. In Hypothetical Scenarios, Youngest Teens Were More Likely to Advise Confessing or Talking to Police

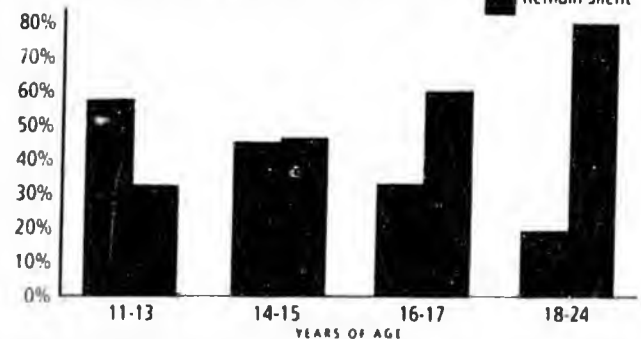


Figure 3. In Hypothetical Scenarios, Younger Youth Were More Likely to Advise Accepting a Plea Bargain



In addition, younger teens were significantly less likely to recognize the inherent risks in various decisions, and they were less likely to comprehend the long-term consequences of their decisions. The study found no differences by age in the effects of peer pressure on decision making. Those with lower IQs, however, performed more poorly on all items. Although perhaps not surprising, this finding is notable given that two-thirds of those under age 15 in juvenile detention facilities had an IQ lower than 89 compared with one-third in the community sample. Therefore, because a greater proportion of youth in the juvenile justice system are of below-average intelligence, the risk for incompetence to stand trial is even greater among adolescents who are in the juvenile justice system than it is among adolescents in the community. For example, among 11–13 year olds with very low IQ scores, more than one-half scored as poorly as adults who are typically found incompetent to stand trial. Once again, none of the findings varied by race-ethnicity, socioeconomic status, or locale.

These findings suggest that younger adolescents' developmental immaturity may affect their behavior as defendants in ways that extend beyond their competence to stand trial. Their responses indicate that they are often more willing than adults to confess to authority figures such as police, rather than remaining silent, especially if they believe it will result in an immediate reward, such as going home. For similar reasons, they may be more willing to accept a prosecutor's plea agreement.

Expanded Definition of Competence Needed

Clearly, many of the youngest adolescents are less able to understand the trial process and are less mature in their ability to take into consideration the long-term ramifications of their decisions. Yet, the relation between immaturity and competence to stand trial has not yet been defined legally. The findings reported here point to the need for a broader legal construct of competency, one that recognizes that developmental factors—namely, cognitive and psychosocial immaturity—may compromise the critical decision-making ability of many young criminal defendants in either adult or juvenile courts. The findings also suggest the need to consider various protections against trying youth who may not be competent; for example, making competency evaluations mandatory for adolescents below a certain age, and requiring competence evaluations for any youth sent to criminal court to be tried as an adult.

The findings raise a dilemma, however. If a sizable proportion of younger adolescents are unfit to stand trial owing to immaturity, how does society redress the crimes they committed? One option is to develop a dual system of competence, one for the adult courts and one for the juvenile courts, with more relaxed standards of competence in the latter. Youth deemed incompetent to stand trial in an adult court could be tried in a juvenile court under less demanding standards of competence. Of course, this lower standard of protection would also require less punitive sentencing that involves rehabilitative services for those youth. For those very few who would be deemed incompetent to stand trial in either court, dismissal of charges and adequate supervision with useful remedial services could be employed, as is already done in many states.

New Guides to Help Assess Juvenile Competence

Legal and clinical practitioners have had few, if any, resources to help them understand how immaturity manifests itself in legal contexts with juveniles. The Network therefore sought to develop a set of flexible tools and practice guides that present the issues and identify the needed information to assess youth capacity and maturity in the context of legal competence. The guides are designed to be adaptable to the many different state juvenile justice laws and to the different audiences who might use the manuals, from judges to mental health practitioners.

Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice, and Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals draw from a national survey of existing practices for competence evaluations of juveniles, a nationwide review of juvenile competency laws, and a national set of consensus panels that included judges, prosecutors, defense attorneys, and mental health clinicians. The Network has begun introducing these guides through a series of workshops with mental health and legal professionals in 87 of the 100 largest U.S. jurisdictions.¹

The findings of this latest research affirm the developmental reality of adolescence and underscore the need to expand the notion of competence to include cognitive and psychosocial maturity. The competency standard announced by the Supreme Court in *Dusky v. United States* (1960) is a functional test, and functionally it should make no difference whether the source of the defendant's incompetence is mental illness (the current standard for adults) or immaturity.

The tool is called the MacArthur Competence Assessment Tool—Criminal Adjudication (MacCAT-CA). For more information, see T. Grisso et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior*, vol. 27 (2003), pp. 333-363.

¹ These are likely conservative estimates given that those youth with more serious mental health issues were screened out of the study.

² The guides are available from Professional Resource Press, at www.ppress.com

For more information

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice
Temple University, Department of Psychology
Philadelphia, PA 19122
www.adjj.org

The Research Network on Adolescent Development and Juvenile Justice is an interdisciplinary, multi-institutional program focused on building a foundation of sound science and legal scholarship to support reform of the juvenile justice system. The network conducts research, disseminates the resulting knowledge to professionals and the public, and works to improve decision-making and to prepare the way for the next generation of juvenile justice reform.

In favor of HB364
Rep. Jon Coghill
HJUD

Parental Consent

I am amazed at the Alaska Supreme Court for choosing to remove parental consent for a medical procedure for a minor. We as parents are responsible for our children's behavior, health, and financial well-being until they are adults—which I understand to be 18 years of age. At that point, they are granted full medical privacy from their parents along with full responsibility for their actions.

In regard to abortion—a medical procedure with potential physical and emotional complications—it makes no sense to afford a minor complete privacy and full authority to make such an important decision concerning their health and future well-being. They are not equipped to make that decision completely on their own. Parental guidance is needed in regard to an unplanned pregnancy of a minor. Either the girl became pregnant by her own choice to be involved sexually, or it was forced upon her.

If sex was forced upon the girl and she is seeking an abortion without her parent's knowledge, she is trying to hide the fact that a crime was committed against her. She will experience an abrupt change in her mental/emotional health, and her parents will not know why. Often when you add a secretive abortion on top of an unexposed rape you will compound the emotional struggles that the young woman will face—even to the point of suicide. You may drive the initial emotional upheaval into the ground, but within a matter of time those issues will sprout up and show themselves later on. An abortion does not erase the fact that the rape happened or that there was a pregnancy. Parents need to be given the opportunity to help their child deal with the emotional responses that they will experience in regard to the trauma they have undergone.

If the teen girl was having sex consensually then as a parent we should be aware of that. They are engaging in very risky behavior and are opening themselves up to contracting STDs and further unwanted pregnancies. This is a behavior that parents need to be aware of in order to "parent" their teen and guide them in their decision-making process.

From my understanding of the law, it is illegal to have sex until you are 16 years of age. There should be no reason whatsoever that a child under the age of 16 should be allowed to keep their sexual activity a secret from their

parents. Are we going to protect children who are caught drinking or taking drugs from telling their parents just so that they don't have any family conflict? I think the only reason a teen doesn't want to tell her parents about her sexual activity is because she doesn't want to "get in trouble" or "disappoint her parents". We should not have laws that protect teens from getting in trouble for breaking the rules of their house. You are taking away the rights of parents to parent their teens.

Also, without parental consent an abortionist could be performing "fake" abortions on young girls—telling them they are pregnant and need an abortion, when in fact, they aren't pregnant. This is a potential scam that, if a parent were to be involved, would be less likely to happen. Adults understand more about medical terms and pregnancy—especially mothers—because they have already been through at least one pregnancy themselves.

Personally I am against abortion, but even if I was for it, I would want to know that my daughter was going in for an abortion and would want to be a part of the decision-making process and be there for the medical procedure.

Please reverse this most affronting law, and restore parental consent to the state of Alaska in regard to abortion. Not only am I asking for a reversal of the law, but I am also asking that parental consent be enforced more strongly than it was before.

I have seen the agony caused first-hand already by this fateful decision last November. I hope to never see it again, and I hope that my own teenagers would never take advantage of this heinous law themselves. The Supreme Court has taken away a basic parental right from me that shocks me and makes me shutter to the core. Please restore our rights as parents and protect the guiding, nurturing relationship that parents must have with their teenagers to raise them the healthiest way possible.

Thanks for your time.

Kim Ford
3232 Naomi Ave.
Wasilla, AK 99654

Mr.
Aron Simon

Should it "beach" to require
notification & consent?

Non-profit

HB

368



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 27, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for CSHB 368(JUD) 25-LS1326\V

Attached please find the following documents, which represent the referral file for HB368:

- Sponsor Statement
- CSHB 368(JUD) 25-LS1326\V
- Adopted amendment #1 with legal opinion
- Withdrawn amendment #2
- Fiscal Note
 - ADM - 0
- Sectional Analysis
- HB 368 (25-LS1326\M)
- Relevant Statutes and Case Law
- Ethics Committee back-up
- HJUD Report

Alaska State Legislature

Chairman

State Affairs Committee

Co-Chairman

Economic Development, Trade & Tourism
Committee

Member

Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees

Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication from

REPRESENTATIVE BOB LYNN District 31 Anchorage

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

Session:

Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931

Fax: (907) 465-4316

Toll Free: (800) 870-4391

Interim:

716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205

Fax: (907) 269-0207

HB 368 Ethics: Legislative & Gov./Lt. Gov. Sponsor Statement for Version 25-LS1326\M

No longer can a lobbyist blame the Legislature for not being allowed to buy their spouse a diamond ring!

Seriously, House Bill 368 makes common-sense changes to the state's ethics laws concerning gifts to and from legislators, legislative employees and lobbyists who are immediate family members.

This bill allows a legislator or legislative employee to accept a gift worth \$250 or more in value from anyone in a calendar year; and a gift of any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist if:

"the gift is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family."

Other proposed changes within HB 368 include:

- Modifying the restrictions on the location where candidates for governor and lieutenant governor can raise campaign funds when the legislature is in session;
- Modifying the restrictions on the location where legislators and legislative employees who are candidates for the state legislative can raise campaign funds when the legislature is in session;
- Establishing the fine for late disclosure filings that are "willful" at \$100 for each day to a maximum of \$2,500;
- Allowing the Select Committee on Legislative Ethics to publish official summaries of decisions and advisory opinions on an annual basis;

HB 368 enhances state campaign and ethics laws with fair and sensible code revisions based on recommendations from the Select Committee on Legislative Ethics and the Alaska Public Offices Commission.

###

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Dan Wayne
Legislative Legal

Fax #: 2029

Number of pages including cover: 2

From: Jane Pierson

Date: March 2008

Re: Final for HJUD on HB 368 (25-LS1326\O)

Please go final on the above-referenced bill. There is one attached amendment to be included (25-LS1326\O).1.

Should you have any questions concerning this matter, please do not hesitate to contact me.

