

**ALASKA ADMINISTRATIVE JOURNAL**  
**OFFICE OF THE LIEUTENANT GOVERNOR**

**ISSUE 29, July 19, 1999**

**GENERAL INFORMATION**

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The Alaska Administrative Journal is an official publication of the State of Alaska, issued weekly, under the authority granted to the Lieutenant Governor by AS 44.62.175. The State of Alaska, Office of the Lt. Governor, complies with Title II of the Americans with Disabilities Act of 1990. This publication is available in alternative communication formats upon request. For general information regarding the AAJ, contact the Lt. Governor's Office at (907) 465-3520; Carol Collins. The internet address is <http://www.gov.state.ak.us/ltgov>.

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Information for this publication is compiled alphabetically by agency and by the following categories:

- Adopted Regulations -Text or Summary of Text
- Agency Meetings
- Attorney General's Opinions
- Boards and Commissions
- Competitive and Other Solicitations
- Delegations of Authority
- Executive Orders and Administrative Orders
- Grants
- Notices of Proposed Regulations
- Public Notices
- Regulations Filed by the Lieutenant Governor

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Attorney General Opinions

Computerized access to summaries of Attorney General Opinions is available. Instruction material can be obtained by calling the Civil Office of the Department of Law in Juneau at (907) 465-3600. This report contains summaries of recently indexed Attorney General Opinions by the Department of Law.

Boards and Commissions

A list of the vacancies of boards, commissions and other bodies whose members are appointed by the governor.

New Regulations

A list of new regulations filed by the Lieutenant Governor for publication in the most recent register (supplement) to the Alaska Administrative Code.

**Office of the Governor: Boards & Commissions**  
**Vacancy List**

**Publish Date:** 07/13/99**Archive Date:** 07/22/99**Location:** Statewide**Body of Notice:****Boards and Commissions Recruitment List**

July 13, 1999

Board/ Seat	Current Member	Expires	FD*	LC* *
Accountancy Board				
CPA/PA	VACANT	04/25/2000	N	Y
Public	Stoots, Joanne	04/25/1999	N	Y
Aging Commission				
Public/Over 65	Burgin, Peggy	09/01/1999	N	N
Public/Over 60	Hoover, Donald	09/01/1999	N	N
Public	Stanton, Alaire	09/01/1999	N	N
Agricultural Loan Fund				
Agriculture	VACANT	04/18/1999	Y	N
Alcohol/Drug Abuse				
Public	Johnstone, Alice	07/01/1999	N	N
Public	Knasiak, Gerry	07/01/1999	N	N
Public	Lopez, Delfin	07/01/1999	N	N
Public	Mann, Cheryl	07/01/1999	N	N
Architects/ Engineers/ Land Surveyors				
Public	Gardner, Kathleen	07/01/1999	N	Y
Arts Council				

Public	Ferguson, Peggy	06/30/1999	Y	N
Public	Fosdick, Rose	06/30/1999	Y	N
Public	Kinnaird, Vivian	06/30/1999	Y	N
Public	Woodward, Kesler	06/24/1999	Y	N
Bar Association				
Public	VACANT	06/30/1999	N	Y
Barbers and Hairdressers				
Hairdresser	Wyche, Rosalyn	07/01/1999	N	Y
Broadcasting Commission				
Public/Restricted	VACANT	08/25/2000	Y	N
Public/Restricted	Burns, Michael	08/25/1998	Y	N
Public/Restricted	Fondell, Ralph	08/25/1999	Y	N
Public/Restricted	Kabler, Melanie	08/25/1999	Y	N
Coastal Policy Council				
Lower Cook Inlet	Cushing, Jack	09/15/1999	Y	N
Bering Straits	Fagerstrom, Robert	09/15/1999	Y	N
Northern Southeast	Hanlon, Eli	09/15/1999	Y	N
Kodiak/Aleutians	Kelty, Frank	09/15/1999	Y	N
Southern Southeast	McFadden, Sheila	09/15/1999	Y	N
Commercial Fisheries Entry				
Salaried	Johnson, Marlene	07/01/1999	Y	Y
Chair	Twomley, Bruce	10/11/1998	Y	Y
Community Service Commission				
Local Labor Organization	VACANT	03/10/2000	N	N
Local Government	VACANT	03/10/1998	N	N

Business	VACANT	03/10/2002	N	N
Correctional Industries Commission				
Ex-offender	Hesson, James	07/01/1999	Y	N
Labor/ Service Industries Rep.	Stevens, Anna Bell	07/01/1999	Y	N
Dental Examiners				
Dentist	VACANT	02/01/1999	N	Y
Hygienist	VACANT	02/01/1999	N	Y
Dentist	Pendergrast, Phyllis	02/01/1999	N	Y
Disabilities/Special Education				
Legislator (Governor Appt.)	Brice, Tom	06/30/1999	N	N
Consumer/Primary	Campbell, Darrell	06/30/1999	N	N
Consumer/Secondary/and University Affiliated Prog. Rep.	Fitzgerald, Kathleen	06/30/1999	N	N
State Agency/DOE/Voc Rehab	French, Duane	06/30/1999	N	N
Consumer/Primary	Pichler, Joseph	06/30/1999	N	N
Consumer/Secondary	Walter, Lori	06/30/1999	N	N
Dispensing Opticians				
Optician	Hedges-Gajdos, Patricia	06/14/1998	N	Y
Domestic Violence/Sexual Assault				
Public/Restricted	Pete, Mary	08/01/1999	Y	N
Education				
Public/1st JD	VACANT	01/312002	Y	Y
Emergency Response Commission				

LEPC/Rural	Ahrens, Roc (Rodney)	08/12/1998	N	N
Local Government Rep.	Freed, Linda	08/12/1999	N	N
LEPC/Rural	Severns, James	08/12/1999	N	N
LEPC/Urban	Vakalis, George	08/12/1998	N	N
Fishermen's Fund Advisory & Appeals				
District 4	Malavansky, Max	01/31/1999	Y	N
Forestry				
Forester/Non-Gov	Maisch, John	06/30/1999	N	N
Historical Commission				
Architect	Graham, Jennings	07/01/1999	N	N
Historical Society Nomination	Lesh, Nancy	07/01/1999	N	N
Public	Taylor, Thomas	07/01/1999	N	N
Historical Records Advisory				
Public/Historical	Campbell, Chris	05/10/1997	N	N
Public/Historical	Stevens, Martha	05/10/1997	N	N
Housing Finance Corporation				
Energy Efficient Home-Building or Weatherization	Grove, Robert	06/30/1999	Y	N
Senior or Low-income Housing Expertise/Experience	Jones, Jewel	06/30/1999	Y	N
Human Resource Investment Council				
Business Industry	VACANT	10/13/1998	Y	N
Public Ed./Secondary Ed.	VACANT	10/13/2000	Y	N
CBO/Postsecondary	Henderson, JoAnn	10/13/1999	Y	N

Native Organization representing Employment & Training	Scott, Donna	10/13/1999	Y	N
Organized Labor	Wingfield, J.C.	10/13/1999	Y	N
Independent Living Council				
Advocate	Best, Jerie	10/01/1999	N	N
Independent Living Center Rep	Jacobson, David	10/01/1999	N	N
Advocate	Lynn, Cynthia	10/01/1999	N	N
Div. of Mental Health & Developmental Disabilities Rep/non-voting	Maltman, David	10/01/1999	N	N
Industrial Development/ Export				
Public	Loescher, Robert	07/01/1999	N	N
Judicial Council				
Public/Governor's Appt,	VACANT	05/18/2003	Y	Y
Public/Governor's Appt,	Lienhart, Janice	05/18/1999	Y	Y
Juvenile Justice Advisory				
Juvenile/Under 24	VACANT	03/01/2001	N	N
Child Advocate Attorney	VACANT	05/01/1999	N	N
Public	VACANT	03/01/2001	N	N
Public	VACANT	03/01/2001	N	N
Public	Bartlett, Lynn	03/01/1999	N	N
Public	Lagao, Sue	03/01/1999	N	N
Child Advocate Attorney	Smith, Christine	05/01/1999	N	N
Juvenile/Under 24	Zellhuber, Jaime	03/01/1999	N	N
Labor Relations Agency				
Management	VACANT	06/30/2000	N	Y
Management	Doyle, Robert	06/30/1999	N	Y

Public	Tamagni, Sr., Alfred	06/30/1999	N	Y
Libraries Advisory				
State Institutions Rep.	Reed, Stanley	01/01/1999	N	N
Marine Pilots				
Public	Huff Tuckness, Barbara	06/01/1999	N	Y
Pilot/Southeast	Spence, Michael	06/01/1999	N	Y
Marital and Family Therapy				
Public	VACANT	12/24/2000	N	Y
Mental Health Trust Authority				
Public	Hawkins, Tom	03/03/1999	N	Y
Public	Labelle, Susan	03/03/1999	N	Y
Midwives				
Physician/OB practice or training	Richey, Mark	07/21/1999	N	Y
Municipal Bond Bank				
Public	VACANT	07/15/1999	Y	N
Natural Resource Conservation				
SW/Kenai Peninsula	VACANT	06/30/1998	N	N
Southeast	Rogers, David	06/30/1999	N	N
Southcentral	Zobel, Dick	06/30/1999	N	N
Nursing Board				
RN/Baccalaureate Ed.	VACANT	03/31/2001	N	Y
LPN	Cunningham, Belle	03/31/1999	N	Y
Public	Dean, Louise	03/31/1998	N	Y
Registered Nurse	Kloster, Kathleen	03/31/1999	N	Y

Public	Senungetuk, Joseph	03/31/1999	N	Y
Oil and Gas Conservation Commission				
Salaried/Geologist	Johnston, David	12/31/1998	Y	Y
Oil and Gas Policy Council				
Industry	VACANT			
Pension Investment Board				
Governor-Appointed Trustee	Corbus, William	01/01/1999	Y	N
Permanent Fund				
Public	Gruening, Clark	07/01/1999	Y	N
Pharmacy Board				
Public	VACANT	04/01/2000	N	Y
Pharmacist	Coursey, Chris	04/01/1999	N	Y
Pioneers Home Advisory				
Public	VACANT	06/30/1991	N	N
Police Standards Council				
Public/Restricted	VACANT	12/18/1999	N	N
Public	VACANT	12/18/1997	N	N
Chief/Admin.	VACANT	12/18/2002	N	N
Power Project Loan Committee				
Public/2nd Judicial District	Davis, Edward	03/04/1999	N	N
Public/1st Judicial District	Smith, Richard	03/04/1997	N	N
Public/4th Judicial District	Huffman, Robert	03/04/1998	N	N
Private Industry Council				
Private Sector	Estelle, Marian	07/01/1999	N	N

Education	McDowell, Jo Ann	07/01/1999	N	N
Professional Counselors				
Licensed Prof. Counselor	VACANT	11/01/2002	N	Y
Professional Teaching Practices				
Principal	Connelly, Linda	07/01/1999	N	Y
Higher Education	Madden, Mary Lou	07/01/1999	N	Y
Classroom Teacher	Miller, Christine	07/01/1999	N	Y
Public Employees' Retirement Board				
Physician/4th JD	VACANT		Y	N
Personnel Board	Bader, Gary	06/20/1998	Y	N
PWS Oil Spill Recovery Institute				
Oil & Gas Industry	Meyers, Kevin	05/09/1999	Y	Y
Oil & Gas Industry	Vidrine, Grant	05/09/1999	Y	Y
Railroad Corporation				
Business Owner	Adams, Jacob	10/03/1999	N	N
Public/Restricted	Binkley, Johne	10/03/1999	N	N
Real Estate Appraisers				
Licensed Residential Real Estate Appraiser	VACANT	06/30/1998	N	Y
Royalty Oil and Gas Development				
Public/Restricted	Aleshire, Lynn	03/14/1996	Y	N
Public/Restricted	Cook, Thomas	03/14/1998	Y	N
Safety Advisory Council				

Local Government	Blackgoat, Christine	08/01/1999	N	N
Labor	Bonner, Laura	08/01/1999	N	N
Industry	Everett, Herbert	08/01/1999	N	N
Labor	Reid, L. Dale	09/01/1999	N	N
Industry	Ross, Chris	08/01/1999	N	N
Labor	Trosper, Stephen	09/01/1999	N	N
Science and Technology				
Scientist or Engineer	Behr-Andres, Christina	09/07/1999	N	N
Public	Duncan, Ronald	09/07/1999	N	N
Scientist or Engineer	Gerster, John	09/07/1998	N	N
Non-Alaskan Scientist	Kozmetsky, George	09/07/1998	N	N
Public	Strutz, Richard	09/07/1999	N	N
Public	Treadwell, Mead	09/07/1998	N	N
Seafood Marketing Institute				
Commercial Fishing	VACANT	07/01/1999	Y	N
Commercial Fishing	Burden, Patrick	07/01/1999	Y	N
Commercial Fishing	Gunderson, Justine	07/01/1999	Y	N
Commercial Fishing	Heyano, Rose	07/01/1999	Y	N
Large Processor	Hill, Larry	07/01/1999	Y	N
Commercial Fishing	Ivanoff, Stephen	07/01/1999	Y	N
Large Processor	Nickinovich, Robert	07/01/1999	Y	N
Large Processor	Sevier, John	07/01/1999	Y	N
Large Processor	Van Devanter, Doug	07/01/1999	Y	N
Social Work Examiners				
Public	Haywood, Beverly	07/01/1999	N	Y
Clinical Social Worker	Henkelman, James	07/01/1998	N	Y

Clinical Social Worker	Patrick-Riley, Colleen	07/01/1998	N	Y
Storage Tank Assistance				
Insurance Industry	Chadwick-Anders, Judy	09/05/1999	N	N
Subsistence Resource Commissions				
Cape Krusenstern	Armstrong, Jr., Frederick	11/04/1997	N	N
Cape Krusenstern	Blodgett, Richard	03/03/1997	N	N
Teachers' Retirement Board				
Physician	VACANT		Y	N
Retired	Wells, Dorothy	06/30/1999	Y	N
Tourism Marketing Council				
Public/Restricted	VACANT	07/01/1999	Y	N
Public/Restricted	VACANT	07/01/2000	Y	N
Public/ Restricted	Bertke, Duke	07/01/1999	Y	N
Public/ Restricted	Litten, John	07/01/1999	Y	N
TRAAK Board				
Public	VACANT	02/14/1998	N	N
Public	VACANT	02/14/2000	N	N
Public	VACANT	02/14/2001	N	N
Public	Vorderstrasse, Jim	02/14/1999	N	N
Veterans Advisory Council				
Public/Restricted	VACANT	07/01/1998	N	N
Public/Restricted	VACANT	07/01/1999	N	N
Public/Restricted	Guinn, John	07/01/1999	N	N

Public/Restricted	Johnson, Nona	07/01/1999	N	N
Public/Restricted	Willis, Ed	07/01/1999	N	N
Western Interstate Commission				
Higher Education	Barrans, Diane	06/22/1999	N	N
Wood-Tikchik State Park				
Bristol Bay Native Association nomination	Samuelson, Jr., H. Robin	07/01/1999	N	N
New Stuyahok nomination	Wonhola Sr., Timothy	07/01/1999	N	N
Workers' Compensation				
2nd/4th JD/ Labor	Giuchici, John	07/01/1999	Y	Y
3rd JD/ Industry	Hagedorn, Steve	07/01/1999	Y	Y
3rd JD/ Industry	Rooney, Florence	07/01/1999	Y	Y
Youth Corps State Advisory Council				
Public	VACANT	07/31/1998	N	N
Public	VACANT	07/31/1999	N	N
Public	VACANT	07/31/1999	N	N
Public	VACANT	07/31/1999	N	N
Public	VACANT	07/31/1999	N	N
Public	Bratcher, Debra	07/31/1999	N	N
Public	Buhite, George	07/31/1999	N	N
Public	Ellis, Rose	07/31/1999	N	N
Public	Neil, Matthew	07/31/1999	N	N
Yukon River Panel				
Advisory	Newman, Elizabeth	01/16/1998	N	N

\* FD = Financial Disclosure required

\*\* LC = Legislative Confirmation required

For general information on Boards and Commissions, or to apply for membership, please contact the Office of the Governor, Boards and Commissions, P.O. Box 110001, Juneau, AK 99811-0001, (907) 465-3500. The public is invited to send resumes to this address. Please indicate which board(s) or commission(s) you are interested in.

**Office of the Governor: Regulations Filed by the Lieutenant Governor  
New Regulations Filed By Lt. Governor (Reg. 151)**

**Publish Date:** 07/13/99

**Archive Date:** 07/22/99

**Location:** Statewide

**Body of Notice:**

**REGULATIONS FILED BY THE LT. GOVERNOR**

**PERMANENT REGULATIONS**

The following regulation projects have been adopted by the individual agencies, filed by the Lieutenant Governor and prepared for the October, 1999 Supplement, Register 151. To receive a copy of these regulations, please contact the adopting agency.

DEPT	A.G. FILE NO	DATE FILED	EFFECTIVE DATE	SUBJECT / PART # / CHAPTER
DCED	993.99.0130	06/30/99	07/30/99	Occ. Licensing: Licensing fees for barbers, hairdressers, electrical administrators & mechanical administrators (12 AAC 02)
DOE	993.98.0154	06/08/99	07/08/99	Bd. of Education: Pupil Transportation, Pt. 1 (4 AAC 27)
	993.98.0165	06/11/99	07/11/99	Bd. of Education: Certification of Teachers (4 AAC 12)
	993.99.0037	06/22/99	07/22/99	Bd. of Education: School Funding, Pt. 1 (4 AAC 09)
	993.99.0154	06/23/99	07/23/99	Bd. of Education: Pupil Transportation, Pt. 2 (4 AAC 27)
DEC	993.98.0040	06/11/99	07/11/99	Solid Waste Management: Contaminated Soil, Pt. 2 (18 AAC 60)
FG	993.99.0048	06/08/99	07/08/99	Bd. of Fisheries: Upper Copper River & Upper Susitna River Area, Tonsina River, Pt. 2 (5 AAC 52)
	993.99.0030	06/17/99	07/17/99	Bd. of Game: Sea Ducks and Beaver Seasons and Bag Limits, Part 4 (5 AAC 84; 85)

	993.99.0048	06/18/99	07/18/99	Bd. of Fisheries: Statewide provisions: Sport & Personal Use Fisheries, Pt. 3 (5 AAC 75; 77)
	993.99.0048	06/21/99	07/21/99	Bd. of Fisheries: King/Tanner Crab and Misc. Finfish Fisheries, Pt. 4 (5 AAC 01- 77)
	993.99.0048	07/09/99	08/08/99	Bd. of Fisheries: King/Tanner Crab and Misc. Finfish Fisheries, Pt. 5 (5 AAC 02 - 77)
	993.99.0047	07/09/99	08/08/99	Bd. of Fisheries: Commercial Finfish Fishing in Cook Inlet Area, Pt. 3 (5 AAC 21)
GOV	993.98.0002	06/16/99	07/16/99	Ak Coastal Policy Council: District Coastal Mgt. & Other Plans (6 AAC 80; 85)
DHSS	993.98.0100	06/04/99	07/04/99	Certification of manual defibrillator technicians & approval of automated external defibrillation training program (7 AAC 26)
DOL	993.99.0071	06/22/99	07/22/99	Cost of Living: Ak Exemptions Act (8 AAC 95)
	993.98.0091	06/30/99	07/30/99	Child Labor (8 AAC 05)
DNR	993.99.0115	06/23/99	09/01/99	Ak Revolving Loan Fund Land Disposals (11 AAC 39)
DPS	993.99.0081	07/13/99	08/12/99	Maintenance of dept. marine vessels & interport differential (13 AAC 69)

\*The Department of Law does not review these regulations. AHFC and AIDEA are exempt from the Administrative Procedures Act as per AS 18.56.088(a) and AS 44.88.085(a).

