

Michael Hostina
General Counsel
Michael O'Brien
Associate General Counsel
Matthew Cooper
Associate General Counsel
Andy Harrington
Associate General Counsel
Rachel Plumlee
Associate General Counsel



203 Butrovich Building
P.O. Box 755160
Fairbanks, Alaska 99775-5160
Telephone: (907) 450-8080
Facsimile: (907) 450-8081
legal@alaska.edu

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March 7, 2018

Heather Hebdon, Executive Director
Alaska Public Offices Commission
2221 E. Northern Lights, Room 128
Anchorage AK 99508-4149

Dear Executive Director Hebdon,

I'm writing on behalf of the University of Alaska with a request for an advisory opinion pursuant to AS 15.13.374. This situation has not arisen yet but may, and we would appreciate any guidance you may be able to offer on this.

To state the question up front, we are trying to determine whether AS 15.13.145, or other provisions of the APOC statutes or regulations, would preclude a UA chancellor from finding "extenuating circumstances" to waive some or all of what would otherwise be the payback obligation arising under Regents Policy, when a faculty member who has been on sabbatical leave is unable to fulfill the obligation to work for the University post-sabbatical for a full academic year, due to the faculty member having been elected to the Alaska Legislature; and whether such a waiver would require reporting as an "election-related expenditure" under 2 AAC 50.356(c) or a contribution under AS 15.13.400.

Some background on this may be helpful. UA employees are allowed to run for public office without resigning from their UA positions.¹ They are of course not allowed to utilize any UA property or other resources in support of their campaigns,² and are not allowed to devote so much time and effort to their campaigns that it interferes with their UA duties.³ If a UA employee wins the election, resignation may become necessary before taking the office, depending on the office.⁴ Municipal council/assembly seats, for example, typically would not require resignation. Winning a state

¹ AS 39.25.160(e)(5).

² AS 39.52.120(b)(6).

³ AS 39.52.170; Regents Policy P04.10.010; University Regulation R04.10.010. (Regents Policies and University Regulations are available online at <http://www.alaska.edu/bor/policy-regulations/>).

⁴ Regents Policy P04.10.020.B.

legislative seat, on the other hand, precludes simultaneous UA employment under the “dual office” clause of the Alaska Constitution.⁵

This question arises in the context of a sabbatical leave situation. UA allows faculty with at least five consecutive years of UA service to request sabbatical leave for study, formal education, research, and other scholarly and creative activity,⁶ generally at a reduced salary.⁷ Among the conditions attached to this policy is “The recipient is obligated to return to the university for further service of at least one appointment period. Failure of the recipient to fulfill this obligation will require the full and immediate repayment of salary and benefits received from the university while on leave, except in extenuating circumstances acceptable to the chancellor.”⁸

Historically, although there have been only a few instances in which chancellors have been asked to find “extenuating circumstances,” they have found sufficient factual basis to do so in the majority of cases where they have been asked. These have arisen in situations where the returning faculty member has developed significant health problems, or where personnel issues would have made the return problematic from the perspective of UA as well as from the perspective of the faculty member.

A faculty member currently on sabbatical has made an inquiry regarding the possibility of running for state legislative office. (We anticipate, and for purposes of our questions it should be assumed, that there will not be any problems of compliance with AS 39.52.120(b)(6), and of corresponding Regents Policies that preclude her from using any University resources for a partisan political purpose, which her candidacy would obviously be.)

Our question arises under a scenario where the faculty member wins the election, and is therefore constitutionally obligated to resign from UA, which resignation will have to occur before the post-sabbatical appointment period has been completed. We are trying to determine whether other provisions of the Alaska Statutes limit the chancellor’s discretion to find “extenuating circumstances” to waive some or all of what would otherwise be the payback obligation arising under Regents Policy. We anticipate that this question would not arise if the faculty member is not elected (in which case we anticipate that the faculty member would remain employed with UA, or alternatively would be leaving for reasons unrelated to the election).

The APOC questions – would a post-election waiver by the chancellor (1) violate AS 15.13.145, prohibiting UA from using “money held” by UA to influence the outcome of the election of a

⁵ Alaska Constitution Art. 2, sec. 5. See *Begich v. Jefferson*, 441 P.2d 27 (1968).

⁶ University Policy P04.04.060.B.

⁷ Sabbatical leaves may be granted for an academic year for an amount “not to exceed” six months’ salary, or for a semester for an amount not to exceed one semester’s salary. P04.04.060. These amounts are to be adjusted downward if the sabbatical entails the faculty member receiving third-party fellowships, grants-in-aid, or earned income.

⁸ P04.04.060.F. For most faculty, an “appointment period” is an academic year.

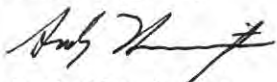
candidate? (2) require reporting as an “election-related expenditure” under 2 AAC 50.356(c)? (3) require reporting as a contribution under AS 15.13.400?

Our own tentative conclusion would be that the chancellor retains discretion to decide on the waiver. It is not “money held” by UA to influence the outcome of an election, it should not require reporting as an election-related expenditure, and it should not require reporting as a contribution. Granting a waiver is at most waiving an inchoate “chase in action” against the faculty member,⁹ not the equivalent of using “money held” to influence the outcome of the election. And the determination is not being made until after the election is over, so the intent is certainly not to influence the election outcome. But since this is not an issue UA has faced before to our knowledge, we thought it best to seek your guidance on this well ahead of time, even taking into account the possibility that the issue may not arise at all. If UA is not going to be able to consider granting the waiver, that is an aspect that we would like the faculty member to realize from the outset.

Since your office is obviously more familiar with the specifics of the APOC statutes and regulations than we are, if there are other APOC provisions that would come into play under this scenario beyond those mentioned above, any additional guidance on those would be appreciated.¹⁰

Thank you in advance for your consideration, and please let me know if additional details would be helpful.

Kind Regards,



Andy Harrington
Associate General Counsel

⁹ The institutional memory of the UA General Counsel’s office indicates that UA has never actually sued a faculty member for return of the salary and benefits for a failure to complete the post-sabbatical period of required service.

¹⁰ We are also contacting the Attorney General’s Office with related questions under the Executive Branch Ethics Act, and contacting the Administrator for the Select Committee on Legislative Ethics with related questions under the Legislative Ethics Act. Our request under the LEA is for staff advice under AS 24.60.158, as UA is not among those entitled to request a formal opinion under AS 24.60.160, and the individual faculty member to our understanding is not entitled to request that either unless and until she actually becomes a legislator-elect.