PASSES

25-LS1326\O.1
Wayne
3/26/08

AMENDMENT # 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 368(JUD), Draft Version "O"

1 Page 1, lines 3 - 4:

2 Delete "who are members of their immediate families"

3

4 Page 2, line 30, following "(B)":

5 Insert "a contribution to a charity event from any person at any time, and"

6

7 Page 3, line 7:

8 Delete "or"

9

10 Page 3, line 10, following "family":

11 Insert ";

12

(D) a gift delivered on the premises of a state facility and

13

accepted on behalf of a recognized nonpolitical charitable organization; or

14

(E) a compassionate gift under AS 24.60.075"

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

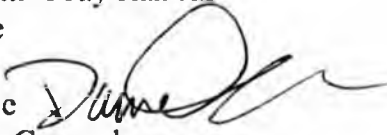
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2008

SUBJECT: What does "recognized nonpolitical charitable organization" mean? (Work Order No. 25-LS1326-O.1; CSHB 368(JUD))

TO: Representative Jay Ramras
Attn: Jane

FROM: Dan Wayne 
Legislative Counsel

Enclosed is the draft amendment to CSHB 368(JUD) that you requested. I note two things for your consideration.

First, with your permission I spoke with Joyce Anderson and she and I agreed it made sense to include in the amendment a reference to the charity event ticket exception in AS 24.60.080(c)(10), which says a legislator or legislative employee can accept tickets to certain charity events from "any person." I have done so.

Second, you have asked that the amendment contain language similar to language from AS 24.60.030(a)(2)(I), an exception to the prohibition on the use of government assets for a non legislative purpose or for a partisan political purpose. AS 24.60.030(a)(2)(I) says that AS 24.60.030(a)(2) does not prohibit the following:

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

I have included the language in the amendment as requested, reworded slightly to clarify the meaning of "on behalf," but please note that there is no legal definition in the Legislative Ethics Act for "recognized, nonpolitical charitable organization."

If I may be of further assistance, please advise.

DCW:med
08-224.med

Enclosure

TO CS LTR 318 (JUD) #2

By ~~Conley~~

Conceptual Amendment

W/D

p 5 l 3 Add the following sentence:

" In addition to any ~~other~~ fine that may be ~~imposed~~^{imposed}
finds
if the committee determines that the late filing was willful,
it may issue a private or public reprimand. "

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 366
 () Publish Date: _____

Identifier (file name): HB368-DOA-APOC-2-11-08 Dept. Affected: Administration
 Title: "An act modifying the limitation on political fundraising..." RDU: AK Public Offices Commission
 Component: AK Public Offices Commission
 Sponsor: House State Affairs Committee
 Requester: House State Affairs Committee Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill amends the campaign disclosure law by prohibiting the solicitation and acceptance of campaign contributions for candidates for governor and lieutenant governor on a day when either house of the legislature is in session in the municipality where the session is convened. It will not result in fiscal impact for the Alaska Public Offices Commission.

Prepared by: Brooke Miles
 Division: Alaska Public Offices Commission
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-334-1726
 Date/Time 2/19/08 12:02 PM
 Date 2/19/2008

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

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



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-1133

Phone: (907) 269-0205
Fax: (907) 269-0207

HB 368 Ethics: Legislative & Gov./Lt. Gov. **Sectional Analysis for Version 25-LS1326\L**

Sec. 1. Amends AS 15.13.072(g) to modify the location where a candidate for governor or lieutenant governor may not raise and spend campaign funds, changing it from the "capital city" to the "municipality in which the session is convened" when either house of the legislature is in regular or special session.

Sec. 2. Amends AS 24.60.031(a) to modify the location where a legislator or legislative employee who is a candidate for the state legislature may not raise and spend campaign funds, changing it from the "capital city" to the "municipality in which the session is convened" when either house of the legislature is in regular or special session.

Sec. 3. Amends AS 24.60.080(a) to allow a legislator or legislative employee to accept a gift worth \$250 or more in value from anyone in a calendar year; or accept a gift of any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist if:
"the gift is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family."

Sec. 4 and 5. Amends AS 24.60.080 to restructure language for the Legislative Ethics Act as it relates to legislative volunteers and trainees.

Sec. 6. Amends AS 24.60.150(a) to allow the publishing of official summaries of decisions and advisory opinions by the Select Committee on Legislative Ethics on an annual basis versus a semi-annual basis.

Sec. 7. Amends AS 24.60.260(c) to establish the fine that may be imposed for a "willful" late filing to \$100 for each day to a maximum of \$2,500. The fine remains the same at \$2 for each day to a maximum of \$100 for each late filing. If the filing was "inadvertent," the maximum fine is still \$25.

###

Alaska State Legislature

Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

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



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

Changes from original Version M to Version L HB 368: Ethics: Legislative & Gov./Lt. Gov.

Section 7, Page 5, Line 11: changed the word "shall" to "may" relating to the imposition of fines for willful late public filings.

Section 8: Deleted the section that created a definition for the term, "partisan political activity."

Relevant Statutes for HB 368

Sec. 24.60.990. Definitions.

(a) In this chapter,

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

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

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

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

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

(D) grants under AS 37.05.316 to named recipients;

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

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

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

(6) "immediate family" means

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

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

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

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

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

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

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

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

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

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

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

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

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct.

(a) A legislator or legislative employee may not

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

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

referred

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct.

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under AS 24 60.080 ;

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

LEXSEE 82 F.3D 989

Caution

As of: Mar 19, 2008

DOUG TEPER, LOUIS FEINGOLD, ALAN ULMAN, Plaintiffs-Appellees, v. ZELL MILLER, in his official capacity as Governor of the State of Georgia, MICHAEL BOWERS, in his official capacity as Attorney General of the State of Georgia, MAX CLELAND, in his official capacity as Secretary of State of the State of Georgia, STEVEN SCHEER, STEVEN WHITE, MICHAEL D. MCRAE, BRIAN FOSTER, in their official capacities as Members of the Georgia State Ethics Commission, Defendants-Appellants.

No. 96-8147

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

82 F.3d 989; 1996 U.S. App. LEXIS 9280; 9 Fla. L. Weekly Fed. C 1082

April 24, 1996, Decided

SUBSEQUENT HISTORY: [**1] As Amended
May 14, 1996.

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of Georgia. D.C. Docket No. 1-96-CV-9-WBH. DISTRICT JUDGE: Willis B. Hunt, Jr.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, a General Assembly member and potential contributors, filed an action under 2 U.S.C.S. § 453 to enjoin the enforcement of a state law that prohibited General Assembly members from accepting contributions for a federal election campaign while the General Assembly was in session. Defendant state officials appealed the order of the United States District Court for the Northern District of Georgia, which granted a preliminary injunction.

OVERVIEW: Plaintiffs, a state General Assembly member and potential contributors, filed an action to enjoin the enforcement of *Ga. Code Ann. § 21-5-35*, which prohibited General Assembly members from accepting contributions for a campaign for federal office while the General Assembly was in session. The district

court granted a preliminary injunction, and defendant state officials appealed. The court affirmed the district court's grant of the preliminary injunction, holding that plaintiffs had a substantial likelihood of success on the merits of the action. The court held that the state election law, as applied to candidates for federal office, was preempted by the Federal Election Campaign Act, 2 U.S.C.S. § 431 *et seq.* (FECA), at § 453. The court found that the interpretation of the statute by the Federal Election Commission (commission) clarified that § 453 preempted state laws such as *Ga. Code Ann. § 21-5-35* which interfered with federal elections. The court found that defendant state officials failed to raise a compelling argument that the commission's interpretation of the preemptive effect of FECA was unreasonable or inconsistent with congressional intent.

OUTCOME: The court affirmed the district court's grant of the preliminary injunction, holding that plaintiffs, a General Assembly member and potential contributors, had a substantial likelihood of success on the merits of the action. The court held that the state election law, as applied to candidates for federal office, was preempted by the Federal Election Campaign Act (Act), as was consistent with the interpretation by the Federal Election Commission.

LexisNexis(R) Headnotes

Constitutional Law > Supremacy Clause > General Overview**Governments > Federal Government > Elections**

[HN1] The Federal Election Campaign Act (Act), 2 U.S.C.S. § 431 *et seq.*, includes a preemption provision, which states that the provisions of the Act, and of rules prescribed under the Act, supersede and preempt any provision of state law with respect to election to federal office. 2 U.S.C.S. § 453.

Civil Procedure > Remedies > Injunctions > Elements > General Overview**Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions**

[HN2] In order to warrant the grant of a preliminary injunction, a plaintiff has the burden of proving four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions**Civil Procedure > Appeals > Standards of Review > De Novo Review****Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview**

[HN3] The court reviews the ultimate decision of whether to grant a preliminary injunction for abuse of discretion, but the court reviews *de novo* determinations of law made by the district court en route. The interpretation and application of a federal statute raises an issue of law, subject to plenary review.

Estate, Gift & Trust Law > Personal Gifts > General Overview**Governments > State & Territorial Governments > Elections**

[HN4] See *Ga. Code Ann. § 21-5-35(a)*.

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Abuse of Public Office > Illegal Gratuities > Elements**Governments > State & Territorial Governments > Elections**

[HN5] Under *Ga. Code Ann. § 21-5-35(a)*, "office" is understood to include federal offices.

Constitutional Law > Congressional Duties & Powers > Elections > General Overview**Governments > Federal Government > Elections**

[HN6] Congress has the well established constitutional power to regulate federal elections.

Constitutional Law > Supremacy Clause > General Overview**Governments > Federal Government > Elections**

[HN7] 2 U.S.C.S. § 453 contains a preemption provision, which states that the provisions of the Federal Election Campaign Act (Act), and of rules prescribed under the Act, supersede and preempt any provisions of state law with respect to election to federal office.

Constitutional Law > Supremacy Clause > Federal Preemption

[HN8] Under the *supremacy clause*, state law that in effect substantially impedes or frustrates federal regulation, or trespasses on a field occupied by federal law, must yield, no matter how admirable or unrelated the purpose of that law.

Constitutional Law > Supremacy Clause > General Overview**Governments > Federal Government > Elections**

[HN9] A Federal Election Commission regulation, 11 C.F.R. § 108.7(b)(3), specifies that federal law supersedes state law concerning limitation on contributions and expenditures regarding federal candidates and political committees.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation**Administrative Law > Separation of Powers > Legislative Controls > General Overview****Governments > Legislation > Interpretation**

[HN10] The United States Supreme Court has instructed that when Congress, through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policy-making authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited. If a statute is silent or ambiguous with respect to the specific issue in question, courts should accept reasonable administrative interpretations.

Administrative Law > Judicial Review > Standards of Review > General Overview**Constitutional Law > Supremacy Clause > General Overview****Governments > Legislation > Interpretation**

[HN11] Many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies. Where this is true, the United States Supreme Court has cautioned that even in the area of preemption, if the agency's choice to preempt represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, the court should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.

Constitutional Law > Supremacy Clause > General Overview**Governments > Federal Government > Elections**

[HN12] An agency like the Federal Election Commission, to which Congress has delegated broad discretion in interpreting and administering a complex federal regulatory regime, is entitled to significant latitude when acting within its statutory authority, even in its decisions as to the scope of preemption of state law.

COUNSEL: ATTORNEY(S) FOR APPELLANT(S): Michael Bowers, Atty General, Atlanta, GA, Jeff L. Milsteen -do-, Dennis R. Dunn -do-, Rebecca S. Mick -do-.