## EMERGENCY REGULATIONS

The following regulation projects have been filed by the Lieutenant Governor and prepared for the October, 1999 Supplement, Register 151. Emergency regulations do not remain in effect more than 120 days unless made permanent by the adopting agency. To receive a copy of these regulations, please contact the adopting agency.

DEPT.	EFFECTIVE DATE	EXPIRATION DATE	SUBJECT / PART # / CHAPTER
FG	07/08/99	11/04/99	Hunting Seasons and Bag Limits for Small Game (5 AAC 85.065)

DOR	06/04/99	10/01/99	Permanent Fund Division: Eligibility of aliens (15 AAC 23)

### EMERGENCY REGULATIONS MADE PERMANENT

The following regulation projects have been adopted by the individual agencies, filed by the Lieutenant Governor and prepared for the October, 1999 Supplement, Register 151. To receive a copy of these regulations, please contact the adopting agency.

DEPT	A.G. FILE NO.	DATE FILED	EFFECTIVE DATE	SUBJECT / PART # / CHAPTER

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#### Administration: Competitive & Other Solicitations

### Invitation To Bid #2164 Grocery Delivery, State Institutions

**Publish Date:** 07/08/99

**Archive Date:** 07/22/99

**Location:** Statewide

**Body of Notice:**

Quarterly Grocery Bid for state institutions for delivery October through December 1999, throughout Alaska.

Contracting Officer Mari K. Dyson

Opening date July 22, 1999 at 1:30 p.m.

Division of General Services, Juneau Office (907) 465-2250

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#### Administration: Competitive & Other Solicitations

### Request For Proposal #5478, Builing Engineering Services, Bank Of America Center

**Publish Date:** 07/08/99

**Archive Date:** 07/29/99

**Location:** Anchorage

**Body of Notice:**

Project #BOA-015-99

Building Engineering Services

Bank of America Center

The Department of Administration, Division of General Services, is soliciting sealed bids from qualified contractors for providing labor as necessary to complete the following work for the Bank of America Center at 550 West 7th Avenue, Anchorage., AK

Provide on site Building Engineering Services for the operations and maintenance of a 374,000 s.f., office building. Scope of services to include: general maintenance/repair, preventative maintenance, energy management, snow removal, parking lot monitoring and life/safety response, etc.

Critical project dates are noted below:

Document Distribution: July 8, 1999, Suite #601  
Mandatory Preproposal  
Site Inspection Meeting: 2:00 pm, July 15, 1999, Suite #601  
Bids due: 2:00 p.m., July 29, 1999,  
State of Alaska,  
550 West 7th Avenue, Suite #601  
Anchorage, AK  
Proposed Notice of Intent to Award: August 11, 1999

Bid Documents may be obtained on or after, July 8, 1999 from: Tanci Gentz, Asset Manager, State of Alaska, Department of Administration, Division of General Services, 550 West 7th Avenue, Suite #601, Anchorage, AK 99501 at (907) 269-0300.

The State assumes no liability for incorrect address or delivery of RFP packages by public or private carriers.

Sealed Bid Documents must be received at the issuing office, 550 West 7th Avenue, Suite #601 no later than 2:00 p.m. on July 29, 1999.

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this procurement should contact Tanci Gentz at the number listed above, no later than July 21, 1999 to make any necessary arrangements

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**Administration: Public Notices**

**Alaska Oil & Gas Conservation Comm - Kuparuk River Pool**

**Publish Date: 07/08/99**

**Archive Date: 08/10/99**

**Location: Northern Region**

**Body of Notice:**

Re: Kuparuk River Pool, Kuparuk River Unit, North Slope Alaska.

ARCO Alaska, Inc. by application received June 16, 1999, requested a variance from 20 AAC 25.230(b) pertaining to the frequency of required well testing in some unique situations, namely wells which share a common flowline (twinned production wells).

A person who may be harmed if the requested order is issued may file a written protest prior to 4:00 PM July 23, 1999 with the Alaska Oil and Gas Conservation Commission, 3001 Porcupine Drive, Anchorage, Alaska 99501 and request a hearing on the matter. If the protest is timely filed and raises a substantial and material issue crucial to the Commission's determination, a hearing on the matter will be held at the above address at 9:00 AM on August 10, 1999 in conformance with 20 AAC 25.540. If a hearing is to be held, interested parties may confirm this by calling the Commission's office, (907) 279-1433 after July 23, 1999. If no protest is filed, the Commission will consider the issuance of the order without a hearing.

If you are a person with a disability who may need a special modification in order to comment or to attend the public hearing, please contact Diana Fleck at 793-1221 no later than August 4, 1999.

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**Administration: Public Notices****Alaska Oil & Gas Conservation Comm. - Pioneer Unit Disposal Injection Order****Publish Date:** 07/08/99**Archive Date:** 08/03/99**Location:** Central Region**Body of Notice:**

Ocean Energy Resources, Inc. by letter dated June 28, 1999, has requested an order allowing the disposal of Class II fluids in the Pioneer Unit in the Matanuska-Susitna Valley in Southcentral Alaska. The requested order would allow disposal of oilfield wastes in the Pioneer Unit #1702-15DA WDW well located in Section 15, Township 17 North, Range 2 West, Seward Meridian.

A person who may be harmed if the requested order is issued may file a written protest prior to 4:00 PM, July 19, 1999 with the Alaska Oil and Gas Conservation Commission, 3001 Porcupine Drive, Anchorage, Alaska 99501, and request a hearing on this matter. If the protest is timely filed and raises a substantial and material issue crucial to the Commission's determination, a hearing on the matter will be held at the above address at 9:00 AM on August 3, 1999, in conformance with 20 AAC 25.540. If no protest is filed, the Commission will consider the issuance of the order without a hearing.

If you are a person with a disability who may need a special modification in order to comment or to attend the public hearing, please contact Diana Fleck at 793-1221 before July 28, 1999.

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**Community & Economic Development: Agency Meetings****Board Of Marine Pilots Teleconference Correction****Publish Date:** 07/12/99**Archive Date:** 07/16/99**Location:** Anchorage, Juneau,  
Ketchikan**Body of Notice:**

The Department of Community and Economic Development, Division of Occupational Licensing, announces a change to the July 15, 1999 teleconference meeting of the Board of Marine Pilots. Instead of the previously noticed time, the meeting will now commence at 8:30 am. This meeting is being held to conduct regular board business.

The teleconference will be open to the public at the following sites: the Legislative Information Office (LIO) in Ketchikan; the Commissioner's Conference Room on the 9th Floor of the State Office Building in Juneau; and the LIO in Anchorage.

For further information, please contact Peter Christensen, Marine Pilot Coordinator, at (907) 465-2548.

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**Community & Economic Development: Agency Meetings****Board Of Social Work Examiners Teleconference Meeting**

**Publish Date:** 07/12/99**Archive Date:** 07/13/99**Location:** Statewide,  
Teleconference**Body of Notice:****BOARD OF SOCIAL WORK EXAMINERS**

Notice is hereby given that the Department of Community and Economic Development, Division of Occupational Licensing, Board of Social Work Examiners, will conduct a teleconference meeting July 16, 1999 at 9:00 a.m. The purpose of the meeting is to discuss the status of the regulation project, review applications, and any other board business as deemed necessary.

Additional information may be obtained from the Department of Community and Economic Development, Division of Occupational Licensing, P.O. Box 110806, Juneau, AK 99811-0806, telephone (907) 465-2551.

Individuals or groups of people with disabilities, who require special accommodations, auxiliary aids or services, or alternative communication formats, call Barbara Gabier at (907) 465-2572. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Agency Meetings**  
**Board Of Social Work Examiners Teleconference Meeting**

**Publish Date:** 07/12/99**Archive Date:** 07/17/99**Location:** Statewide**Body of Notice:**

Notice is hereby given that the Department of Community and Economic Development, Division of Occupational Licensing, Board of Social Work Examiners, will conduct a teleconference meeting July 16, 1999 at 9:00 a.m. The purpose of the meeting is to discuss the status of the regulation project, review applications, and any other board business as deemed necessary.

Additional information may be obtained from the Department of Community and Economic Development, Division of Occupational Licensing, P.O. Box 110806, Juneau, AK 99811-0806, telephone (907) 465-2551.

Individuals or groups of people with disabilities, who require special accommodations, auxiliary aids or services, or alternative communication formats, call Barbara Gabier at (907) 465-2572. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

Jennifer Strickler, Administrative Manager  
Division of Occupational Licensing

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**Community & Economic Development: Agency Meetings**  
**Board Of Veterinary Examiners Meeting**

**Publish Date:** 07/13/99**Archive Date:** 09/25/99**Location:** Anchorage**Body of Notice:**

THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, DIVISION OF OCCUPATIONAL LICENSING, HEREBY ANNOUNCES THE FORTHCOMING MEETING.

BOARD OF VETERINARY EXAMINERS, (907) 465-5470. Meeting is September 23-24, 1999, 8:30 a.m. 3601 C Street, Suite 580, Anchorage, AK.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Delegations of Authority**  
**Division Of Insurance Standing Order Of Delegation**

**Publish Date:** 07/12/99

**Archive Date:** 12/31/99

**Location:** Statewide

**Body of Notice:**

I, John Ference, Acting Director of the Division of Insurance, desire to provide for the delegation of authority to act on my behalf when I am unable to act or cannot be reached. Pursuant to provisions of Alaska Statute 21.06.050, and under these circumstances, I delegate authority to exercise or discharge in the director's name all power, duties, or functions, whether ministerial or discretionary, vested by this in the director, to the following division employees:

First, Jeffrey W. Bush, Deputy Commissioner  
Second, Gloria Glover, Chief Financial Examiner  
Third, Joseph Ver, Administrative Manager

This is a standing Order of Delegation, effective immediately, and will remain in effect until notified or revoked by subsequent order.

John Ference, Acting Director  
Division of Insurance

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**Community & Economic Development: Notices of Proposed Regulations**  
**Proposed Changes In Title 12 Regs - Real Estate Licensing & Surety Fund Fees**

**Publish Date:** 07/13/99

**Archive Date:** 08/27/99

**Location:** Juneau

**Body of Notice:**

REAL ESTATE COMMISSION

Notice is given that the Real Estate Commission, under the authority of AS 08.01.065, AS 08.88.081, AS 08.88.221, and AS 08.88.455, proposes to amend and adopt regulations in Title 12 of the Alaska Administrative Code dealing with the surety fund fee, to implement, interpret, and make specific AS 08.01.065, AS 08.88.081, AS 08.88.221, and AS 08.88.455, as follows:

12 AAC 64.073, SURETY FUND FEE, the commission is proposing to amend the surety fund fee.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
OCCUPATIONAL LICENSING FEES

Notice is given that the Department of Community and Economic Development, under the authority of AS 08.01.065 and AS 08.88.221, proposes to amend and adopt regulations in Title 12 of the Alaska Administrative Code dealing with occupational licensing fees related to the Real Estate Commission, to implement, interpret, and make specific AS 08.01.065 and AS 08.88.221.

Under Alaska law, the Department of Community and Economic Development must establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. The Department of Community and Economic Development has reviewed the income and expenses for the Real Estate Commission and proposed fee changes that reflect, to the extent possible, the actual costs of the activities under this occupational licensing area. The proposed regulations adjust fees for the following area:

12 AAC 02.360, REAL ESTATE COMMISSION, the department is proposing to amend the licensing and renewal fees for real estate salespersons, associate brokers, and brokers.

Notice is also given that any person interested may present written comments relevant to the proposed actions described above, including the potential costs to private persons of complying with the proposed actions, by submitting written comments by mail, fax, or E-mail to:

Kurt West, Regulations Specialist  
Division of Occupational Licensing  
Department of Community and Economic Development  
P.O. Box 110806  
Juneau, AK 99811-0806  
Fax: (907) 465-2974  
E-mail: [kurt\_west@dced.state.ak.us]

Written comments must be received at the address above no later than August 26, 1999. Additionally, any interested person may present oral or written comments relevant to the proposed actions, including the potential costs to private persons of complying with the proposed action, at a hearing to be held on September 20, 1999, beginning at 1:30 PM, in the Alaska Housing Finance Corporation Board Room, 4300 Boniface Parkway, Anchorage, Alaska.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Kurt West at the above number or address no later than August 20, 1999, to make any necessary arrangements.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the mail, fax, or E-mail address above or by telephoning (907) 465-2537.

After the close of the public comment period, the Real Estate Commission and the Department of Community and Economic Development will adopt either these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. The department and the commission may raise or lower the fees, or change or establish fees related to the licensing programs listed above. You should comment during the time allowed if your interests could be affected.

Jennifer Strickler, Administrative Manager  
Division of Occupational Licensing

For each occupation regulated under the Division of Occupational Licensing, the division keeps a list of

individuals or organizations who are interested in the regulations of that occupation. The division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, please send your request to the Division of Occupational Licensing at the address above and include your name, address, and the occupational area in which you are interested.

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**Community & Economic Development: Notices of Proposed Regulations**  
**Proposed Changes In Title 3 Regulations Dealing With Licensing Fees**

**Publish Date:** 07/12/99

**Archive Date:** 08/09/99

**Location:** Statewide

**Body of Notice:**

Notice is given that the Division of Insurance, under the authority of AS 21.06.090 and 21.06.250, proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code, dealing with licensing fees for persons and entities regulated by the Division of Insurance, to implement, interpret, and make specific AS 21.06.250 and AS 21.27.380 as follows:

3 AAC 31.020 is proposed to be amended to add a motor vehicle rental license to the types of limited producer licenses listed for which the Division of Insurance will charge a fee to issue.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to the Division of Insurance, Attention: Dale Whitney; P.O. Box 110805; Juneau, AK 99811-0805, so that they are received no later than 5:00 p.m. (Alaska Daylight Savings Time) August 6, 1999.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Barbara Karl at (907) 269-7900, or TDD (907) 465-5437 no later than July 19, 1999 to ensure that any necessary accommodations can be provided.

If you have questions regarding the proposed regulations, please contact Dale Whitney at (907) 465-2515 or via e-mail to [[Dale\\_Whitney@dced.state.ak.us](mailto:Dale_Whitney@dced.state.ak.us)]

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Division of Insurance at the above address or by telephoning (907) 269-7900 in Anchorage or (907) 465-2515 in Juneau.

After the close of the public comment period, the Division of Insurance will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

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**Community & Economic Development: Public Notices**  
**Barbers And Hairdressers Examination Schedule For October**

**Publish Date:** 07/13/99

**Archive Date:** 10/12/99

**Location:** Statewide

**Body of Notice:**

THE DIVISION OF OCCUPATIONAL LICENSING HEREBY ANNOUNCES THE FORTHCOMING

## EXAMINATION.

BOARD OF BARBERS AND HAIRDRESSERS, (907) 465-2547, Anchorage and other locations determined necessary, examination date 10/10-11/99, deadline date 9/10/99.

E-mail requests for exam applications may be made to: [[license@dced.state.ak.us](mailto:license@dced.state.ak.us)]

Applications and exam information are also available at: Division of Occupational Licensing, 9th Floor State Office Building, PO 110806 Juneau, AK 99811-0806, (907) 465-2534. Division of Occupational Licensing, 3601 C Street, Suite 722, Anchorage, AK 99503-5934, (907) 269-8160.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Public Notices**

**Big Game Guides & Transporters Examination - 12/28/99**

**Publish Date:** 07/13/99

**Archive Date:** 12/29/99

**Location:** Anchorage, Juneau

**Body of Notice:**

THE DIVISION OF OCCUPATIONAL LICENSING HEREBY ANNOUNCES THE FORTHCOMING EXAMINATIONS.

BIG GAME GUIDES & TRANSPORTERS, (907) 465-2543, registered guide and game management unit examinations, Anchorage and Juneau, 12/28/99; registered guide application deadline 8/30/99.

E-mail requests for exam applications may be made to: [[license@dced.state.ak.us](mailto:license@dced.state.ak.us)]

Applications and exam information are also available at: Division of Occupational Licensing, 9th Floor State Office Building, PO 110806 Juneau, AK 99811-0806, (907) 465-2534. Division of Occupational Licensing, 3601 C Street, Suite 722, Anchorage, AK 99503-5934, (907) 269-8160.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Public Notices**

**Board Of Marital And Family Therapy Examination**

**Publish Date:** 07/13/99

**Archive Date:** 11/13/99

**Location:** Anchorage

**Body of Notice:**

THE DIVISION OF OCCUPATIONAL LICENSING HEREBY ANNOUNCES THE FORTHCOMING EXAMINATION.

BOARD OF MARITAL AND FAMILY THERAPY; (907) 465-2551; Examination Date 11/12/99; Application Deadline 9/13/99. Anchorage, AK

E-mail requests for exam applications may be made to:[<a href="mailto:license@dced.state.ak.us">license@dced.state.ak.us</a>]

Applications and exam information are also available at: Division of Occupational Licensing, 9th Floor State Office Building, PO 110806 Juneau, AK 99811-0806, (907) 465-2534. Division of Occupational Licensing, 3601 C Street, Suite 722, Anchorage, AK 99503-5934, (907) 269-8160.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Public Notices**  
**Board Of Public Accountancy Examination**

**Publish Date:** 07/13/99

**Archive Date:** 11/05/99

**Location:** Anchorage,  
Fairbanks, Juneau

**Body of Notice:**

The Department of Community and Economic Development, Division of Occupational Licensing, Hereby Announces the Forthcoming Examination.

BOARD OF PUBLIC ACCOUNTANCY CPA Examination, (907) 465-2580, Anchorage, Fairbanks, Juneau, November 3-4, 1999. Application deadline September 6, 1999.

E-mail requests for exam applications may be made to: [license@dced.state.ak.us]  
Applications and exam information are also available at: Division of Occupational Licensing, 9th Floor State Office Building, PO 110806 Juneau, AK 99811-0806, (907) 465-2534. Division of Occupational Licensing, 3601 C Street, Suite 722, Anchorage, AK 99503-5934, (907) 269-8160.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Community & Economic Development: Public Notices**  
**Nurse Aide Registry Examination Schedule For September**

**Publish Date:** 07/13/99

**Archive Date:** 09/30/99

**Location:** Anchorage,  
Fairbanks, Juneau

**Body of Notice:**

THE DIVISION OF OCCUPATIONAL LICENSING HEREBY ANNOUNCES THE FORTHCOMING EXAMINATION.

NURSE AIDE REGISTRY, (907) 269-8169. Examinations are scheduled in Anchorage, Fairbanks, and Juneau on a monthly basis, but are available to be administered at other examination sites upon request. Completed examination applications must be received in the Anchorage office at least two weeks prior to the examination date. ANCHORAGE: Providence Hospital-Aspen Room, 9/25/99, application deadline 9/11/99. FAIRBANKS: Fairbanks Memorial Hospital, 9/29/99, application deadline 9/15/99, JUNEAU: State Office Building, 9/29/99, application deadline 9/15/99.