ATTORNEY(S) FOR APPELLEE(S): Kenneth S. Canfield, Doffernyre, Shields, Canfield, Knowles & Devine, Atlanta, GA.

JUDGES: Before KRAVITCH and CARNES, Circuit Judges, and HILL, Senior Circuit Judge. CARNES, Circuit Judge, concurring. HILL, Senior Circuit Judge, dissenting.

OPINION BY: KRAVITCH**OPINION**

[*991] KRAVITCH, Circuit Judge:

Officials of the State of Georgia appeal the grant of a preliminary injunction against enforcement of *O.C.G.A. § 21-5-35* to prohibit a member of the General Assembly from accepting contributions for a campaign for federal office while the General Assembly is in session. The court (Judge Hill dissenting) [*992] affirms the district court's grant of the preliminary injunction, concluding that the Georgia statute is preempted by the Federal Election Campaign Act.

1.

Doug Teper is a member of the Georgia General Assembly who is contemplating a campaign for federal office; Teper's co-plaintiffs are potential contributors to his federal campaign. As a member of the General Assembly, Teper is precluded by a provision of the Georgia Ethics in Government Act *O.C.G.A. § 21-5-35*, from accepting campaign contributions during any legislative session. The most recent session [*2] of the General Assembly began on January 8, 1996, and ran through the beginning of April. ¹ Teper asserts that had he been barred from accepting contributions for his federal campaign until the end of the session, he would have been seriously disadvantaged relative to other federal candidates who are not state officials. Indeed, he might have been faced with the dilemma of resigning from state office or foregoing his federal campaign.

1 The General Assembly session ended after oral argument in this case but before this opinion had issued. Adjournment of the General Assembly session did not render the case moot, however. The Supreme Court has recognized that often in cases challenging rules governing elections there is not sufficient time between the filing of the complaint and the election to obtain judicial resolution of the controversy before the election. Consequently, the Court has allowed such challenges to proceed under the "capable of repetition yet evading review" exception to the mootness doctrine. See *Norman v. Reed*, 502 U.S. 279, 112 S. Ct. 698, 704-05, 116 L. Ed. 2d 711 (1992); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 1414-15, 55 L. Ed. 2d 707 (1978); *Moore v. Ogilvie*, 394 U.S. 814, 89 S. Ct. 1493, 1494, 23 L. Ed. 2d 1 (1969); see also *American Civil Liberties Union v. Florida Bar*, 999 F.2d 1486, 1496-97 (11th Cir. 1993).

This exception applies under two conditions: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again." *Weinstein v. Bradford*, 423 U.S. 147, 96 S. Ct. 347, 348, 46 L. Ed. 2d 350 (1975) (per curiam); see also *News-Journal Corp. v. Foxman*, 939 F.2d 1499, 1507 (11th Cir. 1991). Application of the "capable of repetition yet avoiding review" exception is particularly appropriate in cases like Teper's presenting "as applied" challenges to state law, because "the construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simpli-

lying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held." *Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274, 1282-83 n.8, 39 L. Ed. 2d 714 (1974). Given that our decision in this expedited appeal has come too late for the current legislative session, because Teper himself certainly could desire to accept campaign contributions during a future session, and in view of the importance of this issue and its possible bearing on other similarly situated state elected officeholders, this case is not mooted just because the General Assembly recently has adjourned.

[**3] Teper contends that § 21-5-35 is preempted by federal campaign finance laws, which place no such prohibition on the timing of campaign contributions. In particular, [HN1] the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431 et seq., includes a preemption provision, which states that "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453.

On January 2, 1996, Teper filed a motion in district court requesting a preliminary injunction prohibiting Georgia state officials ("the State") from enforcing § 21-5-35 as it applies to candidates for federal office. The district court, after concluding that Teper had standing to challenge the state statute, determined that Teper had a substantial likelihood of success on the merits of his claim that § 21-5-35 was preempted by FECA and regulations promulgated by the Federal Election Commission ("FEC") under the Act.² Consequently, the district court preliminarily enjoined enforcement of § 21-5-35 as it relates to federal elections.

2 In addition to the winning preemption claim, Teper argued to the district court that enforcement of § 21-5-35 violated the *First Amendment* and the *Equal Protection Clause*. The district court did not reach these claims, and they are not before this court on appeal.

[**4]

3 [HN2] In order to warrant the grant of a preliminary injunction, a plaintiff has the burden of proving four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause the defendant; and (4) that granting the injunction would not disserve the public interest. See, e.g., *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994). The district court found that Teper had established the second,

third, and fourth of these factors before proceeding to focus on the first.

[*993] II.

The sole issue on appeal is whether Teper has a substantial likelihood of success on the merits of his claim that *O.C.G.A. § 21-5-35* is preempted by FECA and FEC regulations. The district court, in granting Teper a preliminary injunction, concluded that *O.C.G.A. § 21-5-35*, as applied to federal candidates, falls within the scope of FECA's preemption provision. [HN3] We review the ultimate decision of whether to grant a preliminary injunction [**5] for abuse of discretion, but we review de novo determinations of law made by the district court en route. *Haitian Refugee Ctr., Inc. v. Baker*, 953 F.2d 1498, 1505 (11th Cir.), cert. denied, 502 U.S. 1122, 112 S. Ct. 1245, 117 L. Ed. 2d 477 (1992). The interpretation and application of a federal statute raises an issue of law, subject to plenary review. See, e.g., *United States v. McLeod*, 53 F.3d 322, 324 (11th Cir. 1995).

Preempt. n doctrine is rooted in the *Supremacy Clause* and grows from the premise that when state law conflicts or interferes with federal law, state law must give way. See, e.g., *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 113 S. Ct. 1732, 1737, 123 L. Ed. 2d 387 (1993); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S. Ct. 2608, 2617, 120 L. Ed. 2d 407 (1992). Federalism concerns counsel that state law should not be found preempted unless that is "the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S. Ct. 1146, 1152, 91 L. Ed. 1447 (1947). "Clear and manifest" does not necessarily mean "express," however, and Congress's intent to preempt can be implied from the structure and purpose of a statute even if it is not unambiguously stated in the text. *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S. Ct. 1305, 1309, 51 L. Ed. 2d 604 [**6] (1977).

The Supreme Court has identified three categories of preemption: (1) "express," where Congress "defines explicitly the extent to which its enactments pre-empt state law," *English v. General Elec. Co.*, 496 U.S. 72, 110 S. Ct. 2270, 2275, 110 L. Ed. 2d 65 (1990); (2) "field," in which Congress regulates a field so pervasively, or federal law touches on a field implicating such a dominant federal interest, that an intent for federal law to occupy the field exclusively may be inferred; (3) "conflict," where state and federal law actually conflict, so that it is impossible for a party simultaneously to comply with both, or state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 61 S. Ct. 399, 404, 85 L. Ed. 581 (1941). See *English*, 110 S. Ct. at 2275. Preemption of any type "fundamentally is a question of congressional intent." *Id.*

In order to decide the preemptive effect of FECA on *O.C.G.A. § 21-5-35*, we must juxtapose the state and federal laws, demarcate their respective scopes, and evaluate the extent to which they are in tension.

[HN4] *O.C.G.A. § 21-5-35(a)* provides, "No member of the General Assembly or that member's campaign [**7] committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session." A "contribution" is defined to include "a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office." [HN5] "Office" is understood to include federal offices.

The Attorney General of Georgia has described the purpose of the statute as follows:

It is clear that the General Assembly intended *O.C.G.A. § 21-5-35* to prevent even the appearance of impropriety by its members or certain state officers in accepting contributions during a period where legislation is pending and there could be a perception that any legislative action could be influenced by the giving of a campaign contribution. This strong statement by [**94] the General Assembly is consistent with its desire that public officials not be influenced in the performance of their duties by improper "political contributions." See *O.C.G.A. § 16-10-2* (bribery prohibited); see also *State v. Agan*, 259 Ga. 541, 384 S.E.2d 863 (1989), [**8] cert. denied, 494 U.S. 1057, 108 L. Ed. 2d 765, 110 S. Ct. 1526 (1990).

Op. Att'y Gen. U95-27. The State similarly describes § 21-5-35 as "regulating the actions of state officials in order to preserve the public's faith in the integrity of the political system." Br. of Appellants at 10. No one disputes that § 21-5-35 would have the effect of precluding members of the General Assembly from accepting contributions for federal campaigns while the Assembly is in session.

Nor does anyone dispute [HN6] the well established "constitutional power of Congress to regulate federal elections." *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 632, 46 L. Ed. 2d 659 (1976). The Federal Election Campaign Act of 1971 (as amended), 2 U.S.C. § 431 et seq., creates an intricate federal statutory scheme governing campaign contributions and expenditures related to federal elections. Various FECA provisions detail the

structure of political committees, impose reporting requirements, empower and design the FEC, place limitations on the amounts of campaign contributions and expenditures by individuals and corporations, and restrict the use of such funds.

4 In *Buckley*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659, the Supreme Court upheld FECA's contribution limitations, record-keeping and disclosure requirements, and provisions for public financing of Presidential elections and conventions; however, the Court also held that certain expenditure limitations under the Act were in violation of the *First Amendment* and that the exercise of administrative and enforcement powers delegated to the FEC was unconstitutional because of the way the Committee members were appointed. FECA was amended in 1976 to reconstitute the FEC to allow it to exercise its full powers under the Act constitutionally. See *infra* note 7. Otherwise, *Buckley's* effect on FECA is of no consequence for the present case.

[**9] [HN7] FECA was amended in 1974 to include a preemption provision, which states that "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provisions of state law with respect to election to Federal office." 2 U.S.C. § 453. The current § 453 replaced a prior provision that included a savings clause, expressly preserving state laws, except where compliance with state law would result in a violation of FECA or would prohibit conduct permitted by FECA. See Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 1972 U.S.C.C.A.N. (86 Stat.) 23 (amended by Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 1974 U.S.C.C.A.N. (88 Stat.) 1469). The House Committee that drafted the current provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 1239, 93d Cong., 2d Sess. 10 (1974).

"When Congress ... has included in the enacted legislation a provision explicitly addressing [preemption], and when that provision provides a 'reliable indicium [**10] of congressional intent with respect to state authority, there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation." *Cipollone*, 112 S. Ct. at 2616 (citations omitted). The express language of the broadly worded FECA preemption provision, illuminated by the legislative history, may be sufficiently clear to preempt *O.C.G.A. § 21-5-35*, which could readily be understood as a "state law with respect to election to Federal office."

Likewise, this court could determine that FECA has "occupied the field" of regulation of federal elections and that the Georgia statute has impermissibly strayed into this field.

5 In this case, express preemption via the FECA preemption clause and field preemption are no different in practice. The FECA preemption clause means that FECA occupies the field "with respect to election to federal office." 2 U.S.C. § 453. The only real issue is the effective reach of this phrase.