E-mail requests for exam applications may be made to: [<mailto:license@dced.state.ak.us>]

Applications and exam information are also available at: Division of Occupational Licensing, 9th Floor State Office Building, PO 110806 Juneau, AK 99811-0806, (907) 465-2534. Division of Occupational Licensing, 3601 C Street, Suite 722, Anchorage, AK 99503-5934, (907) 269-8160.

Individuals or groups of people with disabilities who require special accommodations, auxiliary aids or service, or alternative communication formats, call Barbara Gabier, (907) 465-2572, or TDD (907) 465-5437. Please provide advance notice in order for the Department of Community and Economic Development to accommodate your needs.

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**Fish & Game: Adopted Regulations - Text or Summary of Text**  
**Commercial Finfish Fishing In Cook Inlet Area Regulation Changes**

**Publish Date:** 07/09/99

**Archive Date:** 08/09/99

**Location:** Statewide

**Body of Notice:**

The Alaska Board of Fisheries adopted regulations dealing with commercial finfish fishing in the Cook Inlet Area that the Alaska Board of Fisheries adopted at its February 16-March 2, 1999, meeting, under the authority of AS 16.05.251 and 16.05.258 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

On the record, in considering public comments, the Alaska Board of Fisheries paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

/s/David Benton, Deputy Commissioner, July 8, 1999

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**Fish & Game: Adopted Regulations - Text or Summary of Text**  
**Subsistence, Personal Use, Sport And Commercial Shellfish, And Finfish Fisheries**

**Publish Date:** 07/09/99

**Archive Date:** 08/09/99

**Location:** Statewide

**Body of Notice:**

The Alaska Board of Fisheries adopted regulations dealing with king and Tanner crab issues in the subsistence, personal use and commercial shellfish fisheries in all Statewide Areas that the Alaska Board of Fisheries adopted at its March 17-28, 1999, meeting, in Anchorage, Alaska, at the Captain Cook Hotel, under the authority of AS 16.05.251 and 16.05.258 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

On the record, in considering public comments, the Alaska Board of Fisheries paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

/s/David Benton, Deputy Commissioner, July 8, 1999

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**Health & Social Services: Agency Meetings**  
**Medical Care Advisory Committee Meeting**

**Publish Date:** 07/13/99

**Archive Date:** 07/25/99

**Location:** Anchorage,  
Fairbanks, Juneau

**Body of Notice:**

Division of Medical Assistance, Medical Care Advisory Committee, Clarion Suites, 325 West 8th Avenue, Anchorage, Alaska 99501, July 23, 1999, 10:00 a.m. - 3:30 p.m., July 24, 1999, 8:00 a.m. - 5:00 p.m. Public is welcomed to attend and time for public comments will be allocated as necessary. For further information call Claudette Shales (907) 465-3355. If you need special help to participate please contact us immediately to make any necessary arrangements. TDD communication is available through the above phone number.

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**Health & Social Services: Agency Meetings**  
**Proposal Evaluation Committee (Pec)**

**Publish Date:** 07/14/99

**Archive Date:** 07/31/99

**Location:** Anchorage,  
Fairbanks, Juneau, Ketchikan

**Body of Notice:**

The Proposal Evaluation Committee (PEC) meeting formed to review and make recommendations on proposals submitted for the Fetal Alcohol Consultation and Training Services [FACTS] grant program will meet on Friday, July 30, 1999 at 9:00 a.m., in the Alaska Office Bldg., Room 229, Commissioner's Conference Room, 350 Main Street, Juneau, Alaska. While this meeting is open to all interested persons, public testimony will not be taken. For more information, please contact L. Diane Worley, Statewide FAS Coordinator at 907/465-3033.

For individuals with disabilities who require accommodations in order to attend the meeting, call 907/465-3033 (voice) or 907/465-3196 (TDD), no later than July 23, 1999.

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**Health & Social Services: Notices of Proposed Regulations**  
**Creation Of The Division Of Juvenile Justice**

**Publish Date:** 07/13/99

**Archive Date:** 08/31/99

**Location:** Statewide

**Body of Notice:**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES AND THE DEPARTMENT OF PUBLIC SAFETY

Notice is given that the Department of Health and Social Services, under the authority of AS 47.05.010, AS 47.12.310, AS 47.14.010, and related statutes, proposes to adopt changes in the regulations in Title 7 of the Alaska Administrative Code, pertaining to a variety of the department's duties.

The basic purpose of the changes is to implement the creation of the division of juvenile justice, separating its functions from those of the current division of family and youth services. This separation

necessitates adding the new division's name, in numerous places throughout the department's regulations. The current division will retain its name. The new division is being created to enable the department to focus more effectively and efficiently on youth corrections, especially in light of statutory changes in 1996, 1997, and 1998.

Notice is also given that the Council on Domestic Violence and Sexual Assault, in the Department of Public Safety, under the authority of AS 18.66.050, proposes to amend 13 AAC 90.120, "Coordination and Referral" (grantees coordinating with referral agencies). This amendment merely recognizes the Department of Health and Social Services division change.

In the process of making the name changes and dealing with the functioning of the new division, many incidental amendments will be made, updating the regulations to conform to current statutes and practices, clarifying some provisions, and providing consistency in wording.

The changes, in this 102-page draft of the Department of Health and Social Services material, consist of amendment of some current provisions, repeal of others, and addition of new provisions. The subjects covered include:

- 7 AAC 37, PUBLIC ASSISTANCE; eleven obsolete sections, dealing with various aspects of public assistance, are repealed, and the section on fee agents is clarified;
- 7 AAC 38, PERMANENT FUND DIVIDEND DISTRIBUTION; this chapter deals with the effect of the permanent fund dividend on Department of Health and Social Services public assistance programs; the only section being amended will correct a reference to the trust fund and make some wording style corrections;
- 7 AAC 43, MEDICAL ASSISTANCE; three sections, dealing with children's services and inpatient psychiatric services, are amended, to recognize the new division;
- 7 AAC 45, ALASKA TEMPORARY ASSISTANCE PROGRAM; one subsection, dealing with availability of resources, is amended, to recognize the new division;
- 7 AAC 47, GENERAL RELIEF; in addition to updating and clarifying the wording, the amendments change the references to "adult residential care facility" to read "assisted living home," recognizing that the latter superseded the former under AS 47.33 and 7 AAC 75; the entire article on adult foster care is repealed because it, too, has been replaced by assisted living home care;
- 7 AAC 51, CHILD PLACEMENT AGENCIES; address correction only, in the section on organization and operation;
- 7 AAC 52, JUVENILE CORRECTIONAL FACILITIES AND JUVENILE DETENTION FACILITIES; the changes in this chapter present a fairly comprehensive set of amendments, dealing with such matters as admission to facilities, operations, visiting, discipline, supervision, and all aspects of management of and conduct in these facilities;
- 7 AAC 53, SOCIAL SERVICES; authority-note-citation update;
- 7 AAC 54, ADMINISTRATION; the changes in this chapter include a compatibility amendment in the scope section of the existing article on confidentiality and disclosure of records of the division of family and

youth services, an incidental corrective amendment in the grievance-procedure article, and addition of a new article on the records of the new division of juvenile justice; the new provisions deal with confidentiality and disclosure under AS 47.12.310, 47.12.315, and 47.12.320, involving disclosure to other agencies, school officials, other public officials, and the public;

- 7 AAC 55, ADULT SERVICES; statutory-citation update - one section, dealing with services for pregnant women;
- 7 AAC 78, GRANT PROGRAMS; the only provision being amended in this chapter is the one stating that the department will maintain a register of potential grantees, and then listing several grant programs; the amendments merely mention the new division and update several statutory citations.

The regulations implement, interpret, and make specific the provisions of the statutes cited in the first and third paragraphs of this notice, above, and several closely related statutes dealing with the subjects indicated here. In the draft regulations, the authority note under each section being amended or added lists the relevant statutes.

Notice is also given that any interested person may present written statements or arguments relevant to the proposed action, including the potential costs to private persons of complying with the proposed regulation changes, by writing to Patty Ware, Administrative Juvenile Probation Officer, Division of Family and Youth Services, Department of Health and Social Services, P. O. Box 110630, Juneau, Alaska 99801-0630, so that they are received no later than August 11, 1999. Public comment may also be submitted electronically by that date by sending Patty Ware an e-mail message at the following address:

patty\_ware@health.state.ak.us

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations, please contact Patty Ware at the address in the preceding paragraph or by phone (907-465-2112) no later than July 28, 1999, to make any necessary arrangements.

This action is not expected to require an increased appropriation.

Copies of the proposed changes in the regulations may be obtained by contacting Patty Ware at the address or phone number set out above. A full text version of the proposed regulations is also available on the division of family and youth services home page at [www.hss.state.ak.us/DFYS](http://www.hss.state.ak.us/DFYS), under "publications."

The commissioner of health and social services, and, for the Title 13 change, the Council on Domestic Violence and Sexual Assault, after the public comment deadline, will either adopt these or other proposals dealing with the same subjects, without further notice, or decide to take no action on them.

DATE: July 12, 1999

Karen Perdue, Commissioner  
Dept. of Health and Social Services

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Ronald L. Otte, Commissioner

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Department of Public Safety

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**Law: Attorney General Opinions**  
**1999 WASHTO Conference - Ethics Issues**

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

TO: The Honorable Joseph L. Perkins, P.E., Commissioner  
     Department of Transportation and Public Facilities  
DATE:    October 6, 1998  
TEL. NO.: 269-5100  
SUBJECT: 1999 WASHTO Conference: Ethics Issues  
FILE No.: 663-87-0182  
THROUGH: Stephen C. Slotnick  
             Ethics Supervisor  
FROM:    James E. Cantor  
             Supervising Attorney  
             Transportation Section, Anchorage

You asked several ethical and legal questions regarding the Department of Transportation and Public Facilities' hosting of the Western Association of State Highway and Transportation Officials 78th annual conference in 1999. In this memorandum, I respond only to the ethics issues. We have already responded to your legal questions.

The Western Association of State Highway and Transportation Officials (WASHTO) is a non-profit organization comprised of the transportation agencies of 17 western states. WASHTO is a sister to a national organization called the American Association of State Highway and Transportation Officials (AASHTO). By law, Alaska's standards for the construction and maintenance of highways must conform as closely as practicable to AASHTO standards. AS 19.10.160 and 36.30.060. The annual WASHTO conference provides an opportunity to examine and recommend standards applicable to western highways, provides training, and includes a trade show. The annual conference attracts 550 to 850 government and private participants.

WASHTO has no permanent staff. Staffing to organize and conduct the annual conference is generally provided by the host state. Financing for the conference has traditionally come from multiple sources, including participant registration fees, vendor registration fees, trade show booth space fees, and donations by businesses in the transportation industry. The total budgets for the last two annual conferences were \$155,000 and \$280,000, with industry donations accounting for about a third of the totals.

You asked if there are any ethical considerations in asking state employees to help organize the conference. The answer under the Executive Branch Ethics Act (AS 39.52) is no. The department participates in WASHTO to assist it in carrying out its duties, not to benefit the personal or financial interests of its employees. The Ethics Act does not prevent the department from using state employees to help host the annual WASHTO conference. The conclusion is the same, under the Ethics Act, whether the employees are paid or volunteering their time.

You next asked about the private donations that help fund the WASHTO conference. The donations will be to WASHTO, not the state. The department officials organizing the conference hope to solicit

donations on behalf of WASHTO. The department proposes setting up a trust account within the Department of Administration to handle donated and other funds belonging to WASHTO. The WASHTO trust account will be maintained in the Department of Administration rather than a private bank for ease of auditing should the government's role ever be questioned. Any funds remaining in the trust account after the conference will be returned to WASHTO. Because staffing and accounting for the WASHTO conference will be provided by the state, donations will not only be solicited by state employees but also received and spent by state employees.

Donors will be recognized in some fashion at the conference. For example, one suggestion is that donors could be recognized for "sponsoring" a meal or other event.

The Executive Branch Ethics Act would not prohibit the solicitation or receipt by state employees of donations to support the WASHTO conference. Nor would the ethics act limit the size of the donations. Under the ethics law, donations may not personally or financially benefit the officers conducting the solicitation or receiving the funds. AS 39.52.120 - 39.52.130. The ethics law would not prohibit solicitation and receipt because the WASHTO conference benefits the state rather than the personal or financial interests of its employees.

The ethics law may constrain the manner in which the department can solicit funds. Under AS 39.52.120(a), a public officer "may not intentionally secure or grant unwarranted benefits or treatment for any person." The definition of "unwarranted benefits or treatment" in 9 AAC 52.040 does not neatly fit the WASHTO situation. Nonetheless, it could be argued that being listed as an event sponsor is an advertising benefit such that choosing to solicit from one party and not another could create an unwarranted benefit. This argument can be avoided by sending a solicitation to the entire class of potentially interested parties. In this case, I would assume that to be the list of contractors and suppliers who do business with the department's highways sections.

A prior opinion of this office made a similar recommendation in response to a proposal by the Division of Parks to seek donations. 1986 Inf. Op. Att'y Gen. (June 30; 663-86-0470). In that case, the Division of Parks proposed to recognize donors in a brochure, raising concerns about a constitutional guarantee of equal access to public forums. This office recommended a public solicitation and further noted that once an agency allows advertisements or recognition of donations in brochures, the Constitution may limit any discretion to exclude particular groups, companies, or individuals. Accord 1993 Inf. Op. Att'y Gen. (July 12; 663-94-0007) ("[T]he department must be circumspect about how it solicits donations so as not to favor certain groups or exclude others."). The department can avoid constitutional disputes by sending a solicitation to the entire class of potentially interested parties, such as the list of contractors and suppliers who do business with the department's highways sections, and by not refusing other groups, companies, or individuals who may wish to make donations and receive recognition at the WASHTO conference.

Prior ethics opinions issued by this office have cautioned as a matter of policy that "while [solicitation of donations] might not be a direct violation of the Act, such a practice might lend itself to abuse, and certainly would create an inappropriate impression." 1989 Inf. Op. Att'y Gen. (Mar. 20; 663-89-0217); 1989 Inf. Op. Att'y Gen. (Oct. 5; 663-89-0556). Compare 1992 Inf. Op. Att'y Gen. (June 1; 661-92-0692) ("[T]his advice was given in the context of gifts that appeared to benefit the state employees personally, and perhaps it would be less applicable to a situation where the benefit is clearly restricted to the state itself."). To ameliorate any inappropriate impressions, "[c]are must be taken to avoid any implication that the giver is entitled to favorable treatment through official action" or that those who do not give will be treated unfavorably. 1986 Inf. Op. Att'y Gen. (June 30; 663-86-0470).

The department should also monitor the manner in which donations and other WASHTO funds are expended. This office has in the past advised that sponsored activities should not be "so lavish or excessive that they can be construed as gifts to individual [government employees] rather than sponsorship of a legitimate [agency] function." 1993 Inf. Op. Att'y Gen. (July 6; 663-93-0397). See also 1988 Inf. Op. Att'y Gen. (Mar. 11; 663-88-0328).



The following is our understanding of the facts, based on information provided in your memorandum of January 5, 1995.FN2

1. Mr. A's Job Duties

Mr. A is employed by the State of Alaska. Mr. A's position is funded by an interagency personnel agreement between a department of the State of Alaska and B, an agency of the federal government. Mr. A serves at the pleasure of both agencies. The state pays Mr. A's salary and is later reimbursed by B. B is later reimbursed by C, a private corporation, for work performed by Mr. A.

Under the direction of the state and B's on-site officer, Mr. A provides technical assistance regarding policies, procedures, and enforcement of state statutes and safety regulations. These inspections ensure that regulations protecting the safety of the public and employees working on the project are properly observed.

2. The Award

During 1994, Mr. A directed the XYZ safety and inspection project. In recognition of his superior job performance in directing the XYZ program, Mr. A was nominated for a monetary award. As a result, Mr. A was awarded \$1,265 by B. This award was based on a percentage of Mr. A's annual salary. Prior to disbursing Mr. A's award, a department of the State of Alaska requested our opinion on whether such an award was prohibited by the Act. Pending the release of this opinion, B has retained possession of Mr. A's award.

#### DISCUSSION

In our oral advice we advised that Mr. A should not accept the monetary award from B because, under AS 39.52.120(b),

A public officer may not . . .

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state.

AS 39.52.960(7) defines "compensation" to include:

(7) "compensation" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another.

The award presented by B to Mr. A is a "bonus" directly correlated to Mr. A's salary and constitutes compensation to him for services rendered. BLACK'S LAW DICTIONARY defines "bonus" as "[a]n addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service." BLACK'S LAW DICTIONARY 182(rev. 6th ed. 1990).

We base our finding that this award constitutes compensation for services rendered on the following factors. First, and most significantly, B's "award" or bonus was directly related to the quality and quantity of work performed by Mr. A as part of his official duty as a state employee.

Next, in calculating the award, B multiplied Mr. A's salary for FY-94 (\$63,240) by 2 percent, resulting in an award of \$1,265. Thus, the "award" was work-related and based on the value of services performed by Mr. A.

As a state employee, Mr. A is prohibited by AS 39.52.120(b) from accepting compensation from B for performance of his official duties. One purpose of AS 39.52.120(b) is to prevent state employees from receiving "double-pay" for performing their normal official duties. See 1987 Inf. Op. Att'y Gen. (April 24; 663-86-0389). A second purpose of the Act is to assure the public that state officials are not influenced

by remuneration from non-state entities. AS 39.52.010. If Mr. A accepted the monetary award or "bonus" from B, he would be receiving additional payment by a non-state entity for the performance of his official duties. Due to the restriction in AS 39.52.120(b)(4), it is our opinion that Mr. A may not accept B's monetary "award." However, Mr. A may request that B donate the award to a charity. The charity, however, must be an organization in which neither Mr. A or his immediate family members hold a membership or other interest. 1991 Inf. Op. Att'y Gen. (July 1; 663-91-0489).

If you have any questions regarding this opinion, please do not hesitate to call.

DDG/bap

FN1: Assistant Attorney General Neil Slotnick provided the initial oral advice confirmed by this opinion.

FN2: The information attached to your memorandum of January 5, 1996, includes: (1) two letters dated May 8, 1995, and September 1, 1995; (2) Notice of Award; (3) State of Alaska Position Description Questionnaire (PDQ) dated March 21, 1995. In addition to the above information, on February 9, 1996, Mr. A submitted a copy of the personnel agreement application to his position for FY-XX.

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**Law: Attorney General Opinions**

**Employee Rental of Condo to Company under Contract to Employees Agency**

**Publish Date:** 07/09/99

**Archive Date:** 07/16/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

To:     Director  
Date:   April 22, 1996  
File No: 661-96-0841

Telephone No: 269-5161  
From:   Carolyn E. Jones  
           Supervising Attorney  
           Transportation Section, Anchorage  
Subject:     Ethics Opinion

You have asked whether it would be a violation of the Executive Branch Ethics Act if one of your employees rented his condominium to a company under contract to your department for an ongoing construction project. The short answer is no.

FACTS

As you have reported the facts to us, an employee has supervised one of your divisions in Anchorage since March 1995. His prior employment history includes a partnership in a private consulting firm and 28 years of employment with a construction company currently under contract with your department.

In January 1996, a different one of your divisions in Anchorage awarded a competitively bid contract to the construction company mentioned in the previous paragraph. The subject employee had no involvement in the planning, design, contract specifications, or contract award of the project. Nor will he have any involvement in the management of the contract.