I have no doubt that the purpose of the [**11] state law is, as the Attorney General and State assert, to prevent the appearance [**995] of impropriety--bribery, to be precise--that may arise when state legislators accept campaign contributions during the period of time when they are actually legislating. To be sure, the Georgia Ethics in Government Act is an admirable example of self-regulation by incumbent state legislators, and it is not specifically directed toward federal elections. Nonetheless, it is the effect of the state law that matters in determining preemption, not its intent or purpose. [HN8] Under the *Supremacy Clause*, state law that in effect substantially impedes or frustrates federal regulation, or trespasses on a field occupied by federal law, must yield, no matter how admirable or unrelated the purpose of that law. See *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 112 S. Ct. 2374, 2386-87, 120 L. Ed. 2d 73 ("In assessing the impact of a state law on the federal scheme, we have refused to rely solely on the legislature's professed purpose and have looked as well to the effects of the law."); *Felder v. Casey*, 487 U.S. 131, 108 S. Ct. 2302, 2306, 101 L. Ed. 2d 123 (1988) ("The relative importance to the State of its own law is not material when there is a conflict [**12] with a valid federal law," for "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.") (quoting *Free v. Bland*, 369 U.S. 663, 82 S. Ct. 1089, 1092, 8 L. Ed. 2d 180 (1962)); *Napier v. Atlantic Coast Line R.R. Co.*, 272 U.S. 605, 47 S. Ct. 207, 209-10, 71 L. Ed. 432 (1926) (preemption depends not on whether federal and state laws "are aimed at distinct and different evils" but whether they "operate upon the same object").

In this case, the effect of *O.C.G.A. § 21-5-35* is to place a limitation on Teper's fundraising for his federal campaign. It would be possible to conclude, therefore, that the state law operates "with respect to election to Federal office," and thus falls within FECA's express preemption provision, 2 U.S.C. § 453. ^ Other courts have found express FECA preemption of state laws that are no more, or not much more, intrusive of federal regulation. See *Bunning v. Commonwealth of Kentucky*, 42

F.3d 1008 (6th Cir. 1994) (holding that § 453 preempts state law purporting to regulate poll conducted by U.S. Congressman's federal election committee to test the effectiveness of advertising conducted during a federal campaign); *Weber v. Heaney*, [**13] 995 F.2d 872, 875 (8th Cir. 1993) (concluding that, "under every plausible reading of § 453," state law establishing system of public funding for U.S. Congressional candidates "falls squarely within the boundaries of the preempted domain"). And cases in which preemption was not found invariably involve state laws that are more tangential to the regulation of federal elections. See *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273 (5th Cir. 1994) (federal candidate's personal, contractual liability for costs of direct mail fundraising services during his campaign not preempted); *Stern v. General Elec. Co.*, 924 F.2d 472 (2d Cir. 1991) (state law claims of corporate waste based on corporation's contributions to federal political campaigns not preempted); *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543 (8th Cir. 1984) (ban on political contributions by city police department employees not preempted). I hesitate, however, to conclude summarily that the preemptive scope of § 453 is so unambiguous as to evince a "clear and manifest purpose of Congress," *Rice*, 67 S. Ct. at 1152, to encompass state laws such as § 21-5-35. Because further, and more definitive, evidence [**14] of Congress's intent is provided by the FEC's interpretation of FECA--and because § 453 incorporates by reference "rules prescribed under" FECA--I think it appropriate to take the agency's view into account before finally resolving the issue.

6 Indeed, this is Judge Carnes's conclusion.

The 1974 amendments to FECA created the FEC and "vested in it primary and substantial responsibility for administering and enforcing the Act," delegating to the agency "extensive rulemaking and adjudicative powers." *Buckley*, 96 S. Ct. at 677-78; see also *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 102 S. Ct. 38, 45, 70 L. Ed. 2d 23 (1981). [**996] The FEC is authorized to prescribe rules and regulations to carry out the provisions of FEC, 2 U.S.C. § 438(a)(8), and to give, upon request, advisory opinions concerning the application of FECA, 2 U.S.C. §§ 437(d)(7), 437f. Exercising this delegated authority, the FEC has promulgated regulations and issued a number of advisory opinions interpreting and applying FECA to determine its preemptive [**15] effect on state law. With respect to the type of regulation imposed by *O.C.G.A. § 21-5-35*, the FEC's interpretation of FECA is unambiguous: such state laws are preempted.

7 In response to *Buckley*, the 1976 amendments to FECA reconstituted the FEC to allow the agency constitutionally to exercise its delegated

duties and powers under the Act. See S. Rep. No. 677, 94th Cong., 2d Sess. 1, 1-4 (1976), reprinted in 1976 U.S.C.C.A.N. 929, 929-32. The FEC was restructured as an independent executive branch agency, comprised of six commissioners to be appointed by the President with the advice and consent of the Senate. No more than three of the commissioners may be affiliated with the same political party.

[HN9] A 1977 FEC regulation specifies that "Federal law supersedes state law concerning ... limitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b)(3). Interpreting this regulation, the district court plausibly determined that, according to [**16] the terms of the regulation, *O.C.G.A. § 21-5-35* would be preempted, for "[a] restriction on when a potential candidate may accept contributions is simply another type of limitation." The regulation also enumerates the following areas in which state law is not preempted: "(1) manner of qualifying as a candidate or political party organization; (2) dates and places of election; (3) voter registration; (4) prohibition of false registration, voting fraud, theft of ballots, and similar offenses; or (4) candidate's personal financial disclosure." 11 C.F.R. § 108.7(c). Although, as the State emphasizes, the regulation allows states to legislate "prohibition[s] of false registration, voting fraud, theft of ballots, and similar offenses," § 21-5-35 is not about voting fraud. The Georgia statute operates against fraud at the level of governance, as in bribery of a state legislator through campaign donations, not at the level of registering to vote and casting ballots (which the state is free to regulate). Thus, I am inclined to agree with the district court that the gloss this FEC regulation places on the FECA preemption provision could be a sufficient basis for inferring Congress's [**17] intent to preempt the Georgia law.⁸

8 FECA details the procedures FEC must follow in prescribing regulations. The FEC must submit a proposed regulation and an accompanying statement to both the House and the Senate; if neither disapproves the proposed regulation within thirty days, the FEC may issue it. 2 U.S.C. § 438(d). We note that Congress has seen and not disapproved 11 C.F.R. § 108.7, thus suggesting that the regulation is not inconsistent with congressional intent. See *Weber*, 995 F.2d at 876-77.

Any residual ambiguity as to the FEC's understanding of the preemptive effect of FECA on the Georgia statute is conclusively resolved by FEC advisory opinions. The FEC consistently has expressed the opinion that FECA preempts state statutes limiting the time frame during which federal candidates may accept cam-

aign contributions. See Op. FEC 1994-2 (advising that FECA preempts a Minnesota statute barring lobbyists from contributing to a candidate during a regular session of the state legislature); [**13] Op. FEC 1993-25 (advising that FECA preempts a Wisconsin statute restricting the time period during which lobbyists can contribute to candidates); Op. FEC 1992-43 (advising that FECA preempts a Washington statute barring state officials from accepting campaign contributions during legislative sessions). In fact, Teper himself wrote to the FEC in November 1995 requesting an advisory opinion on the constitutionality of *O.C.G.A. § 21-5-35*. In a reply letter dated December 5, 1995, the Associate General Counsel of the FEC wrote that a formal advisory opinion was unnecessary because FEC regulations and previous advisory opinions made clear that the Georgia law was preempted. Subsequently, after the district court's decision in this case, the FEC did address § 21-5-35 in a formal advisory opinion,⁹ reiterating that the Georgia statute was preempted by FECA. See Op. FEC 1995-48. The advisory [**997] opinion noted the district court decision in this case and concluded, "Under the broad preemptive powers of [FECA], only Federal law could limit the time during which a contribution may be made to the Federal election campaign of a State legislator." *Id.*

9 This formal opinion was issued in response to an inquiry by another, more persistent, member of the Georgia General Assembly running for Congress.

[**19] Thus, even if the FECA preemption provision is not sufficiently determinate on its face to preempt *O.C.G.A. § 21-5-35*, the FEC's unambiguous understanding is that FECA preempts the state statute. The pressing question at this point, therefore, is to what extent this court should defer to the FEC's interpretation of FECA. Although this court could, of course, accept the FEC's interpretation simply as persuasive authority, in fact I believe that we are obliged to take the FEC's interpretation as more than merely convincing.

[HN10] The Supreme Court has instructed, "When Congress, through express delegation or the introduction of an interpretive gap in the statutory structure, has delegated policy-making authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited." *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 111 S. Ct. 2524, 2534, 115 L. Ed. 2d 604 (1991). This language reflects the general principle established in the landmark case of *Cherion U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), that if a statute is "silent or ambiguous with respect to the specific issue" in question, courts should accept "reason-

able" administrative [*20] interpretations. See 114 S. Ct. at 2782.

The FEC, in particular, is "precisely the type of agency to which deference should presumptively be afforded." *FEC v. Democratic Senatorial Campaign Comm.*, 102 S. Ct. at 45; see also *Orloski v. FEC*, 254 U.S. App. D.C. 111, 795 F.2d 156, 164 (D.C. Cir. 1986) (allowing the FEC's interpretation of FECA "considerable deference"). This is not only because of the extensive responsibility and discretion in administering FECA expressly vested in the FEC by Congress, but also in light of the fact that "the Commission is inherently bipartisan ... and it must decide issues charged with the dynamics of party politics, often under the pressure of an impending election." *Id.*; see also *Common Cause v. FEC*, 268 U.S. App. D.C. 440, 842 F.2d 436, 448 (D.C. Cir. 1988) (judicial deference particularly appropriate in the context of FECA, which explicitly relies on the bipartisan Commission as its primary enforcer). Deference to FEC interpretations of FECA is appropriate not only for rules but also for advisory opinions, given the FEC's express statutory responsibility for issuing advisory opinions concerning the application of FECA. 2 U.S.C. §§ 437d, 437f. See *FEC v. Colorado Republican Fed. Campaign Comm.*, 59 F.3d 1015, 1021 (10th Cir. 1995) (deferring to FEC interpretive advisory opinions), cert. granted, 116 S. Ct. 689 (1996); *FEC v. Ted Haley Congressional Comm.*, 852 F.2d 1111, 1115 (9th Cir. 1988) (FEC interpretation of FECA through regulations and advisory opinions "entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute"); *Orloski*, 795 F.2d at 164 (FEC interpretation of FECA should be given deference because FEC's statutory responsibility to issue advisory opinions "implies that Congress intended the Commission to fill in gaps left in the statute and to resolve any ambiguities in the statutory language").¹⁰

10 The fact that the multiple FEC advisory opinions interpreting FECA to preempt state regulations of the timing of campaign contributions have been consistent further militates in favor of deference. See, e.g., *Wagner Seed Co. v. Bush*, 292 U.S. App. D.C. 44, 946 F.2d 918, 921-22 (D.C. Cir. 1991) (in the course of concluding that EPA interpretation issued via decision letter entitled to deference, noting that interpretation was given "in order to resolve an important and recurring matter before it," and that "agency has applied this interpretation consistently"), cert. denied, 503 U.S. 970, 112 S. Ct. 1564, 118 L. Ed. 2d 304 (1992).

[*22] There is, however, one further twist to Chevron deference: it may not be obvious that this court's obligation to defer to FEC interpretations of FECA attaches even when those interpretations address the scope of preemption of state law by federal regulation. I recognize that the law may be unsettled in general as to the application of Chevron [*998] to an agency's determination of its own jurisdiction. See generally Cass R. Sunstein, *Law and Administration After Chevron*, 90 *Colum. L. Rev.* 2071, 2097-2101 (1990). Indeed, there is an inherent tension between Chevron deference, which only obtains where a statute is "silent or ambiguous," *Chevron*, 104 S. Ct. at 2782, and preemption doctrine, which maintains that state law will not be preempted unless that is "the clear and manifest purpose of Congress," *Rice*, 67 S. Ct. at 1152. So, to say that a court should defer to an agency's determination that state law is preempted is seemingly paradoxical: the agency would command deference under Chevron only if the federal statute were ambiguous; but if the federal statute were ambiguous, then Congress's intent to preempt seemingly would not be "clear and manifest." Furthermore, [*23] although separation of powers (or institutional competence) concerns might counsel in favor of courts' deferring to agencies in the resolution of ambiguous questions of statutory interpretation,¹¹ countervailing federalism concerns offset this rationale for Chevron deference in preemption cases. Although federal agencies are more democratically accountable than courts, state legislatures are arguably yet more politically accountable. In the abstract, then, it is not at all clear that a state's view that a federal statute does not preempt state law should give way to a federal agency's view that the statute does preempt.

11 The Chevron Court articulated this rationale in passages such as this:

Judges are not experts in the field, and are not part of either political branch of the Government.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In

such a case, federal judges--who have no constituency--have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches." *TVA v. Hill*, 437 U.S. 153, 98 S. Ct. 2279, 2302, 57 L. Ed. 2d 117 (1978).

104 S. Ct. at 2793.

[**24] Fortunately, I need not completely untangle this knotty issue of jurisprudence in order to conclude that the FEC's interpretation of FECA is entitled to deference in this case. In *City of New York v. FCC*, a unanimous Court clarified the law sufficiently to settle the issue before us:

It has long been recognized that [HN11] many of the responsibilities conferred on federal agencies involve a broad grant of authority to reconcile conflicting policies. Where this is true, the Court has cautioned that even in the area of preemption, if the agency's choice to preempt "represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned."

486 U.S. 57, 108 S. Ct. 1637, 1642, 100 L. Ed. 2d 48 (1988) (quoting *United States v. Shimer*, 367 U.S. 374, 81 S. Ct. 1554, 1560, 6 L. Ed. 2d 908 (1961), and citing *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 104 S. Ct. 2694, 2700, 81 L. Ed. 2d 580 (1984)). [HN12] An agency like the FEC, to which Congress has delegated broad discretion in interpreting and administering a complex federal regulatory regime, is entitled [**25] to significant latitude when acting within its statutory authority, even in its decisions as to the scope of preemption of state law. See also *Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 102 S. Ct. 3014, 3022-23, 73 L. Ed. 2d 664 (1982). But cf. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986) (overturning agency preemption de-

termination without mention of Chevron deference). In other words, even if a statute is on its face ambiguous, Congress's intent to preempt may be clear when the administrative agency expressly responsible for interpreting and implementing the statute has clarified it.

Finally, the State has failed to construct a compelling argument that the FEC's interpretation of the preemptive effect of FECA is unreasonable or inconsistent with congressional [*999] intent. To the contrary, I find the FEC's interpretation persuasive and corroborative of my own (and the district court's) understanding of the scope of the FECA preemption provision. Thus, even if the FECA preemption provision, read in light of the purposes and structure of the Act, is not adequately clear to preempt the Georgia statute expressly, FEC's interpretation of the statute settles the matter. I [**26] conclude that *O.C.G.A. § 21-5-35*, as applied to candidates for federal office, is preempted. Thus, the district court correctly decided that Teper has a substantial likelihood of success on the merits.

The district court's grant of a preliminary injunction is **AFFIRMED**.

CONCUR BY: CARNES

CONCUR

CARNES, Circuit Judge, concurring:

I concur in the Court's holding that *O.C.G.A. § 21-5-35*, which has the effect of limiting the time for making contributions to some candidates for federal office, is preempted by the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. ("FECA"). However, I would base that conclusion upon the express language of the preemption clause in the act, 2 U.S.C. § 453, which states unambiguously that the provisions of the act and rules prescribed under it, "supersede and preempt any provision of State law with respect to election to Federal office." (emphasis added) A state law regulating the time in which a category of citizens can accept contributions to run for election to federal office is a "State law with respect to election to Federal office." It is as simple as that. Moreover, nothing in either the legislative history of the act or in the rules and regulations [**27] adopted by the Federal Election Commission casts any doubt upon the clear and manifest preemptive purpose of Congress as plainly stated in the act itself.¹

1 The legislative history discussed in Judge Hill's dissenting opinion does not cast such doubt. Although a Senate conference report does state, "It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or

superseded by the amendments to [the FECA]." S. Conf. Rep. No. 1237, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 5618, 5669, it is clear that this statement was aimed at preserving the so-called "little Hatch acts" of the states, not at permitting direct regulation of the activities of federal candidates. See *Weber v. Heaney*, 995 F.2d 872, 876-77 (8th Cir. 1993) (overturning state law creating monetary incentives for federal candidates to limit campaign expenditures); *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543, 545-46 (8th Cir. 1984) (upholding a "little Hatch act").

[**28] The discussion in Judge Kravitch's opinion about the deference that might be due the Commission's regulations and advisory opinions if there were any ambiguity in FECA's preemption language is, in my view, unnecessary to proper decision of this appeal, because there is no ambiguity in the statutory language. Accordingly, while I agree that FECA preempts *O.C.G.A. § 21-5-35*, I do not join the part of Judge Kravitch's opinion that discusses the effect of the Federal Election Commission's regulations and advisory opinions.

DISSENT BY: HILL

DISSENT

HILL, Senior Circuit Judge, dissenting:

I dissent and I state my reason succinctly: "The fleas come with the dog."

1 Today, our panel's judgment does, in effect, release appellee Teper from restraint of Georgia law. While I disagree, I realize that this judgment ought to be mandated right away. I should not be the instrument of delay while engaging in lengthy opinion writing. [NOTE: This was written and submitted while the Georgia legislature was still in session.]

First, [**29] there is no issue as to whether or not the federal law, FECA, preempts state law. It does so, explicitly. Therefore, what federal law controls, state law may not.

That is not the end of the inquiry. The preemption is coextensive with FECA - no more, no less. So, we should determine how far FECA goes. We may look to legislative history to understand FECA.

2 Briefs have argued, correctly, that we need not look to the legislative history of this Act to determine preemption vel non. That is correct, but the extent of the reach of FECA, and, therefore, just *what* it preempts, is not so clear.

Our majority finds comfort, in footnote 7 to the opinion, in noting that, long after the passage of FECA and its 1974 amendment, the Commission submitted its proposed regulation to Congress and was not allowed to promulgate it prior to the expiration of thirty days. Noting that Congress did not disapprove the proposed regulation, our majority believes that this suggests a congressional interpretation of FECA in accord with that of the Commission.

We have a long line of cases, however, which hold that once a bill has become an Act, the interpretation of it is for the Third Branch. Post hoc expressions by legislators--what then-Judge Scalia called "subsequent legislative history"--is of no weight. See *Gott v. Walters*, 244 U.S. App. D.C. 193, 756 F.2d 902, 914 (D.C. Cir. 1985).

[**30] [*1000] In *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543 (8th Cir. 1984), the Eighth Circuit did just that:

The conference report on the bill that became the 1974 amendment leaves little room for doubt on this question. The report says:

It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded by the amendments to title 5, United States Code, made by this legislation.

S. Conf. Rep. No. 93-1237, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad News 5587, 5618, 5669. Furthermore, right before the conference report was agreed to by the Senate, a colloquy took place between Senator Stevens and Senator Cannon that covers this very point. Senator Cannon was Chairman of the Committee of Rules and Administration, from which the bill was reported, senior conferee on the part of the Senate, and manager of the bill on the Senate floor, so his remarks must be given special weight in determining what Congress meant to say. Mr. Cannon stated that "any State law regulating the political activity of State or local officers or employees is not preempted [or] [**31] . . . superseded." 120 Cong. Rec. 34386 (Oct. 8, 1974). "It [would be] . . . up to the State to determine the extent to which they may participate in Federal elections[.]" Ibid. (remarks of Senator Stevens).

Reeder, 733 F.2d at 545-46.

When a law says that one may avail oneself of a right - as FECA says a federal candidate may solicit and receive campaign funds - that law does not forbid the candidate from voluntarily surrendering that right.

It happens all the time.

Georgia law, itself, circumscribes participation in charitable fund raising activities. See *O.C.G.A. § 43-17-2, et seq.* If one meets and complies with the requirements, it would seem that one may conduct a fund raising campaign.

But I think that a judge may not. Fund raising would violate a canon applicable specifically to the office. See Georgia Code of Judicial Conduct, Canon 5B(2). The judge has accepted a position of trust. By doing so, he or she has relinquished the right to solicit funds, though all the rest may do so. So you see, the fleas, do indeed, come with the dog.

The above does not implicate preemption. It illustrates proper construction of statutes in apparent tension [**32] but fully compatible.

The same principles of construction may be employed where preemption of one rule is clear. Our *Bill of Rights* trumps all aces. No provision of law is more preemptive.

For example, free expression is protected by the *First Amendment*; there may be no state law to the contrary. Indeed, in spite of some strong disapproval of states (and many of their citizens), some conduct deemed free expression embodied in rather bizarre entertainment is not subject to state regulation. See *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 115 L. Ed. 2d 504, 111 S. Ct.

2456 (1991); see also *Redner v. Dean*, 29 F.3d 1495 (11th Cir. 1994).

At the same time, the sale and consumption of beverage alcohol is peculiarly subject to state regulation. When the *Eighteenth Amendment's* "war on whiskey" ended with the *Twenty-first Amendment*, control of alcohol was given to the states.

The upshot of this is that, while Georgia may not prohibit scantily clad terpsichorean performers from performing (it's protected expression), Georgia can absolutely prohibit the sale of alcohol at places where dancers dance. See *New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 69 L. Ed. 2d 357, 101 S. Ct. 2599 (1981); see also *Geaneas v. Willets*, 911 F.2d [**33] 579 (11th Cir. 1990). The state, preempted by the *First Amendment*, is [*1001] not undertaking to regulate dancers qua dancers. It is validly regulating the sale and consumption of alcohol qua alcohol.

In the case before us, I see no indication that Georgia has undertaken to regulate candidates for federal office qua candidates. The state undertakes - validly, I believe - to regulate its legislators qua legislators. If appellee Teper feels that he has unwisely encumbered himself by becoming a legislator, he holds the key to his release in his own pocket.

I have undertaken to be deferential to the conclusions of the Federal Election Campaign Commission that its power trumps this state law, but I remain convinced that its interpretation is flawed. I really doubt that the reach of FECA is more preemptive than the *First Amendment*.

I would reverse.

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510 - 1468

January 7, 2008

Sent to: Senator Hollis French, chair, Senate Judiciary
Senator Lesil McGuire, chair, Senate State Affairs
Representative Jay Ramras, chair, House Judiciary
Representative Bob Lynn, chair, House State Affairs

RE: 2008 Suggested Statutory Changes to the Legislative Ethics Act

At the September 28, 2007 and December 12, 2007 meetings, the Select Committee on Legislative Ethics voted to forward recommendations to the chairs of the Senate and House Judiciary Committees and State Affairs Committees for changes to the Legislative Ethics Act, AS 24.60.