FILE NO.: 663-97-0140  
TELEPHONE NO.: 465-3600  
SUBJECT: Ethics Complaint Against Executive Assistant of Board X  
FROM: Robert B. Briggs  
Assistant Attorney General  
Oil, Gas, & Mining Section

## INTRODUCTION

The Attorney General's Office received a complaint filed by a person ("complainant") regulated by Board X. Board X licenses certain professionals; it also reviews and approves pre-licensing and continuing professional education course work offered within the state for those seeking to be licensed by Board X. The complaint was directed against the executive assistant of Board X, whom we will call Assistant Y. The complaint alleged violations of the Alaska Executive Branch Ethics Act ("Ethics Act" or "Act") based on Assistant Y's conduct relating to the recertification of the complainant's licensing courses. During our investigation the complainant withdrew the complaint.

For reasons expressed below, I conclude that there is no probable cause to believe that Assistant Y committed Ethics Act violations. Accordingly, a formal investigation is not warranted. AS 39.52.350. As discussed below, some of the allegations raised by the complainant, even if true, do not state an Ethics Act violation. Other allegations are not supported by the facts discovered during the investigation. The complaint is therefore dismissed under AS 39.52.320.FN1

## SUMMARY OF INFORMAL INVESTIGATION

Materials submitted by the complainant and detailed records submitted by Assistant Y were reviewed. Assistant Y and two other witnesses were interviewed. An interview of the complainant was attempted.FN2

## DISCUSSION

The complaint alleges that Assistant Y wrongfully took official action that benefited the business of a friend (whom we will call Z), and that injured the complainant's competing business. Although the complaint does not cite to specific sections of the Ethics Act, the complaint includes allegations that Y (i) acted beyond his or her authority in reviewing and certifying the complainant's continuing professional education courses; (ii) delayed approval of the complainant's courses; (iii) improperly removed the complainant's business from a list of approved schools; (iv) improperly removed complainant's business from a licensing exam pamphlet; (v) provided special approval for Z's courses; (vi) provided material from complainant's business to Z; (vii) withheld information from Board X concerning the complainant's business; (viii) wrongfully controlled the agendas of meetings of Board X; (ix) wrongfully denied certification to the complainant in order to retaliate against the complainant; and (x) is not qualified to administer Board X's education program.

In broad summary, complainant argues that Assistant Y has misused his or her official position in violation of AS 39.52.120. Subsection (a) of this statute states that "[a] public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person." This statute contains two proscriptions: the first pertains to the personal gain of the public officer; the second concerns treatment or benefits for any person. Subsection (b) of AS 39.52.120 enumerates five specific proscriptions on the actions of a public officer. Each of these proscriptions involves the personal gain of the public officer, whether it be in the form of employment, compensation, or a benefit to the public officer's personal or financial interest.

Thus, the first question is whether any evidence exists that Assistant Y stood to personally gain from any of the actions allegedly taken. If not, then the only remaining allegation would concern whether Assistant Y intentionally secured or granted unwarranted treatment for the complainant or unwarranted benefits for Z.

After careful consideration of the evidence, I conclude that there is no probable cause to believe that Assistant Y could have personally gained from any of the actions the complainant alleges. At most, the complainant has alleged that Assistant Y took action that benefited Z's business or harmed the complainant's business. The complainant has alleged that Assistant Y has a financial interest in Z's business, but has presented no evidence to support this allegation. I have carefully questioned both Z and Assistant Y concerning a possible financial arrangement between them. Both deny that Assistant Y has or ever had any financial interest in Z's business.

Similarly, the evidence does not support a conclusion that Assistant Y had a personal interest in Z's business. Personal interest is defined under the Act to include an interest held by the public officer or the public officer's immediate family. It can include membership in an organization. AS 39.52.960(18). It does not include, however, an interest of a friend or acquaintance. Here, at most the complainant has alleged that Assistant Y used his or her official position to benefit the interests of a friend, not the interests of Assistant Y, Y's family, or an organization to which Y belongs. Accordingly, I conclude that Assistant Y's personal interests are not implicated by this ethics complaint. Thus, at the outset, any conclusion that Assistant Y took official action to benefit his or her personal or financial interest can be eliminated.

The complaint does raise, however, a prima facie case that Assistant Y may have granted or secured unwarranted benefits or treatment for either the complainant or Z. A misuse of official position may be established if a public officer varies from normal procedures with an improper motivation. 9 AAC 52.040 (a)(1). An improper motivation may include being motivated by personal animus or friendship instead of taking action because it is in the best interest of the state. 9 AAC 52.990(b)(4); 1993 Inf. Op. Att'y Gen. (663-93-0292; Feb. 26).

Improper motivation is difficult to prove. Public officers are entitled to a presumption that they took action for a proper motivation. 1993 Inf. Op. Att'y Gen. (663-93-0292; Feb. 26). Improper motivation may be proved, however by circumstantial evidence. *Id.* For example, if a public officer varied from normal procedure and as a result a friend benefited or an adversary suffered, it might raise an inference of improper motivation. In such a case, the public officer must provide a credible reason for the variation from normal procedures that is consistent with acting in the best interest of the state.

The complainant attributes to Z three statements which allegedly support the claim of improper motivation. The complainant states that Z said during a telephone conversation with the complainant: 1) that "Assistant Y asked me [Z]" to start a particular type of licensing course; 2) that "I [Z] have known Assistant Y since we both were skinny;" and 3) "Assistant Y is a close friend of mine." From these statements, the complainant infers that Assistant Y's conduct was intended to aid Z's business at the expense of the complainant's.

Both Assistant Y and Z, however, describe their relationship as professional, having met at various professional meetings. Both deny ever engaging in social interaction other than at these professional meetings. They see each other on average once per year, and have telephonic contact on average twice per month.

Based on my review of the evidence, I conclude that the evidence that Assistant Y and Z were close personal friends is weak. More important, it takes more than evidence of friendship to establish that a public officer has provided unwarranted benefits.

In my investigation I inquired into facts that might support an inference that Assistant Y took official action affecting complainant or Z based on an improper motivation. Below, I address each allegation raised by the complainant. As I explain, for each allegation I conclude that either the allegation does not give rise to an ethics act violation or that the evidence does not support an inference that Assistant Y misused his or her official position.

Allegation 1: Acting Beyond Authority

The allegation is that Assistant Y exceeded his or her authority as executive assistant of Board X by reviewing and certifying professional education courses (both for pre-license training and continuing professional education). The complainant does not describe how this allegation, if true, would be a violation of the Ethics Act. There is no evidence that Assistant Y performed the function of reviewing and certifying professional education courses for an improper motivation. Because Assistant Y did not vary from otherwise normal procedure, the allegation does not raise an Ethics Act violation.

Board X approves the courses and instructors for pre-licensing and continuing professional education of its licensees. During the time period relevant to this complaint, the Board delegated to Assistant Y the task of reviewing, certifying and approving course outlines and instructors. In performing this task, Assistant Y operated within apparent authority under a regulation adopted by the Board.FN3

After receiving an opinion of the Attorney General holding that the executive assistant does not have authority to approve professional education that the Board itself, by statute, is required to review and approve, Assistant Y promptly stopped approving or disapproving professional education courses. Since then, Assistant Y has reviewed and made recommendations to the Board on all certifications of professional education. The Board has made the final decisions on these matters.

I conclude that there are no facts constituting probable cause that Assistant Y violated the Ethics Act, AS 39.52.010 to 39.52.960 (1995), in reviewing, approving or disapproving course outlines and instructors, and in certifying professional education courses during the relevant time period.

#### Allegation 2: Deliberate Delay of Approval of Pre-licensing Course

This claim is that Assistant Y deliberately, and for improper reasons, delayed approval of the complainant's pre-licensing course. The complainant submitted an outline of the course for re-certification. The course was neither approved nor disapproved by Y. The course was not approved by Board X until after 11 months. By comparison, Z submitted a pre-licensing course for review and certification which was approved by the Assistant Y in less than a month. The complainant alleges that the delay had the purpose either to injure the complainant's business or to assist Z's competing business, or both. Implicit in this allegation is that Assistant Y caused the 11-month delay.

I conclude that Assistant Y was not responsible for the entire 11 months of delay in the recertification of the complainant's course. [A detailed examination of the facts, omitted here to protect privacy, reveals that the eleven-month delay involved legal review by the attorney general's office and multiple Board reviews. Three months of the delay cannot be attributed to Assistant Y.]

The investigation reveals that Assistant Y did not improperly vary from normal procedures. There is no evidence that Assistant Y deliberately delayed the approval of the complainant's courses or that an eight month delay is unusual for review of deficient courses. Assistant Y's initial review revealed that the complainant's proposed course was deficient, a finding later upheld by the Board. Assistant Y investigated the possibility of hiring outside counsel in order to expedite review. This would have been an extraordinary measure, but the decisions to seek -- and later not to hire -- outside counsel cannot be attributed to an improper motivation. Reviewing the treatment of all of the complainant's submissions, the totality of the circumstances indicates no bias on the part of Assistant Y. (See discussion of Allegation 9, below.) Similarly, there is no evidence that Assistant Y's review of Z's proposed courses was unusually expedited. (See discussion of Allegation 5, below.) I conclude that the delay in approval of the complainant's course does not provide probable cause to conclude that Assistant Y violated AS 39.52.120(a).

#### Allegation 3: Improper Removal of the Complainant's School from List of Approved Licensing Schools

The complainant's school was listed as an approved school on a published Board list. The complainant's school was dropped briefly from the Board's list of approved schools on a revision published later in the same year. The complainant's school was then added back to the "approved" list later in the same year.

The complainant's school was dropped from the "approved" list for a total of approximately two (2) months. Action by Assistant Y to remove the complainant's school from an approved list of pre-licensing schools could be a violation of AS 39.52.120(a), if based on improper motive.

The changes in the list of approved schools correspond with the Board's action denying re-certification of the complainant's pre-licensing course, and subsequently re-certifying the course after the complainant had made changes to respond to defects in the course outlines. The changes in the "approved" list reflect the actions of the Board, not Assistant Y.

For these reasons, I conclude that the removal of the complainant's school from the published list of approved schools was the result of the Board's independent action. There are no facts constituting probable cause that Assistant Y improperly caused the complainant's school to be removed from this list in violation of AS 39.52.120(a).

Allegation 4: Undermined the marketing of the complainant's course by removing the complainant's school from the licensing candidate pamphlet printed by the testing service, Company W

During the time in question, a booklet was distributed by the Board, which we will call the Licensing Candidate Pamphlet ("pamphlet"). This pamphlet is distributed on an annual basis. The pamphlet contains general information regarding application for a license, including discussion of prerequisites. Pre-licensing education is a prerequisite to applying for a license and taking the licensing examination. Although the pamphlet does not state that the education must be obtained from an "approved" school, it is necessary to enter a four-digit "school code" in completing the form application. The "school codes" are listed on the back of the pamphlet. In the relevant edition of the pamphlet, 13 schools are listed, including Z's school, but not the complainant's.

Action by Assistant Y to remove the complainant's school from the list of schools published in the pamphlet could be a violation of AS 39.52.120(a) (intent to secure unwarranted treatment), if based on improper motive.

The complainant alleges that Assistant Y caused the complainant's school to be removed from this list, thereby damaging its business due to the fact that potential candidates could not see the complainant's school listed and therefore would not contact it to fulfill the pre-licensing education requirements.

The pamphlet was prepared and published by Company W, which is in the business of preparing standardized examinations throughout the country for licensing examinations of the type administered by Board X. In preparing the pamphlet, Company W depends upon information supplied by the Board. An employee of Company W (who will be referred to as "Q") was responsible for preparation of the pamphlet. During the time in question, Q faxed a message to Assistant Y along with a list dated several months earlier of the approved pre-licensing schools. The complainant's school is listed on this list. Q essentially sought verification of the list of approved schools.

Assistant Y wrote a notation on the message from Q, and faxed a reply back to Q, stating: "I was out of the office last week. I am faxing you a new list with the changes & one new school noted. I will fill these orders for [pamphlets] today."FN4

The list attached to Assistant Y's message is dated as revised less than two weeks before the date that Assistant Y faxed a reply to Q. In short, Assistant Y provided Q with a current list, which contained the complainant's school, with its school code. The notations on the list include noting a new school, and noting changes in the addresses and/or contact persons at three other schools. There is no notation or other remark next to the complainant's school.

With regard to the pamphlet, there are no facts provided by the complainant, nor have any been revealed in informal investigation, which would establish probable cause that Assistant Y caused the complainant's business to be dropped from the list of schools contained in the pamphlet. The only facts adduced thus far establish that Assistant Y provided Company W with a list dated less than two weeks

earlier that listed the complainant's business, with instructions that the business should be listed in the pamphlet. There have been no facts adduced which suggest that Assistant Y caused the failure to list the complainant's business in the pamphlet.

There is no probable cause to conclude that Assistant Y was motivated to, or did in fact, cause the complainant's business to be removed from the list of pre-licensing schools published in the pamphlet published by Company W. I therefore conclude there is no probable cause of a violation of AS 39.52.120(a).

**Allegation 5: Showing Special Favored Treatment to Z**

The substance of this allegation appears to focus not on whether Assistant Y intended to harm the complainant's business, but whether Y intended to improperly assist Z's business.

Regarding the approval of Z's pre-licensing course, which was approved in one month, it should be noted that Z has taught the pre-licensing course under sponsorship of different companies since 1978. Z sought certification of her or his pre-licensing course under the sponsorship of Company V in February 199\_, which was approved in early April 199\_. Thereafter, Z changed her or his sponsor to another company. Thus the approval of Z's course in a shorter time frame than the complainant's does not, by itself, constitute evidence of preferential treatment. Z merely received approval for a course which had previously been submitted and approved.

The complainant's course, on the other hand, had significant defects, upon which the Board based its denial of recertification.

I conclude that there is no probable cause to conclude that Assistant Y violated AS 39.52.120(a) in approving Z's pre-licensing course.

**Allegation 6: Provided the Complainant's Approved Outline Materials to Z to Use As a Model**

If Assistant Y, for improper motive, provided the complainant's outline materials to a competitor, this allegation could be a violation of AS 39.52.120(a). This allegation was denied by both Z and Assistant Y. The complainant has provided no evidence to establish this allegation. Assistant Y stated that Y has never released course outlines of any entity to any other person. There is no probable cause to support this allegation of a violation of AS 39.52.120(a).

**Allegation 7: Deliberately Withheld Information from the Members of the Board in Order to Control Their Actions**

This is a general allegation by the complainant, without stating what specific information allegedly was withheld, nor what decision was allegedly improperly influenced. If based on improper motive, this could be a violation of AS 39.52.120(a).

The minutes and transcripts of several meetings of Board X suggest that Assistant Y was open and informative with the Board, and that the Board independently decided its action regarding re-certification of the complainant's course, as well as other actions. The evidence suggests the Board insisted on being informed by Assistant Y, and acted independently of Y. There is no probable cause that Assistant Y improperly manipulated the Board. There is no probable cause to support this allegation of a violation of AS 39.52.120(a).

**Allegation 8: Assistant Y Controlled Agendas of Meetings of Board X**

This is another general allegation by the complainant, without stating which provision of the Ethics Act was violated, or how Assistant Y improperly controlled the Board agendas. If done for an improper motivation, however, this could be a violation of AS 39.52.120(a).

As the executive assistant to the Board, functioning essentially like an executive director, it might be expected that Assistant Y would play an important role in establishing the Board's agenda, because Y would be required to make sure the Board accomplishes its statutory tasks, including re-certification of courses. The complainant has provided no evidence to establish any undue effort by Assistant Y to control the agenda of the Board. The evidence suggests that the Board independently reviewed the agenda at the beginning of each meeting, modified it when the members thought modification was necessary, and gave direction as to the agenda for future board meetings.

There is no probable cause to support this allegation of a violation of AS 39.52.120(a).

#### Allegation 9: Retaliation Against Complainant by Continuing to Deny Courses Subjectively

This is another general allegation by the complainant, without stating which provision of the Ethics Act was violated, when the retaliation allegedly occurred, nor which courses were improperly denied certification or re-certification. If true, however, Assistant Y's actions could be a violation of AS 39.52.120(a).

The complainant has submitted no evidence to support this allegation. The only evidence regarding evaluations of course work is the evidence of the length of time taken to approve Z's pre-licensing course (approximately one month) versus the time taken to review the complainant's course (approximately 11 months). Delay, by itself, is not evidence of subjectively different treatment, since the evidence establishes that some of the delay was the result of the complainant, as discussed above.

Moreover, a recommendation to deny certification of a course, or recommend modification of the course outline, may equally be based on a good faith evaluation of the course. The complainant has not submitted the course outlines themselves to support the argument that the critique of the outlines by Assistant Y was "subjective" and unjustified.

That Assistant Y's critique of the complainant's course materials was bona fide is supported by the Board's independent consideration of the complainant's courses. The Board decided independently to deny re-certification. When the complainant formally appealed some of the actions of the Board regarding four courses, the Board actions were almost entirely upheld by an administrative hearing officer after a formal adjudicative hearing.

There is evidence that other courses offered by the complainant were re-certified without incident both before and after the events relating to the pre-licensing course. Prior to the dates relevant to the allegations of the complaint, courses on Subjects A, B and C were conditionally approved in approximately one month. Prior to the complaint, courses on Subjects D and E were submitted in November, and approved the following March. A course on Subject F was submitted at the same time as the pre-licensing course at issue here, and was approved the five months later. Two additional courses, submitted for certification after the pre-licensing course had been submitted, were approved within a month.

The entirety of the evidence suggests, contrary to the complainant's allegations, that Assistant Y's evaluation of the complainant's course materials was not biased but based upon good faith critique, which the Board independently reviewed.

There is no probable cause to support this allegation of a violation of AS 39.52.120(a).

#### Allegation 10: Insufficient Credentials, Particularly in Education, to Administer the Board's Education Program

This allegation, if true, would not support a claim of an ethics violation. There is no probable cause to support a formal investigation of this allegation.

### CONCLUSION

For the reasons discussed above, the complaint against Assistant Y is dismissed under AS 39.52.310(g) and AS 39.52.350.

RBB:rar

FN1: The withdrawal of a complaint does not by itself terminate an investigation of an alleged violation of the Ethics Act. AS 39.52.310(i)

FN2: Efforts to interview the complainant were delayed after contact with the complainant was lost due to the complainant's move out of Alaska. During the course of the interview, the complainant refused to provide additional information by any specific date because, it was said, materials necessary to support the claims were in storage and unavailable. When informed that a deadline would be set in order to resolve the complaint, the complainant verbally withdrew the complaint and ended the interview. The complainant subsequently sent a written withdrawal.

FN3: A statute requires the assistant to perform duties as assigned by the Board.

FN4: The handwritten notation is unsigned, but Assistant Y admitted in interview that the notation was hers, responding to Q's inquiry. Q confirmed this fact during a separate interview.