1. **Gifts from registered lobbyists who are immediate family members.**

Currently, a legislative employee cannot receive a gift from a spouse or domestic partner who is a registered lobbyist under AS 24.60.080. The same would hold true if a sibling or child of a legislative employee was a registered lobbyist. With the implementation of HB 109, a legislator's spouse or domestic partner cannot be a registered lobbyist under AS 24.45.121(e). A sibling or child of a legislator who is a registered lobbyist may not give a gift to the legislator.

The committee recommends the strict prohibition on gifts from lobbyists be relaxed to allow gifts from immediate family members who are registered lobbyists. The committee did not define "immediate family member" but decided to leave the definition up to the legislature. There are two definitions of "immediate family member" in AS 24.60. One definition is narrowly construed, AS 24.60.990(a)(6), and the other is broad and includes extended family members, AS 24.60.080(c)(5).


Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address
P.O. Box 101468
Anchorage, AK.
99510 - 1468

TO: All Legislators

FROM: Herman G. Walker, Jr, Chair 

DATE: January 7, 2008

RE: Legislative Ethics Legislation

7

As we approach the 2008 legislative session, it is likely ethics legislation will be one of the priorities again. If you are considering 'legislative' ethics legislation, keep in mind staff and committee members are here to work with you and assist you in drafting legislation. Joyce Anderson is very knowledgeable about the code and may have background information or be able to direct you to supplementary materials which would be helpful to you and your staff.

Given we are the body who administers the ethics code, the committee is respectfully requesting copies of ethics legislation prior to introduction. The committee and/or staff would like to have time to review the changes and provide you with a constructive review of your proposed legislation.

Thank you for considering our request to be actively involved in legislation having a direct impact on the Select Committee on Legislative Ethics' oversight of the ethics code.

The committee is recommending three statutory changes to the Legislative Ethics Act. For your information, attached is a copy of a letter sent to the House and Senate State Affairs and Judiciary chairs outlining the proposed changes. If you would like copies of the background materials on these proposed changes, please give the ethics office a call.

January 3, 2008

2. **Campaigning during a special session.** AS 24.60.031 prohibits campaigning during a special session unless the session is during the 90 days immediately preceding an election and then the prohibition only applies in the Capital City. For example: if a special session was held in Anchorage, legislators who represent Anchorage could attend the session during the day and campaign in the evening.

The committee recommends the statute be changed to include language prohibiting campaigning in any location where a legislative session is held.

3. **Fine structure for late disclosures.** AS 24.60.260 authorizes the Ethics Committee to impose fines of \$2.00 for each day a disclosure is late with a maximum fine of \$100. A maximum fine of \$100 does not have an intended deterrent effect. Further, the attorney general's office has a policy of not pursuing fines of less than \$500.

The committee recommends adding a fine structure for willful omission or blatantly failing to file a disclosure. An innocent late filing would not trigger the increased penalty and the current fine structure would apply. The committee would make the determination of a willful omission or blatant failure to file. After reviewing a survey of the fine structure in thirteen states, the committee recommended the fine structure in the State of Louisiana - \$100 a day with a maximum of \$2500.

2
1. Attached are background materials that may be helpful in preparing legislation. Joyce Anderson, administrator, is available to answer any questions you may have and work with you and your staff in drafting legislation.

Changes to the Legislative Ethics Act have a direct impact on the committee's oversight of the Act. Therefore, the committee's active role in the legislative process is essential.

Thank you for considering our recommendations.

Sincerely,

Herman G. Walker, Jr.
Chair, Legislative Ethics Committee

Enc.

September 28, 2007 Ethics Committee Meeting**Minutes from Agenda Item # 7, Advisory Opinion 07-03, Lobbyists and Gifts****7. ADVISORY OPINION 07-03: Lobbyists and Gifts, requested by the Ethics Committee**

Dan Wayne, LAA legal, went over the draft opinion. A legislator or legislative employee may not accept a gift, other than food and beverage for immediate consumption or tickets to a charity event, from a lobbyist, regardless if the lobbyist is a family member of the person. A gift of food and beverage for immediate consumption may be accepted at a lobbyist's residence. A gift of incidental travel is prohibited. AS 24.60.080(a) now provides a very broad prohibition. A lobbyist may also not facilitate a gift of arranging travel for a legislative fact-finding trip if the facilitating has a monetary value.

Staff stated she believes the unintended consequence of changes to AS 24.60.080 prohibit gifts from lobbyist family members of legislators and legislative staff and recommends the statute be changed. Senator Bunde moved to have the committee make a recommendation to the legislature to change the statute to allow gifts from a family member lobbyist. Mr. Wayne pointed out the definition of family member in AS 24.60.080 is very broad. Senator Bunde's motion was deferred until action was taken on the opinion.

Member Thomas made a motion to accept the opinion. Further discussion held. Chair Cook posed the following scenario: A lobbyist would host a reception for a legislative employee at the lobbyist's residence. Informal advice previously given stated the use of the home would be considered a "service" to the legislative employee. If the home were to be provided, the employee would need to pay for the use of the home. Committee members agreed with this interpretation and felt no additional language was needed in the draft opinion. Roll vote taken: YES - all members present voted in favor of the draft opinion. AO 07-03 accepted as drafted.

Back to Senator Bunde's motion on suggested legislation. The first step is to define family member. Staff pointed out there are two definitions of family in the ethics code. AS 24.60.990(a)(6) includes spouse domestic partner, child, stepchild, adoptive child, parent, sibling, grandparent, aunt and uncle and stepparent sister, brother grandparent aunt uncle of both the person covered by the code and their spouse domestic. AS 24.60.080(c)(5) includes only spouse domestic partner, parent, child, stepchild, adoptive child or sibling. AS 24.60.080 Senator Bunde preferred the more narrow definition. Representative Roses questioned whether a cousin could give a gift. The committee decided to leave the definition of family member to the legislature.

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage, AK
(907) 269-0150
FAX 269-0152

Mailing Address
P.O. Box 101468
Anchorage, AK
99510-1468

September 28, 2007

ADVISORY OPINION 2007-03

Subject: Gifts – Lobbyists

RE: Gifts from lobbyists.

This opinion was initiated by the Select Committee on Legislative Ethics (the committee) in order to clarify its understanding of how AS 24.60.080 regulates gifts from lobbyists to legislators and legislative employees.

Questions presented

The following questions involve hypothetical persons and situations.

1. Does AS 24.60.080 prohibit a person who is a legislator or legislative employee from accepting a gift from a lobbyist who is a family member of the person?
2. Does AS 24.60.080 prohibit a legislator or legislative employee from accepting from a lobbyist a gift of hospitality at the lobbyist's residence, including, for example, food and beverage for immediate consumption, or a gift of incidental transportation, like a ride to or from the airport?
3. May a legislator or legislative employee accept a gift of travel provided by the lobbyist's employer for a legislative fact-finding purpose, where the gift is facilitated by the lobbyist?

General Discussion

AS 24.60.080 is the principal statute governing acceptance of gifts by persons subject to the code of legislative ethics. Effective July 10, 2007, as amended by sec. 27, ch. 47, SLA 2007, subsection (a) of that statute says, in relevant part:

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

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

- (A) food or beverage for immediate consumption; or
- (B) tickets for a charity event at any time. . .

In addition, as amended by sec. 28, ch. 47, SLA 2007, subsection (c) was narrowed so that exceptions for certain gifts by lobbyists and their immediate family members that were formerly allowed are now disallowed. The changes prohibit legislators and legislative employees from accepting a gift of any monetary value, other than a gift of food or beverage for immediate consumption or a ticket for a charity event, from a lobbyist, an immediate family member of a lobbyist, or person acting on behalf of a lobbyist.

There is one more exception to the general rule restricting gifts from lobbyists and immediate family members of lobbyists that is found outside of AS 24.60.080. As part of the broad revision of the Legislative Ethics Act made by ch. 47, SLA 2007, and effective July 10, 2007, the legislature adopted AS 24.60.075, the "compassionate gift exemption." A "compassionate gift" is one that is "intended to aid or comfort a recipient or a member of the recipient's immediate family in contending with a catastrophe, a tragedy, or a health-related emergency." AS 24.60.075(e). The exemption establishes that, notwithstanding AS 24.60.080 (limiting acceptance of gifts by legislators and legislative employees) and AS 24.45.121 (limiting the activities of lobbyists), a legislator or legislative employee may accept, receive, and solicit a compassionate gift from any person, including a lobbyist, if the gift is pre-approved by the chair of Legislative Council and the chair or vice-chair of this committee has "approved in writing" the decision of the Legislative Council chair. Certain limitations and disclosure requirements apply. In effect, as it relates to gifts by lobbyists, the compassionate gift exemption operates as an exception to the prohibition against accepting gifts from lobbyists that is set out in AS 24.60.080(a)(2).

Lastly, note that the special definition of "immediate family" formerly applicable to AS 24.60.080 found in subsection (k) was repealed by sec. 74, ch. 47, SLA 2007. Therefore, as it relates to the prohibition against gifts from a lobbyist or a lobbyist's immediate family member, the definition under AS 24.60.990(a)(6) now applies.

1. Does AS 24.60.080 prohibit a person who is subject to it from accepting a gift from a lobbyist who is a family member of the person?

As AS 24.60.080 was revised in 2007, except for food and beverage for immediate consumption and tickets to a charity event, that section broadly prevents a person who is subject to it from accepting any other gift from a lobbyist, regardless of whether the lobbyist is a family member of the person. The former exception for gifts from immediate family members contained in AS 24.60.080(c)(5) before its 2007 amendment no longer applies if the gift giver is a lobbyist.

2. Does AS 24.60.080 prohibit a person who is subject to it from accepting from a lobbyist a gift of hospitality at the lobbyist's residence, including, for example, food and beverage for immediate consumption or a gift of incidental travel such as a ride to the airport?

AS 24.60.080(a)(2) prohibits a legislator or legislative employee from accepting any gift of monetary value from a lobbyist, but subparagraph (a)(2)(A) makes an exception for food and beverage that is for immediate consumption, whether at the lobbyist's residence

or elsewhere. Former exceptions under AS 24.60.080(c) that may have allowed additional types of gifts of hospitality or incidental travel no longer apply when the gift giver is a lobbyist.

3. May a legislator or legislative employee accept a gift of travel provided by the lobbyist's employer for a legislative fact-finding purpose, where the gift is facilitated by the lobbyist?

AS 24.60.080(c)(4) allows the legislator or legislative employee to accept a gift of travel if the travel is primarily for the purpose of obtaining information on a matter of legislative concern. However, AS 24.60.080(c) no longer applies to lobbyists. AS 24.60.080(a)(2) prevents a person subject to the section to accept a gift from a lobbyist "with any monetary value." Consequently, if the service of facilitating travel has a monetary value and the service is deemed to be provided to the legislator or legislative employee, rather than to the lobbyist's employer, the legislator or legislative employee may not accept the gift. (See also, AS 24.45.121(a)(9), which prohibits a lobbyist from "facilitating" a gift "to or on behalf of a person covered by AS 24.60.")

Adopted by the Select Committee on Legislative Ethics on September 28, 2007.