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**Law: Attorney General Opinions**  
**Former State Employee/Administered a Grant**

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

TO:     Designated Ethics Supervisor  
DATE:   June 24, 1997  
FILE NO:     663-96-0576  
TEL. NO:     465-3600  
SUBJECT:     Employment of Former State Employee With a Private Entity for Which Employee Administered a Grant: Executive Branch Ethics Act (AS 39.52)  
FROM:   Marjorie L. Vandor  
           Assistant Attorney General  
           Governmental Affairs Section - Juneau

You have requested our advice about whether a former state employee, Employee X, is in violation of the Executive Branch Ethics Act, AS 39.52, because Employee X, within two years of leaving state service, became employed by a private entity, Company A, which was the recipient of official action taken by Employee X while in state service. Employee X was project manager of a grant made by the division to Company B (a company serviced by Company A). Employee X was involved in Company B's grant project through the completion of construction. Company A apparently was benefited to some degree by Company B's grant project. Evidently, since leaving state service and while acting in his/her new position with Company A, Employee X has been involved in assisting with an application for a change in Company B's PCE level with the Alaska Public Utilities Corporation (APUC), which relates back to the state grant.

You ask if Employee X is in violation of AS 39.52 for the above actions. In brief, we find no violation of

AS 39.52.180(a) based upon the fact scenario provided us in your initial letter and follow-up memorandum. AS 39.52.180(a) prevents a public officer from representing, advising, or assisting a person for compensation regarding a matter in which the public officer participated personally and substantially through the exercise of official action.FN1 We have previously opined that for a "matter" to be prohibited for the purposes of AS 39.52.180(a), it requires the former employee's personal and substantial participation on a specific application, project, program or effort on behalf of the state while in state employ. See 1989 Inf. Op. Att'y Gen. (February 27; 663-89-0294). Each application process constitutes a "new" matter under AS 39.52.180(a). See Inf. Op. Att'y Gen. (February 26; 663-91-0302).

Therefore, with respect to the case you have presented us, Employee X would only be in violation of AS 39.52.180(a) if he/she had been employed at the time and was personally and substantially involved in Company B's approval process for the current APUC application (that occurred while he/she was in state employ). The fact Employee X was a state program manager on Company B's earlier grant, and Employee X's new employer (Company A) was benefited thereby, does not automatically prohibit Employee X from utilizing the knowledge he/she has of the process and agencies' policies for Company A and B after leaving state service.FN2

We hope this addresses your concerns. Please do not hesitate to call us if you need further clarification.

MLV:jn

FN1: AS 39.52.180(a) restricts former state employees from accepting employment regarding a "matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action." "Matter" is defined in AS 39.52.180(a) as ". . . includes a case, proceeding, application, contract, or determination but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments or other legislative measure; or the proposal consideration, or adoption of administrative regulations." AS 39.62.960(1). "Official action" means "a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction by a public officer." AS 39.52.960(14).

FN2: We note no allegation that Employee X has utilized information to which he/she was privy while in state employ which has not been disseminated to the public and from which he/she somehow benefited personally or financially. See AS 39.52.140.

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**Law: Attorney General Opinions**  
**Outside Activities of Public Officer**

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM

State of Alaska  
Department of Law

TO: Designated Ethics Supervisor

DATE: May 14, 1996

FILE NO.: 661-96-0694

TELEPHONE NO.: 269-5172

FROM: John L. Steiner

Assistant Attorney General

SUBJECT: Outside Activities of Public Officer

Mr. X, Commissioner of Department Q has requested an advisory opinion under AS 9.52.240 whether he

may, under the Executive Ethics Act, assist and testify on behalf of a former employer in its federal administrative claim and receive compensation for his services. This response is directed to you in your capacity as the governor's delegate for ethics responsibilities.

#### Background

Several years prior to his employment as a departmental commissioner for the State of Alaska, Mr. X was directly in charge of a substantial project performed by his employer under contract to the United States. In that capacity, he prepared and submitted on behalf of his employer numerous claims against the United States government. After moving on to other full-time employment, he continued, on a compensated part-time basis, to assist his former employer in pursuit of its claims.

Counsel for the current holder of the claims he prepared for his former employer has notified Mr. X that those claims will be litigated, and that his assistance will be essential. Mr. X's written request for advice contemplated that his assistance might entail both compensated consultation and testimony. In a subsequent telephone conversation, he has advised us that he now understands that he would not be paid for consultation services, but would receive only reimbursement for any expenses he might incur as an unpaid fact witness.

Mr. X notes that he is aware of no conflict between himself and the owner of the claims. We understand that he believes both that he has no personal conflict and that the holder of the claims has no relationship with either his department or any other state unit that might pose a real or perceived conflict. Mr. X notes that he is aware of no litigation involving his department and counsel representing the holder of the claims.

In his written request for advice, Mr. X states that his assistance with the claims would be upon the following conditions:

- (1) Any time he spends on the claims would be during off-duty hours or during periods of personal leave.
- (2) None of his work on the claims would distract from any of his duties as Commissioner of Department Q.

In our telephone conversation, Mr. X estimated the time he expects to devote to the claims as probably one weekend deposition within the next six months and several days of out-of-town testimony thereafter, totaling less than one week over the next year and one-half, together with a number of ten-minute telephone conversations "here and there" over that period.

#### The Executive Ethics Act

The Executive Ethics Act (the "Act") poses no bar to a state employee's "independent pursuits" as long as they "do[es] not interfere with the full and faithful discharge of an officer's public duties and responsibilities. . . ." AS 39.52.110(a). A public employee may provide services for personal or financial benefit or engage in employment outside his or her public employment unless the outside service or employment is "incompatible or in conflict with the proper discharge of official duties," and as long as any outside service or employment for compensation is reported annually by July 1 to the employee's designated supervisor. AS 39.52.170. An administrative regulation clarifies the proper analysis:

For purposes of AS 39.52.170, a public employee's outside employment or service, including volunteer service, is incompatible or in conflict with the proper discharge of official duties if the public employee's designated supervisor reasonably determines that the outside employment or service

- (1) takes time away from the employee's official duties;
- (2) limits the scope of the employee's official duties; or
- (3) is otherwise incompatible or in conflict with the discharge of the employee's official duties.

9 AAC 52.090. A commissioner's "designated supervisor" for purposes of the Act is the governor. AS 39.52.960(8)(E).

#### Discussion

We assume Mr. X has correctly determined that the state has no relationship with the holder of the claims or its attorneys. Although his department maintains a close funding relationship with an agency of the United States government, it is not the same agency that is the target of the claims. We therefore see no basis for an actual or perceived incompatibility or conflict based upon the parties. Should Mr. X become aware of any relationship between the state and any party, it may be necessary to revisit this conclusion.

Mr. X's request for ethics advice does not identify the nature of the claims upon which he will testify. Because his duty of loyalty now runs to the state rather than to those claims, he should be conscious whether advocacy for a particular claim theory, beyond mere factual testimony, might conflict with his department's interests as a significant purchaser of services. As long as he will not be advocating novel and precedent-setting theories incompatible with the substantive interests of his department, there would be no conflict in testimony in support of claims against a government agency.

The Act does not establish different degrees of loyalty or commitment for public officers at different levels of authority. All officers must fully and faithfully discharge their official duties. However, the high level of authority and responsibility entrusted to a commissioner arguably requires, and creates a public expectation of, greater commitment of professional time and energy in order to fully discharge that high level of public duty than may be required or expected of lower level state employees. A commissioner's duties are not preclusive of outside activities. See 1991 Inf. Op. Att'y Gen. (Apr. 24; 663-91-0429)(finding no ethical prohibition to commissioner's service as a compensated senior advisor to a foundation). However, the relatively recently adopted 9 AAC 52.090, quoted in full above, clarifies that time demand is a key consideration in the evaluation of the possibility of incompatibility. Mr. X's request for advice reflects his sensitivity to the need to avoid interference with the full and faithful discharge of his duties as a department commissioner.

Mr. X's stated condition that his activities with regard to the claims would be limited to off-duty hours and periods of personal leave theoretically avoids all interference with his public duties. However, at the commissioner level, identification of on-duty and off-duty hours may depend as much on the immediate demands of his office as on the clock or calendar. Based upon the scope of the proposed activity, any risk of interference may well be resolved by his further condition that none of his work on the claims would distract from his official duties. It is critical to note, however, that 9 AAC 52.090 and AS 39.52.960(8)(E) place responsibility for reasonable determination whether outside employment or service of a commissioner is incompatible or in conflict with the commissioner's duties in the hands of the governor. This advisory opinion may inform the governor's evaluation, but cannot substitute for the governor's judgment.

Both of Mr. X's "conditions" appear to be as much commitments as to how he will carry out his assistance with the claims as they are predictions of the demands the claims will likely make on his time. The amount of time he states that he expects to devote to the claims - less than one week over one and one-half years - would not appear to threaten his ability to fulfill the conditions he has imposed or his official duties. Assuming the governor is satisfied with his commitment and ability to abide by those conditions, the Executive Ethics Act poses no further limitation upon Mr. X's uncompensated assistance with the claims.FN1

Although he has advised us that he does not now anticipate receiving compensation, because Mr. X's original request for advice asked specifically whether he would be permitted to receive compensation, we will briefly address that issue. Subject to the discussion above concerning avoidance of incompatibility or conflict with the proper discharge of his official duties, and the duty to report compensated employment or service annually by July 1 to the governor as his designated supervisor, compensation

for consultation services is permitted under AS 39.52.170 and would raise no independent ethical concerns. A public official's employment as a compensated expert witness under circumstances that pose no conflict with the official's public duties has previously been deemed permissible under the Act. See 1992 Inf. Op. Att'y Gen. (Jan. 1; 663-91-0381).

JLS:sb

FN1: It seems appropriate to note that to the extent the forum reviewing the claim has subpoena power, Mr. X may in any event be subject to compelled appearance to testify under subpoena. Compliance with a properly issued subpoena, being involuntary, would further reduce any ethical concern, even if interference with the commissioner's official duties becomes a real possibility. In the event the claim holder should demand more of Mr. X's time than would be consistent with the conditions he has imposed, it is expected that he would refuse to violate the conditions unless compelled under a legal subpoena.

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### Law: Attorney General Opinions

## Outside Employment as an Engineer (Executive Branch Ethics Act, AS 39.52)

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

### Body of Notice:

MEMORANDUM

State of Alaska  
Department of Law

TO: Designated Ethics Supervisor

DATE: March 24, 1997

FILE No.: 661-97-0495

TEL. NO.: 269-5255

SUBJECT: Outside Employment as an Assistant Attorney General Engineer (Executive Branch Ethics Act, AS 39.52)

FROM: Robert E. Mintz

Assistant Attorney General

Oil, Gas & Mining - Anchorage

You have asked for advice under AS 39.52.210 regarding an employee's proposed outside employment. The employee is an engineer and proposes to do contract engineering work on a part-time basis, on evenings and weekends. This memorandum follows our previous oral advice.

### GENERAL LEGAL PRINCIPLES RELEVANT TO OUTSIDE EMPLOYMENT

In enacting the Alaska Executive Branch Ethics Act ("Ethics Act"), AS 39.52, the legislature recognized that "people who serve as public officers retain their rights to interests of a personal or financial nature," AS 39.52.110(a)(2), and that "so long as it does not interfere with the full and faithful discharge of an officer's public duties and pursuits," the Ethics Act "does not prevent an officer from following other independent pursuits," AS 39.52.110(a). However, the Ethics Act prohibits a public employee from "engag[ing] in or accept[ing] employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties." AS 39.52.170(a). Thus, the central inquiry in evaluating proposed outside employment is whether the employment would be "incompatible or in conflict" with the employee's state job.

In addition, the Ethics Act establishes several other specific prohibitions of which one must be particularly mindful when examining potential outside employment. Alaska Statute 39.52.120 bars public officers from, among other things, "seek[ing] other employment or contracts through the use or

attempted use of official position," "accept[ing], receiv[ing], or solicit[ing] compensation for the performance of official duties or responsibilities from a person other than the state," or "us[ing] state time, property, equipment, or other facilities to benefit personal or financial interests." Alaska Statute 39.52.140(a) bars public officers from "disclos[ing] or us[ing] information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not been disseminated to the public." Information is not considered to have been "disseminated to the public" merely because it is available to the public; the information must have been "published through newspaper publications; broadcast media; a press release; a newsletter, a legal notice; a non-confidential court filing; a published report; a public speech; or public testimony before the legislature, a board, or a commission." 9 AAC 52.070.

The Ethics Act further prohibits public officers from unauthorized use or disclosure of "information acquired in the course of official duties that is confidential by law." AS 39.52.140(b). Finally, the Ethics Act prohibits public officers from representing, advising, or assisting a person for compensation in any matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

#### WHEN IS OUTSIDE EMPLOYMENT INCOMPATIBLE OR IN CONFLICT WITH THE PROPER DISCHARGE OF OFFICIAL DUTIES?

The regulations interpreting the Ethics Act provide the following guidance as to the incompatibility-or-in-conflict standard:

For purposes of AS 39.52.170, a public employee's outside employment or service, including volunteer service, is incompatible or in conflict with the proper discharge of official duties if the employee's designated supervisor reasonably determines that the outside employment or service

- (1) takes time away from the employee's official duties;
- (2) limits the scope of the employee's official duties; or
- (3) is otherwise incompatible or in conflict with the proper discharge of the employee's official duties.

9 AAC 52.090. All of these issues are highly dependent on the specific facts of the situation and ultimately require you, as the designated ethics supervisor, to apply your judgment in determining whether the outside employment or service would have any of the prohibited results.FN1

#### Time Conflicts

The question of taking time away from the employee's official duties is self-explanatory, and there is little legal guidance we can provide. In one previous memorandum of advice under the Ethics Act, this office has advised that if [the employee] only does the proposed five to ten hours of work outside of his normal working hours for the state, it would appear reasonable to conclude that the outside employment is not interfering with his state duties.

1995 Inf. Op. Att'y Gen. at 6 (July 14; 661-95-0777, 661-95-0817). In another memorandum of advice, this office stated, "We believe that 30 hours of outside work, in addition to 37.5 hours as a state employee per week, may be deemed excessive." 1989 Inf. Op. Att'y Gen. at 4 n.3 (Aug. 7; 663-889-0588). I note that your employee is proposing to spend "5-10 hours per week" on outside employment.

#### Limiting Scope of Official Duties

On the question of limiting the scope of the employee's official duties, no clear impact of this sort appears from the facts provided. However, it is not difficult to imagine scenarios under which doing contract engineering work for a third party might have the effect of limiting the scope of the official duties of an engineer.

The employee has provided as examples of possible contract work, "Peer review of engineering assumptions and judgments," "Provide knowledge and experience in [specialized] engineering functions and operations," and "Verify facts and critique methods." He has explained the "relationship to current duties" as the following, among others: "[Specialized] engineering principles are used to study [technical] issues in the normal course of agency duties." If, for example, the engineer's outside work involved providing peer review and knowledge in the specialized engineering functions, verifying facts, and critiquing methods for an entity on a technical issue that later came before your agency for decision, due process considerations might bar your agency from relying on the engineer for assistance, and in any event the engineer's objectivity in advising your agency would likely be compromised.

#### Other Forms of Incompatibility or Conflict

The residual category of "incompatible or in conflict with the proper discharge of the employee's official duties" is obviously a broad one, and incompatibility or conflict could arise for many different reasons. On the other hand, the Ethics Act itself cautions against acting on the basis of a merely "insignificant or conjectural effect," AS 39.52.110(b), so a determination that outside employment would be incompatible or in conflict with the proper discharge of official duties should be based on facts that indicate a significant problem.

For example, this office has advised that it is permissible for an employee responsible for field operations in a state park to own and operate a private retail store (not, apparently, in the park) even though "some of the customers in the employee's store are also individuals the employee will deal with officially." 1989 Inf. Op. Att'y Gen. at 1 (April 28; 663-89-0426). However, it is important to note that there is a difference between "conjectural" and "potential." Outside employment that generates a potential conflict of interest between the employee and the state can be considered incompatible, if the conflict itself -- were it actually to occur -- would have more than an insignificant or conjectural effect. 1988 Inf. Op. Att'y Gen. (May 25; 663-88-0482).

One set of factors that has often been considered important in previous memoranda of advice on outside employment is whether the outside work involves the same or similar tasks, issues, or members of the public served as in the employee's state work. See 1990 Inf. Op. Att'y Gen. at 2 (Aug. 14; 663-90-0389). In the case of a state insurance financial examiner who also prepared tax returns for outside clients, the outside employment was acceptable as long as the clients were not in the insurance industry.

In this case, there is no overlap in the persons that Mr. X deals with as a state employee and those that he deals with as an employee of his spouse's firm. Thus, Mr. X does not have an opportunity to act toward a person in a way that satisfies his public obligations but is detrimental to a continued business relationship between that person and "X and Company," or conversely, in a way that is detrimental to the state's interest and beneficial to the business.

1989 Inf. Op. Att'y Gen. at 2 (Dec. 5; 663-89-0487). But there would be a conflict of interest if the employee served a client regulated by Mr. X's division. *Id.* A state employee who worked at a state salmon hatchery was allowed to operate his own business raising shellfish, since his state job did not deal with the shellfish growing industry and his public duties -- supervising daily operations of a finfish hatchery -- have nothing in common with his raising shellfish in his free time. 1990 Inf. Op. Att'y Gen. at 2 (Aug. 14; 663-90-0389).

At the other end of the spectrum, an employee of the Division of Mining whose state job largely involved providing advice to miners and reviewing mining applications wanted to start a private business to "assist miners with various aspects of their mining applications" -- tasks "that are almost identical to [those of his] current job." 1987 Inf. Op. Att'y Gen. at 1 (Dec. 23; 665-88-0080). Our office concluded that this situation would "create a serious potential conflict between the employee's public duties and the proposed private business activities." *Id.* at 2. We also found that there would be a violation of AS 39.52.160(a)(1) (assisting for compensation a person in a matter pending before the officer's agency) and that there was a strong potential for violation of AS 39.52.120(b) (use of official position to seek

other employment).

Somewhat similar circumstances existed in the case of a state hydrologist involved with groundwater investigation projects statewide who proposed also to work with a private consultant to investigate sites where contamination might have occurred. Our office observed that, in performing private duties similar to those performed in his state job, "the employee might be faced with a situation in which the client's interest was not the same as the state's interest." We concluded that this potential for conflict made the outside employment "incompatible or in conflict with official responsibilities within the meaning of AS 39.52.170." 1988 Inf. Op. Att'y Gen. at 3-4 (April 25; 663-88-0482). We also noted that, since the agency frequently comments on the types of studies the employee proposed to do with the private consultant, "[i]t would create a rather difficult situation for a subordinate employee to have to comment on a study or report prepared by his or her supervisor" -- i.e., the employee seeking the outside work. *Id.* at 3.

A closer question was found in the case of a state real estate loan examiner who wished to pursue outside employment as a real estate agent. Although the examiner's specific job responsibilities for the state appear to have been different from those of a real estate agent, our office was concerned with the fact that his state job required him to be in "daily contact with real estate brokers and agents, title companies, and lending institutions," and that he would "undoubtedly be in contact with some, if not all, of these entities in the course of" his private real estate transactions. 1989 Inf. Op. Att'y Gen. at 3 (Aug. 7; 663-89-0588). However, the examiner argued that the loans administered by his agency were almost entirely on "rural" properties, while his private real estate work would involve only "urban" properties. We agreed that under those facts, the potential for a 'direct' conflict . . . is probably remote." *Id.*

Nonetheless, we saw a substantial potential for violation of AS 39.52.120(b), in that the intensive contacts between the examiner and real estate entities in his daily work for the state could easily lead to seeking employment or contracts through the use of official position or to conducting private business on state time. While not concluding that the proposed private activity would "automatically" violate the Ethics Act, we counseled that it would be prudent for the employee to avoid it and deferred to the ethics supervisor the decision whether to prohibit outside employment. *Id.* at 4.

I should emphasize that, although some of the opinions referred to above address violations of various provisions of the Ethics Act other than AS 39.52.170(a), outside employment may be "incompatible . . . with the proper discharge of official" duties even if it does not involve any independent violations of the Ethics Act. For example, where a state employee conducting a private business bid against vendors with whom he also dealt in his official capacity, the fact that his business activity "created an opportunity for coercion" of the vendors was held sufficient to make the activity incompatible with his official duties irrespective of whether he actually took advantage of that opportunity. "[I]t is unseemly for an [agency] employee to be bidding against a vendor when the employee must frequently take official action concerning the vendor." In the Matter of Paul Skvorc, Alaska Personnel Bd. Hearing Officer Findings of Fact, Conclusions of Law, and Recommended Penalties, at 49 (Jan. 24, 1996), adopted in relevant part, Alaska Personnel Bd. Order (April 10, 1996). Similarly, where the employee rented equipment for his private business from a vendor with which he also dealt in his official capacity, the possibility that the employee could be offered favorable private terms in return for favorable official treatment made the business activities incompatible with state employment because they "created, at a minimum, an appearance of wrongdoing" -- whether or not the employee actually abused his position. *Id.* at 51.

#### APPLICATION OF THE GENERAL INCOMPATIBILITY STANDARD TO FACTS PRESENTED

In light of these examples and analyses, it seems clear that if your engineer were to perform work for entities that your agency regulates on matters to be addressed by the agency, such work would be incompatible and in conflict with the proper discharge of his official duties. However, I understand that the particular work the engineer proposes to do in the immediate future is with a private consultant who in turn would be working, not for a regulated entity, but for a local government authority. This would

seem to present less of a potential for conflict of interest, but you would need to consider whether the local government is nonetheless a consumer of your agency's products or services and how similar the engineer's private work would be to his state work.

For instance, I note that the proposed outside work may include performing analyses of the same or a similar type to those he performs as part of his official duties. As with the case of the hydrologist summarized above, you may be concerned with the possibility that the interests of the ultimate client in the outcome of such analyses and forecasts diverge from those of your agency. And in any event it would be a violation of AS 39.52.120 for the engineer to be paid by a private client to perform work that it is his official duty to carry out. Another consideration would be whether the engineer's choice of projects in his work for your agency could be influenced by the subjects of his outside work.

I also understand that the proposed outside work for the private consultant may include certain tasks that are further removed from the consultant's ultimate client (the local government) and from the engineer's duties with your agency. One task would be training the consultant in the use of commercially available computer software with which the engineer has become familiar in the course of his state work. At least in the abstract, this task would appear to present little potential for incompatibility with the discharge of his official duties. This would depend, however, on the extent to which the training involved actual issues or tasks that could create conflicts of the sort discussed above or involved the use of information acquired by the engineer in the course of his state employment that has not been publicly disseminated -- which, as pointed out above, is prohibited. (Expertise in using the software itself is not "information" subject to this prohibition. See 1997 Inf. Op. Att'y Gen. (Jan. 24; 66 3-97-0181).) Another relevant factor would be whether providing software training to others outside the agency is also a part of the employee's official duties.

In addition, you should consider the extent to which providing private software training might give the appearance that the employee studies software on the job in order to sell his expertise privately -- whether or not that is actually his motivation. As indicated above, the appearance of or the opportunity for impropriety may sometimes be sufficient to make outside employment incompatible with one's official duties. In this regard, it may be relevant whether the proposed software training would be a one-time project or a recurring business activity.

The second proposed task would be providing "peer review" to the outside consultant, which I understand means the employee would use his professional judgment to evaluate aspects of the consultant's engineering work. It is not clear to me how such peer review would be distinguished from other forms of collaboration in the consultant's engineering work, for the purposes of the Ethics Act. You would therefore need to assess the extent to which the work that the employee would review involves issues, tasks, or clients whose relationship with the employee's official duties could generate conflicts of the sort discussed above.

In addition, you may wish to consider whether the employee's contacts with entities such as the consultant in the course of his official duties are so intensive that any outside employment involving such entities would raise concerns about the potential for violating AS 39.52.120(b), as addressed in the case of the real estate loan examiner discussed above.

REM:ars

FN1: Under AS 39.52.210, a designated ethics supervisor may reassign an employee's duties to avoid a potential violation of the Ethics Act or may order divestiture of the interest that creates the potential conflict.

**Publish Date: 07/09/99****Archive Date: 07/16/99****Location: Statewide****Body of Notice:**MEMORANDUM           State of Alaska  
                                  Department of LawTO:     Designated Ethics Supervisor  
DATE:   July 14, 1995  
FILE NO.:     661-95-0777; 661-95-0817  
TEL. NO.:     269-5274  
FROM: Nancy B. Meade  
          Assistant Attorney General  
          Environmental Section - AnchorageSUBJECT: Outside Employment under Contract Administered by Separate Unit of Employee's Agency;  
Outside Employment as Research Analyst (AS 39.52)

You have requested our advice on two potential violations of the Executive Branch Ethics Act, AS 39.52.010 -- AS 39.52.960, which were disclosed to you through ethics disclosure forms submitted pursuant to AS 39.52.170. First, "John Doe," an agency employee, wishes to subcontract with a state university (the University), which intends to contract with the agency to perform work on a project initiated by Mr. Doe in his former position at the agency. Second, Mr. Doe also wishes to become employed as a research analyst with the University. We conclude that neither of these proposed outside positions would violate any provision of AS 39.52.

**FACTS**

With respect to the first question, we understand from the ethics disclosure form that was forwarded to our office, as well as from Mr. Doe himself in a follow-up telephone conversation, that Mr. Doe formerly worked as the project manager for the agency's "Comparative Risk Project," a project designed to help the agency develop a methodology to use in prioritizing its workload. As part of his duties in that position, Mr. Doe applied for, and obtained, a grant from a federal agency; the funds from that grant are to be expended in conducting a three-part analysis, which will then yield a system for the agency to use in prioritizing its work. Two of the three parts are fairly scientific, and will probably be assessed by the agency's employees as part of their official duties, while the third is more of a statistical analysis, which will likely be conducted by non-agency personnel. This grant was obtained in the latter part of 1993, but, for a variety of reasons, very little work has been done under the grant to date.

In February 1995, Mr. Doe changed jobs within the agency; he is now in an unrelated position. Approximately two months later, the new manager of the Comparative Risk Project approached officials at the University to informally discuss whether the University could conduct the third, statistical part of the risk analysis, which will include conducting a public survey. The data from this research survey will be provided to the agency, which will then combine it with the other two components of the analysis to come up with a prioritization procedure.

After the University submits a proposal to the agency, and assuming the University obtains the contract, Mr. Doe would like to be employed as a research analyst for the project, helping to develop the survey and draft the final report. He obtained his Master's Degree in Public Administration from the University, and his work would be based on that expertise. It is wholly unrelated to Mr. Doe's current job. Mr. Doe estimates that the total time working on this project will be 30--60 hours, at a total salary of approximately \$300--500.

With respect to your second question concerning Mr. Doe's outside employment as a University research analyst, the facts appear to be straightforward. Mr. Doe wishes to work under a University grant, funded by a federal agency, to conduct research on a separate issue. The work is

expected to take five to ten hours per week.

## ANALYSIS

Since the first scenario potentially implicates several different provisions of the Executive Branch Ethics Act (the "Act"), each applicable section will be discussed in turn. The second question is discussed in section D below. At the outset, we note that Mr. Doe is clearly a "public officer" within the Act's meaning. AS 39.52.960(21) (term generally includes any employee of a state agency).

### A. Misuse of Official Position

A public officer may not use his official position for personal gain; specifically, the officer may not "seek other employment or contracts through the use or attempted use of official position," and may not "receive . . . compensation for the performance of official duties or responsibilities from a person other than the state." AS 39.52.120(b)(1),(2). We have stated previously that this provision "was intended both to prevent bribes and to prevent employees from receiving double pay for performing their normal duties." 1987 Op. Att'y Gen. at 2 (Apr. 24, 663-87-0389).

Mr. Doe did not seek, or even consider, employment with the University relating to the Comparative Risk Project while he was employed as the project manager. Only after he left that position did the contracting opportunity arise with the University. Moreover, the fact that Mr. Doe is seeking only to enter a contract with another entity which, in turn, intends to contract directly with the state makes the relationship between Mr. Doe and the state indirect, making it even less possible that his official position in the agency somehow secured the contract for him. Thus, it does not appear that Mr. Doe used, or could have used, his official position to get the subcontract work with the University.

Second, the work Mr. Doe would do for the University is different from his "official duties" that he now does for the agency; designing a public survey on citizens' perceptions is wholly separate from Mr. Doe's current job duties. Mr. Doe's proposed employment would not run afoul of the prohibition on receiving outside compensation for performing official duties.

### B. Improper Use of Information

Mr. Doe is prohibited from disclos[ing] or us[ing] information gained in the course of, or by reason of, [his] official duties that could in any way result in the receipt of any benefit for [him], if the information has not also been disseminated to the public.

AS 39.52.140(a). Whether information has been "disseminated to the public" is determined under 9 AAC 52.070 (eff. 4/24/94); information that is merely available to the public, but has not been "published" under paragraph (a) of the regulation is not considered to have been disseminated.

It does not appear that Mr. Doe used, or will use, any particularized information that he had by virtue of his position as Comparative Risk Project Manager to design or conduct the public survey. The survey appears to be a separate, and smaller, aspect of the entire assessment; it is one of the three components of the methodology that the agency must examine under the federal grant, and its management is not susceptible to any private agency information. Since Mr. Doe likely does not even have any specialized information about conducting the survey that would benefit him by giving him an advantage in subcontracting with the University, there does not appear to be any violation of this provision.

On the other hand, Mr. Doe may have information that he gained as project manager that could be used to help the University tailor its eventual formal bid proposal more carefully to comport with exactly what the agency is seeking in the public opinion portion of the risk analysis. If any such information is not included in the agency's Request for Proposals, Mr. Doe may not use that information, since it would indirectly benefit him if the University should win the contract. Thus, if Mr. Doe does have any such non-disseminated information, he should not assist the University in preparing any bid that

would be submitted to the agency.

#### C. Improper Influence

AS 39.52.150(a) provides:

A public officer . . . may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

If Mr. Doe were to be employed by the University to do work under a University/agency contract, he would have a personal or financial interest in the state contract within the meaning of this rule. Nonetheless, since Mr. Doe has changed jobs, he is no longer in a position to "take or withhold official action" that could affect the contract between the agency and the University. This provision, then, does not prevent Mr. Doe from working for the University on the survey project.

Although this conclusion would allow Mr. Doe to work on a contract that is being administered by his own agency, the Act does not prohibit such an arrangement. Indeed, the Act specifically allows a public officer to have a personal or financial interest in a contract that is awarded or administered by the same agency for which that officer works, as long as that interest is reported in writing to the employee's designated supervisor. AS 39.52.150(d). By filling out the disclosure form, Mr. Doe has complied with that requirement.

#### D. Outside Employment

The Act also discusses the circumstances in which an employee is restricted from engaging in employment outside the state:

A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

AS 39.52.170(a) (emphasis added). This section is expanded upon in the regulations, which provide that outside employment violates this section

if the employee's designated supervisor reasonably determines that the outside employment or service

- (1) takes time away from the employee's official duties;
- (2) limits the scope of the employee's official duties; or
- (3) is otherwise incompatible or in conflict with the proper discharge of the

employee's official duties.

9 AAC 52.090 (eff. 4/24/94).

It is Mr. Doe's designated supervisor who will apply the tests in this provision. You must ascertain whether it can be reasonably determined that Mr. Doe's outside work for the University, as proposed, would take time away from his official duties. In making this determination, you will likely consider that he would do the extra work, which amounts to approximately ten hours per week, "outside normal working hours." See Ethics Disclosure Form, April 20, 1995. Second, in determining whether Mr. Doe's proposed work would limit the scope of his official duties, you will need to examine the substantive relationship between the public survey and any issues that Mr. Doe deals with in his current position. Finally, though we do not perceive other indications that the proposed project would be incompatible with, or in conflict with, Mr. Doe's current duties, you should make that determination as well.

The second question, concerning Mr. Doe's proposed work as a research analyst, is also

resolved under these provisions. Generally, if he only does the proposed five to ten hours of work outside of his normal working hours for the state, it would appear reasonable to conclude that the outside employment is not interfering with his state duties. In addition, you must determine whether the proposed work would limit the scope of his official duties. Since it appears that the periodic research work is unrelated to Mr. Doe's current duties, it may be reasonable to conclude that the outside employment does not limit the scope of Mr. Doe's official duties. Finally, there do not appear to be other indications that the proposed work would be incompatible with, or in conflict with, Mr. Doe's current duties.

Thus, as long as Mr. Doe reports this outside employment, AS 39.52.170(b), as he has, and as long as you determine that the outside positions meet the test in the regulation, they are probably permissible.

#### CONCLUSION

There does not appear to be any violation of the Executive Branch Ethics Act presented by the outside employment proposed by Mr. Doe, though you will need to make the specific determination required by 9 AAC 52.090. Although Mr. Doe's situation implicates several of the Act's provisions,<sup>1</sup> none appear to prohibit (1) his work for the University on the public survey portion of the Comparative Risk Project, or (2) his work as a University research analyst.

If I have misstated any facts in this opinion, or if you have any other questions, please contact me immediately.

NBM:vo

FN1: Moreover, "[a]n appearance of impropriety does not establish that an ethical violation exists." 9 AAC 52.010 (eff. 4/25/94).

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#### Law: Attorney General Opinions

### Post-state Employment Executive Branch Ethics Act (AS 39.52)

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

#### Body of Notice:

April 30, 1997

State employee

Re: Post-state Employment Executive Branch Ethics Act(AS 39.52)  
A.G. File Number: 663-97-0328

Dear X:

This letter responds to your request for advice regarding post-state employment. Alaska Statute 39.52.250(a) authorizes the Department of Law to provide you advice. The factual background for this opinion is based upon your letter to the department of March 4, 1997, and a telephone conversation between you and me on April 21, 1997.

Your letter states that you are employed with a state agency, but that you will retire on May 4, 1997. Also, as stated in your letter, you have supervisory duties over management of natural resources found in specific regions of the state. Allocation of these resources among specific user groups is the duty of the an executive-branch board whom your agency serves in a staff capacity.

Allocation and other decisions by the Board are adopted as state regulations under the Administrative Procedure Act, AS 44.62. Part of this regulatory process is the solicitation of regulatory proposals or comments, which another section of your agency collects, compiles, and distributes to the public. You have informed me that you and your division do not see these proposals until their publication. Your job tasks include responding to public proposals and to proposals developed by your agency.

You have been offered employment with a private organization that represents the interests of a regional user group before the Board. The regions that this organization represents include at least one that you currently manage. You have stated that if you accept the offer, you will begin your job after you have retired from state service. You have described your prospective duties with that organization as follows:

1. to represent and assist the organization in commenting upon regulatory amendments for the region and those nearby;
2. to review and comment upon regulation proposals that the Board makes available for public review;
3. to present, and to help other organization members to present, public testimony to the Board;
4. to work with interested user groups to get support for the organization's position;
5. to work with state advisory committees, other user groups, the Board, and the state agency for whom you now work in drafting resource management plans, should the Board assemble a subcommittee for that purpose; and
6. to advise the organization on matters important to its members.

In your letter of March 4, 1997, you have also stated that the Board has called for proposals for changes in regulation of a number of the resources that the Board oversees in the region that your prospective employer represents. You identified April 10, 1997, as the Board's deadline for receiving proposals. You also doubted that your prospective employer intended to submit a proposal, and you stated that you did not help it draft one. You also stated that the proposals submitted would not be published until late May 1997, and thus would be unavailable to you or the public until after you retire from state service. You expect the Board to consider the proposals in December 1997 and January 1998.

Your service with your agency brings you within the scope of the Executive Branch Ethics Act. See AS 39.52.960(21)(A). The provision dealing with post-state employment reads as follows:

(a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

AS 39.52.180(a) (emphasis added). The Department of Law has consistently read this subsection in accord with the legislature's intent that AS 39.52.180 be narrowly applied. See, e.g., 1991 Inf. Op. Att'y Gen. 175, 176 (Feb. 25; 663-91-0291). Thus limitations on post-state employment apply only to a "matter" that your agency considered during your tenure, and in which you "participated personally and



In April, X was appointed director of one of the department's regions. X also chairs the board of directors of a for-profit corporation. The corporation owns many large parcels of undeveloped land located within the region. The corporation has logged some of these parcels by helicopter and is interested in enhancing the value of these parcels through additional road access. X is also a shareholder in the corporation.

The corporation is based in the region and many of the corporation's business activities are located there. As chair, X does not receive a salary or other compensation for X's efforts. However, the corporation does cover expenses related to X's work as chair. Except for an annual meeting, two days of which occur during the week and for which X takes personal leave, X performs the work as chair during off-hours.

You provided us a position description questionnaire for the particular region's director. The questionnaire describes the main purpose of the job as to "manage the operational arm" for the department in the region. Position description questionnaire at 3. The questionnaire also describes the regular duties for the position. Approximately 15 percent of work time is devoted to administering "the planning, design, construction, maintenance, and operation of the department's activities in the region." Id. You informed us that since the questionnaire was revised, the design duties have been transferred to the headquarters division.

Another 15 percent of the job requires X to monitor "work progress and quality and take appropriate action to ensure compliance with applicable requirements and to ensure commitments are met." Id. Another 10 percent of the job involves implementing "policies established by the executive arm of government [and] establish[ing] policy for management of the region." Id. Since the current questionnaire was last revised, the position has been expanded to include supervision of the entire state network.

One of the core responsibilities for each of the department's three regional directors is to help the department plan for department projects. Each regional director is responsible for identifying the region's needs and then proposing projects that will serve those needs. The projects are analyzed on a statewide basis by the Project Evaluation Board (PEB), which meets periodically during the year. Its members consist of the three regional directors, the state network director, the director of statewide planning, and one deputy commissioner.FN1

The PEB's planning decisions, consisting largely of a priority ranking of all statewide projects, are compiled into a document known as the State Plan (SP). The PEB transmits the SP to Division A, a division outside the regional offices. Division A's function is to prepare the plans necessary to actually accomplish the work on each listed project. Once the plan is finished, it is turned over to the appropriate regional office for implementation.

In practice, X's role appears to be weighted more toward implementation and administration than planning. For example, X played no role in developing the new Regional Plan, which identifies long-term needs and solutions for department activities in X's region. That work was performed by Division B, another division not located within the regional offices.

We have identified two general areas where the interests of the corporation and the state may intersect. First, the corporation is known for having expressed an interest in seeing the state take action that would likely enhance the value of some of the corporation's lands.

Second, the corporation operates a seasonal network that could be said to compete with the state network. The corporation has contemplated expanding its network to other areas in the region, but the idea remains merely conceptual and no plans are being prepared for such service. Additionally, the department may soon consider whether to contract with the corporation to access the corporation's network.