Members present and concurring in this opinion were:

Dennis "Skip" Cook, Chair
Senator Gary Stevens
Senator Con Bunde
Representative Bob Roses
H. Conner Thomas, public member
Ann Rabinowitz, public member
Gary J. Turner, public member
Herman G. Walker, public member

Members dissenting from this opinion were: None.

Member absent was:

Representative Berta Gardner

DCW/ljw:lmb
07-335 ljw

2008 STANDARDS OF CONDUCT HANDBOOK

GIFTS

AS 24.60.080

A legislator or legislative employee may not solicit or accept (whether directly or indirectly) any gift worth \$250 or more, or a series of gifts from the same person or entity which total \$250 or more in a calendar year. Gifts may be in the form of money, services, loans, travel, entertainment, hospitality, promise or other form.

AS 24.60.080(a)(1)

A legislator or legislative employee may not solicit, accept or receive, a gift with any monetary value from a lobbyist or from an immediate family member of a lobbyist or from a person acting on behalf of a lobbyist. WITH THE EXCEPTION OF food or beverage for immediate consumption OR tickets to a 501(c)(3) charity event pre-approved by Legislative Council. **AS 24.60.080(a)(2)(A) and AS 24.60.080(a)(2)(B)**

1. Food and Beverage: Legislators and legislative employees may accept food and beverage for immediate consumption from a lobbyist at any time.
 - a. Under AS 24.45.051 a lobbyist must report to APOC the cost of food and beverage for immediate consumption that exceeds \$15.00 per person if provided for a legislator or legislative employee.
 - b. AS 24.45.051 expands the reporting requirements to include the spouse/domestic partner of a legislator or legislative employee.
 - c. If the food and beverage is provided as part of an event open to all legislators or employees, no disclosure is required.
2. Charity Event: Legislators and legislative employees may accept a ticket to a pre-approved charity event from a lobbyist at any time.
 - a. The Alaska Legislative Council must approve the charity event in advance.
 - b. The value of the ticket(s) may not be worth more than \$250 aggregate from the same lobbyist in a calendar year.

Gifts to immediate family members of legislators and legislative employees must be reported to the committee. IF the gift was given because of the family member's connection to the legislator or legislative employee and the value of the gift(s) is \$250 or more.

An immediate family member of a legislator or legislative employee may not receive a gift prohibited under this section.

IMMEDIATE FAMILY MEMBER is defined in AS 24.60.990 as

- Spouse or domestic partner
- Parent, child (including stepchild and adoptive child) or sibling IF financially dependent on the legislator or legislative employee OR shares a substantial financial interest

Political contributions reported to APOC are not gifts under this section

EXCEPTIONS TO THE \$250 GIFT LIMIT: There are exceptions to the prohibitions in AS 24.60.080(a)(1) which limits a gift to less than \$250. The exceptions are defined below. Keep in mind the following exceptions do not apply to AS 24.60.080(a)(2) which are gifts received from a lobbyist, an immediate family member of a lobbyist or a person acting on behalf of a lobbyist.

The exceptions are:

- **gift of hospitality in another person's home** and travel to reach the home. Note: a vacation home located outside the state is not considered a residence under this subparagraph. **AS 24.60.080(c)(1)**
- **gift of hospitality at a social event or meal.** **AS 24.60.080(c)(1)**
- **discounts available to the public** or to a large class of people to which the legislator or employee belongs or **discounts accepted while on official business if the discount benefits the state.** **AS 24.60.080(c)(2)**
- **gift of food that is native to the state** and is shared as part of a normal cultural or social pattern. **AS 24.60.080(c)(3)**
- **gift of travel and hospitality to obtain information on matters of legislative concern.**
A person who accepts a gift worth \$250 or more under this exception must disclose the gift to the Ethics Committee within 30 days.
DISCLOSURE REQUIRED **AS 24.60.080 (c)(4)**
- **gift(s) from the recipient's immediate family.**
In this section only, immediate family includes the spouse, (or domestic partner) parents, children, siblings, grandparents, aunts and uncles as well as in-laws and step-relations. No limit on the value of the gift and no disclosure is required. **AS 24.60.080(c)(5)**
- **gifts not connected with the recipient's legislative status.**
A person who accepts a gift worth \$250 or more under this exception must disclose the gift to the committee within 30 days of receipt of the gift. The disclosure is kept **confidential**. The disclosure must include the name and occupation of the donor and, if the value exceeds \$250, a description of the gift.
CONFIDENTIAL DISCLOSURE REQUIRED **AS 24.60.080(c)(6)**
- **gifts other than money from another government or government official.**
Gifts of this nature are allowable if the recipient accepts the gift on behalf of the legislature and delivers it to Legislative Council within 60 days. **AS 24.60.080(f)**
- **discounts and welcoming gifts offered during session in the capital city to legislators and their personal staff (but not other legislative employees).**
These are gifts offered to all legislators and their staff, such as parking passes. **AS 24.60.080(c)(7)**
- **gift of legal services related to a matter of legislative concern and other services related to a matter of legislative concern.**

This exception is for a gift of services and not a monetary gift. This exception does not relate to private matters.

DISCLOSURE REQUIRED

AS 24.60.080(c)(8)

- **gift of transportation from a legislator or legislative employee to a legislator or a legislative employee.**

This exception relates to travel within the state and only to a mode of transportation owned or under the control of the donor (i.e., aircraft, boat, motor vehicle, etc.).

AS 24.60.080(c)(9)

- **gift received by immediate family member because of legislative connection.**

A spouse/domestic partner or dependent parent, child or sibling must disclose receipt of a gift with a value of \$250 or more that is given because of the family member's connection with the legislator or legislative employee.

DISCLOSURE REQUIRED

AS 24.60.080(i)

- **prohibited gifts to immediate family members**

The list of prohibited gifts a legislator or legislative employee may accept extends to gifts to immediate family members.

AS 24.60.080(i)

REMEMBER: If a gift exceeds \$250 in value or if the cumulative value in a year exceeds \$250, you will have to say "No thank you" to the donor and return the gift unless the gift falls within one of the exceptions listed in (c)(1) through (c)(9) and (i)

If a person covered by the ethics code receives a gift of unknown value that may exceed the \$250 limit, that person should use caution and explain the \$250 limit to the donor. If the donor states the value to be greater than \$250, the gift would need to be returned unless it falls into one of the exceptions listed in AS 24.60.080(c)(1) through (c)(9).

May a legislator or legislative employee accept a waiver of conference fees, when the purpose of attending the conference is to obtain information on matters of legislative concern?

Yes. The gift of "waived fees" may be accepted but, if over \$250, the gift must be disclosed to the Ethics Committee within 30 days.

May a legislator or legislative employee accept airfare to a meeting paid for by another branch of state government?

Yes but, if over \$250, the gift must be disclosed to the committee within 30 days.

May a person covered by the ethics code accept a loan exceeding \$250 from a personal friend who is not connected with the loan recipient's legislative status?

Loans are gifts. The loan may be accepted because the friendship is not related to legislative status. The gift must be disclosed because the value is over \$250. The disclosure is confidential and not published in the Legislative Journal. See Advisory Opinion 03-02. Commercial loans do not require disclosure.

May a legislator accept the services of a JTPA (Job Training Partnership Act) volunteer in his or her legislative office?

Yes. Volunteers in a legislative office are allowed so long as the volunteer is not paid by another source. Only the JTPA program and the University Legislative Intern program are exempted from this "outside payment" restriction. The legislator is expected to take responsibility for the ethical conduct of volunteers.

Are volunteers in a legislative office subject to the ethics code?

Volunteers are generally required to comply with the ethics code, with the exception of the sections addressing: contracts and leases, state programs and loans, close economic associations, nepotism, and representation before state agencies.

May a legislator's spouse (or other immediate family member) accept travel and hospitality to a conference the legislator is also attending?

Yes but the acceptance of the gift must be disclosed within 30 days to the Ethics Committee if \$250 or more in value.

May a legislator or legislative employee solicit contributions in excess of \$250 for a nonpolitical charitable organization?

Yes, the organization must have either a 501(c)(3) tax exemption or have an extended history in the community. The committee notes that lobbyists could be approached for contributions to charitable nonpolitical organizations but urges extreme caution in doing so as this may lead to the appearance of impropriety.

May a person subject to the ethics code accept payment of golfing greens fees or tournament fees that exceed \$250?

No, unless the gift is not related to legislative status or if from an immediate family member as defined in AS 24.60.080(c)(5). If not related to legislative status, the gift may be accepted. Because the gift exceeds the \$250 limit, the gift must be disclosed within 30 days.

Does receipt of a prize in a raffle require disclosure of a gift to the Ethics Committee?

No, assuming the raffle was open to the public and the chance to win the prize was purchased.

May a legislator or legislative employee accept a gift of lodging in excess of \$250 at a hotel grand opening?

Generally no, unless the purpose of attending relates to matters of legislative concern. If so, the gift must be disclosed.

May a legislator or legislative employee accept a gift of a fishing trip from a lobbyist?

No, regardless of the value. Gifts of this nature from lobbyists are not allowed. A legislator or legislative employee may only solicit, accept and receive a gift of food and beverage for immediate consumption, a ticket to a pre-approved charity event or a compassionate gift pre-approved Legislative Council and the Ethics Committee chair from a lobbyist.

May a legislator or legislative employee accept a gift of a round of golf from the spouse of a lobbyist?

No, regardless of the value. A legislator or legislative employee may not accept a gift from an immediate family member of a lobbyist. A legislator or legislative employee may only solicit, accept and receive a gift of food and beverage for immediate consumption, a ticket to a pre-approved charity event or a compassionate gift pre-approved Legislative Council and the Ethics Committee chair from an immediate family member of a lobbyist

What if a legislator or legislative employee is in a dating relationship? May they accept gifts in excess of \$250 from the person they are dating?