Questions Presented

Based on the foregoing facts, we address the following questions:

1. Do X's personal or financial interests arising from X's role as chair of the board of directors of the corporation give rise to an unavoidable conflict of interest with X's duties as regional director?
2. If no unavoidable conflict exists, what should X do to ensure that X does not misuse X's official position with regard to X's personal or financial interest in the corporation?

#### Analysis

##### A. The Ethics Act and Outside Employment

The Ethics Act restricts a public employee's ability to engage in outside activities that conflict with the employee's official responsibilities. "A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties." AS 39.52.170(a).

The Ethics Act defines "personal interest" to mean "an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for-profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit." AS 39.52.960(18).

The Ethics Act defines "financial interest" two ways. First, it means "an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including property ownership, or a professional or private relationship that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit." AS 39.52.960(9)(A). "Financial interest" also means "holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management." AS 39.52.960(9)(B). We have previously found that a matter of "financial interest" to a corporation is also a "financial interest" to the persons who serve on the corporation's board. 1987 Inf. Op. Att'y Gen. (Oct. 16; 663-88-0145).

Regarding public employees, courts have defined a "conflict of interest" as a situation in which an employee is required to serve two masters in a way that presents a potential for wrongdoing. *Glazer v. Commissioner on Ethics for Public Employees*, 431 So. 2d 752, 756 (La. 1983). It is a situation in which a person's regard for one duty tends to lead to his or her disregard of another duty. *United States v. Miller*, 463 F.2d 600, 602 (1st Cir. 1972). In a typical conflict of interest scenario, an employee's actions to promote his or her private interest could be detrimental to the public interest that the employee is bound to serve.

Not every apparent conflict is prohibited. The Ethics Act acknowledges that employees may have outside business interests which may appear to conflict with the employee's responsibilities to the state. AS 39.52.110 (a).

Whenever there is a conflict, the Ethics Act requires that a determination be made as to whether the conflict is minor and inconsequential ("conflicts that are unavoidable in a free society") or "substantial and material." AS 39.52.110(a)(3). The Act provides that there is no violation where (1) the "personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or, (2) [the] action or influence would have insignificant or conjectural effect on the matter." AS 39.52.110(b)(1) and (2).

Additional guidance is provided by regulation:

For purposes of AS 39.52.170, a public employee's outside employment or service, including volunteer

service, is incompatible or in conflict with the proper discharge of official duties if the employee's designated supervisor reasonably determines that the outside employment or service (1) takes time away from the employee's official duties; (2) limits the scope of the employee's official duties; or (3) is otherwise incompatible or in conflict with the proper discharge of the employee's official duties.

9 AAC 52.090. Note that, under this regulation, an employee's designated supervisor, not the attorney general, is charged with reaching the final determination of whether an employee's outside interests unavoidably conflict with the employee's official duties.

#### B. No Unavoidable Conflict

As noted above, you have asked for our advice under AS 39.52.240(a) as to whether an unavoidable conflict exists. Based on our understanding of the facts, we do not believe such a conflict exists.

Our investigation revealed that X's position as regional director is not likely to encounter issues involving X's interests in the corporation that cannot be resolved so as to avoid conflicts. Although X certainly makes significant policy decisions as regional director, it does not appear that X's routine decisions tend to have a particular impact on the corporation. Nor are they likely to in the foreseeable future. The mere fact that a public official is also a member of an organization that advocates a certain public policy does not, without more, mean that the public official may not take official action that advances or negates that policy. 1993 Inf. Op. Att'y Gen. (Feb. 17; 663-93-1257). For instance, that the corporation may generally favor economic development in the region does not necessarily mean that X may not take official action that may affect such development.

We note two issues where the interests of the state and the corporation intersect: the corporation's lands and its network. At present, no decision to invest state resources in a way that affects the corporation's lands has been made. X has not taken official action on such a project. At present, we find that the constraint imposed on X concerning this possible investment is not so significant that it unavoidably conflicts with X's ability to perform the duties of regional director.

Likewise, we find that X has not taken official action affecting the state network's overlap with the corporation's competing network. Other than in the overlapping area, the two networks operate in different markets. The possibility that the state might contract with the corporation to provide some network services will, if it occurs, require further analysis, but appears very speculative at this point. At present, we believe that X should not take official action affecting the state network in the overlapping area (discussed below). However, based on the facts you provided, we also find that this inability does not affect such a significant part of X's duties as regional director that, with that duty removed X cannot properly perform those official duties. Therefore, we conclude that X's service with the corporation is not incompatible or in conflict with the proper discharge of X's official duties within the meaning of AS 39.52.170(a).

As noted above, the Ethics Act recognizes that public officials cannot be expected to be entirely free of interests in the decisions and policies of government and that minor and inconsequential conflicts are unavoidable. AS 39.52.110(a). With this concept in mind, we believe that the Ethics Act does not prohibit X's service as regional director simultaneous with X's current position as the corporation's chair.

#### C. Heightened Risk of Misuse of Official Position

Although we do not believe that X's service with the corporation creates an unavoidable conflict with X's official duties under AS 39.52.170(a), we do believe the situation poses an enhanced risk of action that might be a misuse of official position. Therefore, you should keep this additional guidance in mind in advising X and monitoring X's activities. We note that, in our discussions with X, X was quite aware of this risk and indicated a particular desire to avoid the risk.

All public officers must be careful not to misuse their official positions. "A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant

unwarranted benefits or treatment for any person." AS 39.52.120(a). The Ethics Act further defines this concept as follows:

A public officer may not (1) seek other employment or contracts through the use or attempted use of official position; (2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state; (3) use state time, property, equipment, or other facilities to benefit personal or financial interests; (4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or (5) attempt to benefit a personal or financial interest through coercion of a subordinate.

AS 39.52.120(b).

This office has previously determined that a person who serves as a corporate director has both a "personal interest" as well as a "financial interest" in state grants to that corporation. 1990 Inf. Op. Att'y Gen. (Aug. 21; 663-90-0410).

We have consistently advised public officers to recuse themselves from considering proposals to the state in which the officers have a personal or financial interest. Given the speculative but quite real possibility that the corporation and the state may need to discuss matters related to the proposed state investment or state contract for network services, X should avoid taking action that affects the corporation's interests.

Note that "official action" within the meaning of AS 39.52.120(b)(4) does not just mean final decision-making. It is broadly defined to mean a "recommendation, decision, approval, disapproval, vote, or other similar action, including inaction. . . ." AS 39.52.960(14).

If the corporation stands to benefit from a decision or recommendation by X acting in the role as regional director, X must not participate in the decision or recommendation. Should such a matter arise, X must immediately disclose the matter to you and refrain from taking action on the matter until you have advised X of the ethical implications. AS 39.52.210(a), (b). If you find X's participation would not be a violation, you may advise X to participate. If, however, you find that X's participation would constitute a violation, you must either reassign X's duties regarding the matter or direct X to resign from the corporation's board. AS 39.52.210(c).

As an example of how this limitation can affect X's work, we find that AS 39.52.120(b) prevents X from participating in the PEB's consideration of projects that significantly affect the corporation. If the corporation may benefit from a project, X may not assist the region in analyzing the project or in recommending it to the PEB for inclusion in the SP. Nor may X participate in the PEB's consideration of the project, including prioritizing it among other projects. As a second example, we find that AS 39.52.120(b) also prevents X from taking official action that affects the state network in the overlapping area, as the state network competes with the corporation's network in this market.

You should take steps to ensure that X does not participate in either the consideration of projects by either X's region or the PEB that relate to the corporation, or in decisions affecting the state network in the overlapping area. These steps may include a standing delegation of these duties to others in your department. If you wish, we will help you draft such a delegation.

#### D. Grants, Contracts, Leases, and Loans

The Ethics Act also contains a more specific provision for conflicts involving state grants, contracts, leases, and loans. AS 39.52.150(a). This provision is more strict than the general ban on misuse of official position in AS 39.52.120. We have consistently interpreted AS 39.52.150(a) to mean that a public officer cannot cure a conflict by merely avoiding all involvement with the grant, contract, lease, or loan. 1997 Inf. Op. Att'y Gen. (May 30; 663-97-0400). If the official merely has the power to affect the award, execution, or administration of the grant, contract, lease, or loan, the officer must give up the forbidden personal or financial interest. For X, this would mean resigning from the corporation's board.

The Ethics Act does provide for two exceptions to AS 39.52.150(a). This first exception allows the officer to retain the personal or financial interest if the grant, contract, or lease (not loan) is "competitively solicited" and the officer neither (1) is employed by the administrative unit that awards the grant, contract, or lease or the administrative unit for which the grant, contract, or lease is let, nor (2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease. AS 39.52.150(b). Our regulations limit this exception to circumstances where strict objective award procedures such as the sealed bid procedures in the procurement code are used. 9 AAC 50.080(a). The second exception applies to state loans and is unlikely to arise with respect to the corporation. AS 39.52.150(c).

We believe that under AS 39.52.150, X's region may not enter into a grant, contract, or lease agreement with the corporation while X serves as both director of the region and chair of the corporation. This section also prevents X from taking any official action, including administrative action, on a grant, contract, or lease with the corporation even if the grant, contract, or lease was formally arranged by a different administrative unit. For instance, this section would not permit an administrative unit to award even a competitively solicited grant, contract, or lease to the corporation if the X's region assisted in preparing the request for proposals.

#### E. Undisseminated and Confidential Information

As a final matter, we draw your attention to the Ethics Act's limitation on the improper use or disclosure of information. This prohibition, which applies to all public officials, is especially relevant to X in light of X's important role with the corporation.

"A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public." AS 39.52.140(a). You should advise X that as regional director, X will have access to information before it is available to the general public. X must be careful not to disclose or use that information if it may benefit X's interest in the corporation.

Note that our regulations do not consider information to have been "disseminated to the public" until "it has been published through newspaper publication; broadcast media; a press release; a newsletter; a legal notice; a non-confidential court filing; a published report; a public speech; or public testimony before the legislature, a board, or a commission." 9 AAC 52.070(a). The mere fact that information is available to the public does not satisfy this standard. 9 AAC 52.070(b).

A public officer also may not "disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law." AS 39.52.140(b). As regional director, X has access to confidential information. X must also be certain not to disclose such information.

We would be pleased to help you with any further questions you have regarding this matter.

CWB:rar

FN1: The state network director is supervised by the director at issue.

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**Law: Attorney General Opinions**  
**Request for Advice Pursuant to AS 39.52.240**

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

TO:     Wilson Hughes, Chairman, AIDEA/AEA Board of Directors  
DATE:   September 6, 1996  
FILE NO.:     661-96-0816  
TELEPHONE NO.:     269-5135  
FROM:   Keith A. Laufer, Assistant Attorney General  
           Governmental Affairs Section, Anchorage  
SUBJECT:     Request for Advice Pursuant to AS 39.52.240

This Memorandum is provided in response to your request to Attorney General Botelho dated August 15, 1996, seeking advice pursuant to AS 39.52.240. You have requested advice as to what actions you should take with respect to certain fiber optic cable matters involving GCI.

**Background**

You are a member and serve as the chair of the Alaska Industrial Development and Export Authority (AIDEA). Under AS 44.83.030-44.83.040, you are also a member of and serve as the chair of the Alaska Energy Authority (AEA).

AEA is the owner of the Alaska Intertie (the AI). The AI is a 138kV electrical transmission intertie which runs from Willow to Healy, Alaska.FN1 Several utilities use the AI for the transmission of power pursuant to an agreement between AEA and the utilities.

Under an agreement with the state Department of Administration, AIDEA serves as the grant administrator with respect to grant funds related to the proposed Northern and Southern Interties. The Northern Intertie, as proposed, will run from Healy to Fairbanks, Alaska, and will be owned by the utilities benefiting from the line. The Southern Intertie, as proposed, will run from Anchorage to Kenai, Alaska, and will be owned by those utilities benefiting from the line. As grant administrator, AIDEA has the discretion to make certain determinations regarding how grant funds will be disbursed with respect to the interties and has entered into contracts with the beneficiaries of the grants.

You have been affiliated with GCI for some time. You serve as GCI's Executive Vice President and General Manager. In that capacity, you are generally responsible for the day to day operations of GCI. In addition, you are a GCI shareholder.

GCI together with AT&T/Alascom has formally requested permission to integrate fiber optic cable into the AI. In addition, GCI has made formal requests to AIDEA and to the utilities participating in the Northern Intertie to allow it to integrate fiber optic cable into that intertie as well. Other parties have also expressed interest in fiber optic cable opportunities on these and other interties.

At least one AIDEA board meeting, you disclosed, on the record, that GCI might have an interest in integrating fiber optic cable onto interties, including the AI and Northern and Southern Interties. Because, at the time, GCI's participation in any of the projects was speculative, you participated in two AIDEA grant administration actions related to the Southern Intertie. No formal AIDEA or AEA board actions have been required with respect to the AI or the Northern Intertie.

Because GCI has now made formal requests to AIDEA and AEA with respect to the interties, you have requested advice from this office as to what actions you should take as an AEA and AIDEA board member regarding intertie and fiber optic cable matters.

**Governing Law and Analysis**

Initially, we must determine what law governs the issues raised by your request. GCI, in essence, is requesting that AEA provide GCI with contractual or lease rights to integrate fiber optic cable onto the AI.FN2 With respect to the Northern Intertie, GCI is requesting that AIDEA, as grant administrator, provide it with the legal right to integrate fiber optic cable into that intertie and that grant funds be permitted to benefit such fiber optic cable.

Generally, conflict of interest issues related to contractual and lease rights are governed under AS 39.52.150, a section of the Executive Branch Ethics Act (the Ethics Act). In this case, however, statutes governing both AEA and AIDEA have specific provisions governing these issues.

Under the statutes governing AEA, AS 44.83.040(d) provides:

A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for abstention. . . . A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes.

Similarly, under the statutes governing AIDEA, AS 44.88.180 provides:

Conflicts of interest. A member of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the member is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that may be a party to the contract or lease. A resolution of the authority that is approved by a majority of the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.

Both of these specific statutes predate the adoption of the Ethics Act. At the time of the adoption of the Ethics Act, the legislature did not elect to repeal the specific AEA and AIDEA statutes governing conflicts of interest. It is an accepted rule of statutory construction that a general statute such as the Ethics Act will not be deemed to impliedly repeal a specific statute absent a clear expression of intent to do so. See *Warren v. Thomas*, 568 P.2d 400 (Alaska 1977); *Colonial Ins. Co. v. Tumbleson*, 889 F. Supp. 1136 (D. Alaska 1995). Where two statutes attempt to control the same subject matter, the more specific statute will control over the more general one. See *Matter of Hutchins Estate*, 577 P.2d 1074, 1075 (Alaska 1978). In this case, both AEA and AIDEA have specific statutes governing potential contract and lease conflicts regarding board members. Accordingly, the conflict of interest issues raised here are governed by the specific AEA and AIDEA statutes.

Under the specific AEA and AIDEA conflict of interest statutes, board members are not permitted to vote on resolutions relating to contracts or leases if the board member is a party or has a direct ownership or equity interest in a party to the contract or lease. AS 44.83.040(d), AS 44.88.180. As you are a substantial shareholder in GCI, you have a direct ownership interest in that company.FN3 Accordingly, under both the AEA and AIDEA statutes you are precluded and must abstain from voting on matters pertaining to GCI's integration of fiber optic cable onto interties. In accordance with AS 44.83.040(d), you should clearly disclose your interest in the matter when abstaining from voting on such matters coming before the AEA board. While not required under the AIDEA conflict of interest provision, we nonetheless recommend that you make a similar disclosure when abstaining from votes coming before the AIDEA board.

While the AEA and AIDEA conflict of interest statutes govern the specific actions you must take with respect to contract and lease matters coming before those boards, other provisions of the Ethics Act govern your conduct as a public officer generally.FN4 For example, AS 39.52.120 prohibits you from using your official position to seek contracts or to affect matters in which you have a personal or financial interest.

While the AIDEA and AEA statutes only require that you abstain from voting with respect to those matters directly affecting GCI, in order to avoid violating the Ethics Act we recommend that you also abstain from participating in all other fiber optic and intertie issues that could affect GCI.

#### Conclusion

Under the specific statutes governing AIDEA and AEA, you are required to abstain from voting on board matters affecting GCI contract and lease issues. Moreover, under the Ethics Act you should abstain from voting on all other fiber optic or intertie matters that could materially affect GCI.

If you have any questions regarding these matters, do not hesitate to contact me.

KAL:aw

FN1: The AI also includes a segment, approximately five miles long, from Teeland to Douglas. In addition, under an agreement between AEA and Matanuska Electric Association (MEA), an approximately 15 mile MEA-owned segment of intertie is included as part of the AI.

FN2: At this point, it is unclear what form these contractual relationships might take, what parties might be involved, or what procurement or public leasing requirements may be applicable.

FN3: Even in the absence of your share ownership, your role as Executive Vice President and General Manager of GCI is so significant we believe that, for purposes of these conflict of interest provisions, you could be considered the party. Clearly, as a managing officer of GCI, you have the ability to influence and direct the actions of GCI. Under these circumstances, your role is analogous to that of a party to the contract. Accordingly, we believe you would be required to abstain from voting on matters relating to GCI even if you owned no shares in the company.

FN4: Under the Ethics Act, as an AEA and AIDEA board member, you are considered a public officer. AS 39.52.960(21)(B). Moreover, because of your status as a shareholder and officer of GCI, actions that benefit GCI are considered to be in your financial interest. AS 39.52.960(9)(A), (B).

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**Law: Attorney General Opinions**  
**Request for Opinion by former employee - AS 39.52.250**

**Publish Date:** 07/13/99

**Archive Date:** 07/23/99

**Location:** Statewide

**Body of Notice:**

August 31, 1995

Attorney for Former  
Employee

Re: Request for Opinion by Former Employee  
A.G. file no: 663-96-0048

Dear Counsel:

This will respond to the inquiry you have made on behalf of your client, a former employee. You state that a contractor employed by the employee's agency to manage a state-owned facility has offered him a management position.

Alaska Statute 39.52.180(a) limits the scope of the employment that may be accepted by public officers who leave state service. The limitation lasts for two years from the date of their termination, without a waiver. The statute provides, in relevant part, that

A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, . . . .

In summary, the elements of the prohibitions set forth in AS 39.52.180(a), as they apply to your client, are:

- 1) for two years after leaving state service, your client may not
- 2) represent, advise, or assist
- 3) a business (included in the definition of "person" in AS 39.52.960(17))
- 4) for compensation
- 5) regarding a contract (specifically included as a "matter")
- 6) that was under consideration by the administrative unit (the agency)
- 7) in which your client participated personally and substantially
- 8) through the exercise of official action. 1993 Inf. Op. Att'y Gen. at 3 (Oct. 28; 661-94-0267).

In carrying out its duties under AS 39.52.250 this office has consistently given the statute the narrow interpretation intended by the legislature, that is, the statute has not been extended beyond its plain meaning. In the sectional analysis prepared by the Department of Law when the Alaska Executive Branch Ethics Act was first reviewed (Bill Review File No. 883-86-0047) the Attorney General recognized that the two-year ban was a compromise between competing interests. The state's interests are set forth in AS 39.52.010(a). The policy underlying the Ethics Act is the advancement of three general goals: (1) to discourage public officials from acting upon personal or financial interests in the performance of their public responsibilities; (2) to improve standards of public service; and (3) to "promote and strengthen the faith and confidence of the people of this state in their public officers." For subsection 180(a) in particular, the first and third purposes are evident. By barring future employment on matters in which the official takes substantial official action, the temptation to take that official action with an eye toward future gain is at least discouraged, if not eliminated. 1986 Inf. Op. Att'y Gen. at 2 (Sept. 24; 663-87-0109).