Yes. However, a confidential gift disclosure is required

Sec. 24.60.080. Gifts. (effective July 10, 2007)

- (a) Except as otherwise provided in this section, a legislator or legislative employee may not
- (1) solicit, accept, or receive, directly or indirectly, a gift worth \$250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$250 that in a calendar year aggregate to \$250 or more in value;
 - (2) solicit, accept, or receive a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except
 - (A) food or beverage for immediate consumption; or
 - (B) tickets for a charity event at any time, except that tickets to or gifts received at a charity event under this subparagraph are subject to the calendar year limit on the value of gifts received by a legislator or legislative employee in (1) of this subsection; in this subparagraph, "charity event" means an event the proceeds of which go to a charitable organization with tax-free status under 26 U.S.C. 501(c)(3) and the Alaska Legislative Council has approved in advance; the tickets may entitle the bearer to admission to the event, to entertainment, to food or beverage, or to other gifts or services involved in charity event.
- (b) [Repealed, § 42 ch 127 SLA 1992.]
- (c) Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept
- (1) hospitality, other than hospitality described in (4) of this subsection,
 - (A) with incidental transportation at the residence of a person; however, a vacation home located outside the state is not considered a residence for the purposes of this subparagraph; or
 - (B) at a social event or meal;
 - (2) discounts that are available
 - (A) generally to the public or to a large class of persons to which the person belongs; or
 - (B) when on official state business, but only if receipt of the discount benefits the state;
 - (3) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm;
 - (4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;
 - (5) gifts from the immediate family of the person; In this paragraph "immediate family" means
 - (A) the spouse of the person;
 - (B) the person's domestic partner;
 - (C) a child, including a stepchild and an adoptive child, of the person or of the person's domestic partner;
 - (D) a parent, sibling, grandparent, aunt, or uncle of the person;
 - (E) a parent, sibling, grandparent, aunt, or uncle of the person's spouse or the person's domestic partner; and
 - (F) a stepparent, stepsister, stepbrother, step-grandparent, step-aunt, or step-uncle of the person, the person's spouse, or the person's domestic partner;
 - (6) gifts that are not connected with the recipient's legislative status;

- (7) a discount for all or part of a legislative session, including time immediately preceding or following the session, or other gift to welcome a legislator or legislative employee who is employed on the personal staff of a legislator or by a standing or special committee to the capital city or in recognition of the beginning of a legislative session if the gift or discount is available generally to all legislators and the personal staff of legislators and staff of standing and special committees; this paragraph does not apply to legislative employees who are employed by the Legislative Affairs Agency, the office of the chief clerk, the office of the senate secretary, the legislative budget and audit committee, the office of victims' right, or the office of the ombudsman;
- (8) a gift of legal services in a matter of legislative concern and a gift of other services related to the provision of legal services in a matter of legislative concern;
- (9) a gift of transportation from a legislator or a legislative employee to a legislator or a legislative employee if the transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other means of transport owned or under the control of the donor; this paragraph does not apply to travel described in (4) of this subsection or travel for political campaign purposes; or
- (10) a contribution to a charity event from any person at any time; in this paragraph, "charity event" has the meaning given in (a)(2)(B) of this subsection.

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

(e) A political contribution is not a gift under this section if it is reported under AS 15.13.040 or is exempt from the reporting requirement under AS 15.13.040 (g). The use of a bulk mailing permit owned by a legislator's campaign committee or used in a legislator's election campaign is not a gift to that legislator under this section.

(f) Notwithstanding (a) of this section, a legislator or legislative employee may accept a gift of property worth \$250 or more, other than money, from another government or from an official of another government if the person accepts the gift on behalf of the legislature. The person shall, within 60 days after receiving the gift, deliver the gift to the legislative council, which shall determine the appropriate disposition of the gift. In this subsection, "another government" means

a foreign government or the government of the United States, another state, a municipality, or another jurisdiction.

(g) Notwithstanding (a) of this section, a legislator or legislative employee may solicit, accept, or receive a gift on behalf of a recognized, nonpolitical charitable organization.

(h) A legislator, a legislative committee other than the Select Committee on Legislative Ethics, or a legislative agency may accept

- (1) a gift of volunteer services for legislative purposes so long as the person making the gift of services is not receiving compensation from another source for the services; or
- (2) the services of a trainee who is participating in an educational program approved by the committee if the services are used for legislative purposes. The committee shall approve training under a program of the University of Alaska and training under 29 U.S.C. 2801 – 2945 (Workforce Investment Act of 1998). A legislative volunteer or educational trainee shall be considered to be a legislative employee for purposes of compliance with this section, AS 24.60.030 - 24.60.039, 24.60.060, 24.60.085, 24.60.158 - 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative volunteer or educational trainee has violated the provisions of one of those sections, the person may file a complaint under AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding.

(i) A legislator or legislative employee who knows or reasonably should know that an immediate family member has received a gift because of the family member's connection with the legislator or legislative employee shall disclose for publication under (d) of this section the receipt of the gift by the family member to the committee if the gift would have to be disclosed under this section if it had been received by the legislator or legislative employee. If receipt of the gift by a person who is a legislator or legislative employee would be prohibited under this section, a member of the person's immediate family may not receive the gift.

(j) In this section, the value of a gift shall be determined by the fair market value of the gift to the extent that the fair market value can be determined.

Revisor's notes — Subsections (g) — (j) were enacted as (h) — (k). Relettered in 1998, at which time former subsection (g) was relettered as (k).

Effect of amendments — The 1998 amendment, effective January 1, 1999, in subsection (a) added "Except as otherwise provided in this section," at the beginning, substituted "\$250" for "\$100" in three places, and added "Except for food or beverage for immediate consumption, a legislator or legislative employee" at the beginning of the last sentence. In subsection (c) rewrote paragraphs (1) and (2) and added paragraphs (7) and (8), rewrote subsections (d)-(f) and (k), and added subsections (g)-(j).

The first 2002 amendment, effective April 16, 2002,

in subsection (c) added paragraph (9) and made related stylistic changes.

The second 2002 amendment, effective July 1, 2002, substituted reference to the Workforce Investment Act of 1998 for reference to the Job Training Partnership Act in the second sentence in subsection (h).

The first 2003 amendment, effective September 14, 2003, substituted "domestic partner" for "spousal equivalent" throughout subsection (k).

The second 2003 amendment, effective September 15, 2003, added paragraph (e)(10).

The 2006 amendment, effective March 31, 2006, added paragraph (11) of subsection (c), making corresponding stylistic changes.

Related Advisory Opinions 88-03, 88-05, 88-09, 89-01, 89-03, 89-04, 89-06, 90-01, 92-01, 92-03, 93-03, 93-04, 93-05, 93-06, 93-08, 93-09, 94-03, 94-09, 95-03, 96-03, 96-04, 96-05, 97-01, 98-01, 99-02, 00-01, 02-02, 03-02

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152
Email: ethics_committee@legis.state.ak.us

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510 1468

TO:

FROM: Joyce Anderson, Administrator

DATE:

RE: Fund Raising During Session

You have asked if it is permissible under AS 24.60 for a legislator to conduct fund raising activities during session for a campaign for an office other than a legislative office. Specifically, fund raising in Juneau during session.

First of all, I suggest you check with the Alaska Public Offices Commission to determine if AS 15.13, state election campaigns, imposes any restrictions on the activities you are contemplating. I will only address the ethical considerations in AS 24.60 in relation to your position as a legislator.

AS 24.60.031 addresses restrictions on fund raising for legislators and legislative employees. (See statute below.) The restrictions in AS 24.60.031 prohibit legislators from soliciting or accepting a contribution or a promise or pledge to make a contribution when either house is in regular or special session for a campaign for the state legislature. Additionally, legislators cannot accept money from an event held on a day when either house is in regular or special session if the substantial purpose of the event is to raise money on behalf of the legislator for state legislative political purposes.

The statute is clear in that only campaigns for the state legislature fall under the restrictions imposed in AS 24.60.031(a) and (b). Legislators running for statewide office are not restricted from accepting or soliciting campaign contributions during session. Further, legislators running for state office are not restricted from holding an event for the

purpose of raising funds for a statewide campaign. Since the legislative ethics code places no restrictions on fund raising for state office by a legislator this would include fund raising activities in Juneau during session.

Historical information: *In Advisory Opinion 94-04, the ethics committee answered the question of whether a legislator who is a candidate for statewide elective office may engage in fund raising activities for that office during the legislative session. The committee concluded AS 24.60.031(b) prohibited a legislator who is candidate for a statewide race from accepting money from an event held during the legislative session. The language in AS 24.60.031(b) also prohibited a legislator from accepting money from an event held during the legislative session for any elective office. AS 24.60.031(b) in 1994 read as follows: A legislator or legislative employee may not accept money from an event held during a legislative session if the substantial purpose of the event is to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes: ...*

AS 24.60.031(b) was changed in 1998 with the passage of Senate Bill 105. The restriction on accepting money from an event held during a legislative session was narrowly applied only to a legislator running for a state legislative office. The language 'for campaign purposes' (which was determined to include any elective office) was deleted. Attached is Advisory Opinion 94-04 for your information. AS 24.60.031 (b) has not had any further changes to date.

Again, I would like to mention you should contact APOC for a review of AS 15.13.

Pursuant to AS 24.60.158 my advice is informal and not binding on the committee. However, I feel this statute is clear on its face and an advisory opinion is not necessary due to the accompanying documentation in Advisory Opinion 94-04 and 1998 legislative changes to the one section addressed in A.O. 94-04.

However, you have the option to request an advisory opinion from the committee if you so choose.

Enc. Advisory Opinion 94-04
AS 24.60.031

Alaska State Legislature

**Select Committee on
Legislative Ethics**

716 W. 4th, Suite 230
Anchorage, AK
(907) 258-8172
FAX: 258-2106

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510

January 24, 1994

ADVISORY OPINION 94-04

Subject: Campaigning During Session

RE: May a legislator who is a candidate for a statewide elective office engage in fund raising activities for that office during the legislative session?

You are a legislator, covered by the Legislative Code of Ethics. You have filed a general letter of intent and you have announced that you are running for Lieutenant Governor in the next election. You ask whether you may engage in fund raising activities concerning that campaign during the legislative session.

Discussion

To begin with, the committee notes that campaign contributions that you report as required by law are excluded from the provisions concerning gifts by AS 24.60.080(c).¹

Under AS 24.60.031, a legislator's fund raising activities are restricted during the legislative session. The section states:

Sec. 24.60.031. RESTRICTIONS ON FUND RAISING. (a) A legislator or legislative employee may not

(1) while the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a state legislative campaign;

¹ AS 24.60.080(c) states:

(c) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member or legislative employee for campaign purposes or to raise money for state legislative political purposes; or

(3) expend money in a state legislative campaign that was raised by or on behalf of a legislator during a legislative session under a general letter of intent to become a candidate for public office.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

Under paragraph (1) of subsection (a), legislators are prohibited from soliciting or accepting contributions during the legislative session for state legislative campaigns. Under paragraph (3), legislators may not spend money in a state legislative campaign that was raised during the session. The scope of paragraph (2) is not clearly limited to "state legislative campaigns." That paragraph prohibits legislators from accepting money raised at events held during the session if the event was to raise money on behalf of the legislator for campaign purposes or for state legislative political purposes. Unlike the other two paragraphs, this paragraph does not, on its face, limit the prohibition related to "campaign purposes" to "state legislative campaigns."

The committee believes that the language of the statute should be interpreted as it is written. Accordingly, a legislator running for statewide office may solicit and accept contributions for that office during the legislative session (as permitted by paragraph (1) of 24.60.031(a)) and a legislator who has filed a general letter of intent to become a candidate for public office may spend money raised during the session on a campaign for statewide office (as permitted by paragraph (3)). However, under paragraph (2), a legislator may not accept money from an event held during the legislative session if the purpose of the event was to raise money for the legislator's campaign for any elective office. The committee recognizes that this result appears inconsistent, but the committee believes that any change from this result should be made by amendment to the statute, not by interpretation of it.

Conclusion

For the reasons discussed above, the committee finds that the prohibition contained in AS 24.60.031(a)(2), concerning accepting money from an event held during the legislative session, applies to statewide campaigns, including your campaign for lieutenant governor. Therefore, you may not accept money raised during the session at fundraising events.

Adopted by the Select Committee on Legislative Ethics on January 24, 1994. Members present and concurring in this opinion were:

Joseph P. Donahue, Chair
Ed Granger, Vice-Chair
Senator Drue Pearce

Margie MacNeille
Representative Brian Porter
Shirley A. McCoy
Senator Jay Kerttula

Members absent were:

Edith Vorderstrasse
Representative Jerry Mackie

TC:gc
94-038.glc