The competing interest of the employee has at least two forms. The first is the employee's right to be able to continue to use skills and abilities developed outside of state service, and not have a relatively short period of state employment become a barrier to continued professional practice and development. The second, an observation made in our bill review of the Ethics Act, is the clear recognition that the expertise and knowledge one gains in a job are transferable. Employees rightfully take with them skills that enable them to seek more responsible positions.

For the reasons discussed below, the statutory balancing of the competing interests prohibits your client's proposed employment. That proposed employment by our contractor in that management position falls directly within the prohibitions set forth in AS 39.52.180(a), and, unless waived, is not permitted for two years from the date of his separation from his position at the agency.

1. Your client participated personally and substantially through the exercise of official action regarding the contract.

Your client was hired by the agency in 1993, in a middle management position. He reported directly to the agency Director. In early 1994 he was promoted and served in that position until January, 1995, when his resignation was accepted by the new administration.

The management contract was under consideration by the agency during the tenure of your client in his previous management position. You have stated that he sat on the selection committee and the negotiating team. After the contract was executed, you state he "took over responsibility for its administration." A contract is specifically defined as a "matter" in subsection 180(a). "Official action" is defined in AS 39.52.960(14) as "a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer." This employee's responsibilities in both positions, which at a minimum would have involved making recommendations related to expected contract performance, fall within the definition of "official action." 1991 Inf. Op. Att'y Gen. at 4 (Nov. 18; 663-92-0291).

The original contract and Amendment No. 1 specifically list management and engineering positions to be funded, names of incumbents in those positions, and hourly rates to be paid those incumbents. The hourly rates to be paid to incumbents in these positions were discussed at length during the negotiations prior to execution of the original contract. In his previous management position your client was part of the negotiating team and participated in these discussions. The previous agency Director executed the original contract with rates for hourly compensation in place. Soon after your client's promotion, he signed Amendment No. 1 to the contract, which increased the hourly compensation for some of the contractor's management employees. There is no record of any negotiations having occurred prior to this increase being approved. Two additional amendments were executed by your client. He was a very "hands-on" manager, and took a personal and substantial interest in the contractor's performance.

2. Your client's proposed employment would require him to assist or advise regarding the contract.

You and your client assert that his duties in the proposed employment would involve only the day-to-day operations of the contractor and would have nothing to do with the administration of the contract. These assurances were given in a reasonable attempt to build a wall between, on the one hand, the performance of the contractor's duties under the contract, its amendments, and any subsequent negotiations between the agency and the contractor to extend or modify it and on the other, performance of subsequent contracts to be performed by the contractor.

We agree that employment on a new matter is not prohibited even if the new matter is related to a matter on which the former employee participated while a state employee. See, e.g., 1994 Inf. Op. Att'y Gen. (Dec. 13; 663-94-0462). Here, however, the wall between management and the contractor's compliance with terms of the contract is non-existent or, at best, porous. In our view, employment in the proposed position will inevitably require your client to interpret, implement, and advise about the contract, even if his general day-to-day duties concern only work under other contracts.

The contractor cannot comply with the plain terms of the contract without performing very specific tasks. The lead paragraph of the contract states that "reliable, cost effective, and quality performance is the state's goal for the contract. The incumbent in the position contemplated by your client would be directly in charge of day-to-day work, and as a result would be directly involved in assisting the contractor in performing the contract.

Further, the effectiveness of the day-to-day operations of the state facility will have a significant effect on the measures by which the agency will evaluate the contractor in the performance of its duties agreed to under the contract. The defense of that performance will necessarily involve the day-to-day operations of the facility because operations are a substantial part of what the contractor has agreed to do under the contract. As a result, the duties of the proposed position do not isolate your client from the statutory prohibition of rendering assistance to the contractor, for compensation, regarding the contract that was under consideration by the agency during his tenure there. It is, in fact, direct assistance to the contractor in meeting the state's expectations under the contract, and such management level work constitutes "assistance regarding" the contract.

Further still, a provision of the contract establishes and maintains a "facility sinking fund" for future capital repair and improvements to the facility. The amount of money to be deposited in the sinking fund is directly related to the continuing success of the contractor in performance of the contract. As a result, the state's goal of re-establishing the facility as a viable enterprise for years to come will be fulfilled only if credible work is performed, and that is directly dependent on the revenue generated by the work of the manager in the position for which your client is being considered.

Another example involves environmental concerns. Paragraph X.X of the contract states that the prevention of direct or indirect damage or injury to public or private property through compliance with environmental laws is a responsibility of facility operation. Your client would be directly responsible for assisting the contractor in meeting this contractual requirement.

Finally, your client's participation in the negotiation of salaries under the contract also precludes his subsequent employment under that contract. We understand that neither the original contract nor any subsequent amendment lists the position contemplated by your client. Your client told me that another position is presently vacant. Apparently the intention is to combine the duties of the other position with some of the work performed by the more expensive employees, so that your client's significant technical skills could be effectively used. Assuming this new position was agreed to by the agency and reduced to an amendment to the contract, it still would not withstand the limitations of AS 39.52.180. Your client's substantial participation in setting the salaries for the contract in general, and for the positions on which his subsequent salary will be based, precludes his employment under this contract for two years from the date he left state service.

You state that your client believes he should be able to work at the facility as a manager "just as he should be able to work there in one of a number of capacities for which he is capable and qualified." Yet, in our view, to the extent these positions are defined, created, or otherwise significantly affected by the contract, your client could not work for the contractor at this state facility in these capacities for two years after termination of his state employment.

#### Conclusion

The two-year ban is a reasonable compromise that protects the state's interests but does not unfairly or excessively restrict an officer's ability to work in the private sector after leaving state service. 1986 Inf. Op. Att'y Gen. (Sept. 24; 663-87-0109). Although a wide range of employment following state service would not trigger the two-year ban, the employment offered to your client falls precisely within the narrow scope of AS 39.52.180(a). Unless the restriction is waived, he is prohibited from being employed by the contractor in their operation of the facility, under their contract as amended, for a period of two years following his termination from state service.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

Thomas H. Dahl  
Assistant Attorney General

THD/bap

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**Law: Attorney General Opinions**  
**Retention of Business Interests upon Appointment to Office**

**Publish Date:** 07/09/99

**Archive Date:** 07/16/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

TO:     Michael A. Nizich, Designated Ethics Supervisor  
Office of the Governor  
DATE: January 11, 1995  
FILE NO.:     663-95-0310  
TEL. NO.:     465-3603  
FROM: Kristen F. Bomengen, Assistant Attorney General  
SUBJECT:     Retention of business interests upon appointment to office  
(Executive Ethics Act -- AS 39.52)

INTRODUCTION

You have asked whether a department commissioner may retain personal business interests upon appointment to office. You have further inquired about whether the commissioner's spouse's business interests with that department may be affected by the appointment. Finally, you have asked whether the commissioner may remain involved in volunteer service in the community as a board member for a non-profit organization that has a grant from the department.

The answer, in brief, is that the commissioner and spouse may retain personal business interests. The businesses may have to forego certain business opportunities with the department. On the other hand, if the commissioner severs all financial ties with the commissioner's business, the Executive Branch Ethics Act does not restrict the future activities of that business. The commissioner's continued participation as a board member of a grantee agency, however, would be incompatible with the official duties of a department commissioner.

BACKGROUND

Two types of business interests must be examined in order to respond to these concerns. First, the commissioner's spouse owns a firm. Although the department itself does not let contracts related to the firm's activities, some related contracts will be awarded and administered on behalf of the department. The spouse's business generally bids on contracts of this nature. These contracts would not usually be awarded and administered by the Commissioner's Office, but either by the Department of Transportation and Public Facilities (DOT/PF) or an administrative unit within the department.

Second, the commissioner is a partner in a consulting business, which has been involved in a number of consulting projects for the department. These projects concern policy development and planning. One project has just been completed. The contracting officer for this project was an employee of an administrative unit within the department. However, because of the policy

considerations within the project, the project was reviewed by two division directors and a deputy commissioner. In the future, the department will likely let additional contracts that are within the expertise of this partnership. The commissioner is considering severing ties with the business partnership. The commissioner may be interested in returning to consulting after leaving state service.

In addition, the commissioner currently serves as a board member for a non-profit agency that regularly seeks grants from the department. The commissioner is interested in continuing community service activities, but is concerned about potential for conflict under the provisions of the Executive Branch Ethics Act.

#### APPLICABLE LAW

The applicable provisions of the Executive Branch Ethics Act are as follows:

AS 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. (a) A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

(b) The prohibition in (a) of this section does not apply to a state grant, contract, or lease competitively solicited unless the officer

(1) is employed by the administrative unit awarding the grant, contract, or lease or is employed by the administrative unit for which the grant, contract, or lease is let; or

(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

AS 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

AS 39.52.960. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "administrative unit" means a branch, bureau, center, committee, division, fund, office, program, section, or any other subdivision of an agency;

....

(9) "financial interest" means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management[.]

The statutes have been clarified by regulations as follows:

9 AAC 52.080. STATE GRANTS, CONTRACTS, LEASES, AND LOANS. (a) For purposes of AS 39.52.150(b), a state grant, contract, or lease is competitively solicited if the grant, contract, or lease

(1) is awarded by competitive sealed bidding under AS 36.30.100 - 36.30.190 or competitive sealed proposals under AS 36.30.200 - 36.30.270; or

(2) is awarded by procedures substantially similar to competitive sealed bidding or competitive sealed proposals and AS 36.30 does not apply to the awarding of the grant, contract, or lease.

(b) If a state grant, contract, lease, or loan is awarded by or for a public corporation, board, or commission within a department but not by or for the office of the commissioner of that department, then an employee of the office of the commissioner in that department is not considered to be employed by the administrative unit awarding the grant, contract, lease, or loan.

(c) For purposes of AS 39.52.150(b)(1), if the public officer was not employed by the administrative unit at the time a state grant, contract, or lease was competitively solicited, the officer's subsequent employment by that administrative unit does not constitute a violation of AS 39.52.150 unless the officer takes or withholds official action with respect to the administration of the grant, contract, or lease.

9 AAC 52.090. OUTSIDE EMPLOYMENT OR SERVICE. For purposes of AS 39.52.170, a public employee's outside employment or service, including volunteer service, is incompatible or in conflict with the proper discharge of official duties if the employee's designated supervisor reasonably determines that the outside employment or service

(1) takes time away from the employee's official duties;

(2) limits the scope of the employee's official duties; or

(3) is otherwise incompatible or in conflict with the proper discharge of the employee's official duties.

## ANALYSIS

### Spouse's Business

Under AS 39.52.150(a), a public officer or an immediate family member may not have or seek a financial interest in a state contract if the public officer may take or withhold official action that affects the award or administration of the contract. When a contract is competitively solicited, however, the prohibition of AS 39.52.150(a) only applies if the employee is part of the administrative unit awarding the contract or actually takes action on the contract as set out at AS 39.52.150(b).

The commissioner's spouse owns a firm, and may bid on state contracts. Under AS 39.52.150, the firm may bid on any project on which the commissioner could not take official action. Thus, the firm may bid on any project that has no connection with the commissioner's department.

The spouse's firm, however, may wish to bid on projects for work related to the department. We assume for this analysis that the contracts are competitively bid.<sup>1</sup> Thus, the questions are whether the commissioner's "administrative unit" will award the contract, and, if not, whether the commissioner will take official action that affects the award or administration of any such contract.

The award and administration of these projects for the department is usually performed by DOT/PF pursuant to a Reimbursable Services Agreement (RSA) with the department. The department rarely issues these contracts directly, unless a delegation of authority for contracts of a limited dollar amount is received from DOT/PF. The commissioner, however would be the signatory on the RSA to DOT/PF that funds these projects for the department.

In most, if not all, cases, neither the department nor the Commissioner's Office will be the administrative unit that awards the contract. Moreover, the project manager within the department most likely will be from another administrative unit, not the commissioner or an employee within the Commissioner's Office. Under 9 AAC 52.080(b), employees of the Commissioner's Office are specifically excluded from being considered employees of all administrative units of the department.

Thus, the commissioner's potential conflict will be analyzed under AS 39.52.150(b), not AS 39.52.150(a). The question, then, is not whether the commissioner may take official action, but whether the commissioner will take official action on a project on which the spouse's firm may want to bid.

The commissioner must sign the RSA for funds to be spent on projects that involve significant expenditures. A RSA generally will be signed prior to the award of a contract by DOT/PF, but a contract amendment may involve subsequent RSAs that will be designated for a specific firm. Further, the statutory duties of the commissioner, as principal executive officer of the department, include the management of certain state facilities. Pursuant to these duties, the commissioner should participate in some decisions regarding important facilities for the department. Thus, in the usual case the commissioner will take official action on a contract let on behalf of the department.

The spouse's firm may not bid on contracts on which the commissioner will take official action. AS 39.52.150(b)(2). This conflict may be cured, however, if the commissioner may delegate the commissioner's duties and thereby avoid taking any official action on a particular project.

Whether the commissioner may delegate the commissioner's duties requires a case-by-case analysis that must be performed by the commissioner's designated ethics supervisor. If the matter includes a traditionally delegated function, it may be reasonable to conclude that the commissioner will take no direct action on the matter. For example, contracts for small dollar amounts for minor modifications traditionally have been delegated to a person in another administrative unit within the department. On more significant matters, the designated ethics supervisor, once concluding that there is a potential for a violation under AS 39.52.210, may make a reassignment of duties in order to cure the conflict, or direct the commissioner to divest the financial interest that poses the potential violation.

In summary, the spouse's firm may bid on any state contracts that clearly do not involve the potential for action by the commissioner of this department. This may include some contracts awarded by DOT/PF on behalf of the department. The spouse's firm may not seek state contracts that require official action by the commissioner of this department.

#### The Commissioner's Business Partnership

As discussed above, under AS 39.52.150, a public officer may not seek a contract or hold a financial interest in a contract if the officer may take or withhold official action concerning that contract. If the contract is competitively solicited, these restrictions apply only if the public officer is an employee of the administrative unit that awards the contract, or if the public officer takes official action with respect to the contract. The commissioner's consulting business involves outside employment or the rendering of services that will benefit a financial interest. Accordingly, AS 39.52.170, which prohibits outside employment that is incompatible with performance of state duties, also applies.

If the commissioner retains a financial interest in the consulting business, we believe that the consulting business should not bid on state contracts with the department. First, these contracts involve matters of policy and agency discretion, and the Commissioner's Office has been directly involved in previous contracts obtained by this partnership. Under AS 39.52.150(b), the commissioner may not retain a financial interest in the consulting business unless these policy decision are delegated to another official.

Moreover, under AS 39.52.170, outside employment or financial interests are restricted if

the employment or interest is incompatible or in conflict with the proper discharge of official duties. Under 9 AAC 52.090, an incompatibility with the discharge of official duties may arise with outside employment or service, including volunteer service, if a determination is made that it limits the scope of the employee's official duties or demonstrates another conflict. We believe that the commissioner's designated ethics supervisor would find that a delegation of policy-making authority would not be consistent with the expectation that a commissioner will perform the planning and policy formulation duties of the position.

The commissioner has indicated that the business and financial interest in the partnership will not be retained. The commissioner has asked, however, whether the commissioner's former business associate would be precluded from continuing in the business and seeking contracts from the department. The answer is that the Executive Branch Ethics Act does not prohibit a former business partner from continuing the activities of the business, including seeking contracts from the department.<sup>2</sup>

#### Community Service as a Board Member

The commissioner serves on a board of a volunteer organization that obtains grants from the department. The restrictions on outside employment in AS 39.52.170 also apply to volunteer activities. 9 AAC 52.090. These services may be incompatible or in conflict with the proper discharge of the employee's official duties if conflicting interests may arise in the course of performing these duties. A board member must act in the best interests of the non-profit agency. A commissioner must act in the best interests of the department. The interests of a grantee may not be fully compatible with the interests of the department. For example, a board member may become involved in problems encountered in the grant or a petition to the department; the department commissioner may have to make a final determination that will impact the grantee or respond to a petition. The conflict would not exist if the non-profit agency has grants from other departments, but a serious potential for conflicts exists when the non-profit agency is a grantee of the same department. Consequently, the commissioner is advised to resign from the board of the grantee agency.

#### CONCLUSION

In summary, the commissioner's spouse's business interests do not present a potential for a violation of the Executive Branch Ethics Act, except that the spouse's firm will be precluded from seeking contracts from the department if the commissioner is likely to take official action on the contract. The commissioner's business partnership will present a potential for a violation of the Executive Branch Ethics Act if the commissioner retains a financial interest in the partnership. However, if the financial interests in the partnership are severed, there is no restriction on the continuation of the former partner's business activities with the department. Finally, the ongoing presence of the commissioner on the board of a non-profit agency that has a grant from the department will be incompatible with the appointee's official duties. The commissioner is advised to resign from the board.

KFB/bap

FN1: The competitive nature of such a contract may require further analysis when such a contract is actually let. Under the ethics regulations, such contracts may qualify as competitively solicited for purposes of AS 39.52.150. 9 AAC 52.080(a)(1). However, if in a given case such a contract is not competitively solicited, and the commissioner may take official action that affects that contract, the spouse's firm may not bid on that contract.

FN2: Regarding the additional concern about returning to the business after state employment, for the first two years following state employment, the restrictions on the appointee's business activities are addressed under AS 39.52.180, and must be evaluated in light of the specific "matter" with which a former employee proposes to become involved.

**Law: Attorney General Opinions****State Commission Member Former Member of Municipal Planning Board****Publish Date:** 07/13/99**Archive Date:** 07/23/99**Location:** Statewide**Body of Notice:**MEMORANDUM           State of Alaska  
                                  Department of Law

TO:     Designated Supervisor  
DATE:   September 6, 1996  
FILE NO.:     663-97-0074  
TELEPHONE NO.:     465-2123  
FROM: Sarah J. Felix, Assistant Attorney General,  
Governmental Affairs - Juneau  
SUBJECT: State Commission Member Former Member of Municipal Planning Board

Your memorandum of August 12, 1996, regarding a potential conflict of one of the state commission members has been referred to this office for an advisory opinion in accordance with AS 39.52.240.

You initially requested our advice on this matter at a meeting of the Commission on August 5, 1996, and I provided you with oral advice at that time that the commission member did not have a prohibited conflict. Before requesting our advice, the Commission considered the potential conflict of interest at this meeting, and determined under its bylaws relating to the Ethics Act that the commission member did not have a prohibited conflict of interest. During the meeting, you requested that our advice be reduced to writing, and later provided our office with a written request.

You requested advice as to whether a commission member would be in violation of the Executive Ethics Act (Ethics Act), AS 39.52, if she/he voted on a petition for creation of a new borough where the commission member was formerly a member of the Planning & Zoning Board (Planning Board) of the existing borough from which the proposed new borough seeks detachment. The petitioners propounding the new borough have complained that the commissioner has a conflict as a result of his prior service on the municipal Planning Board. You point out in your request that the commission member resigned from the municipal Planning Board before assuming duties on the Commission. You also indicate that the commission member has explained that the Planning Board did not consider the petition during the commission member's service on the Planning Board. Additionally, the commission member owns property in the area of the proposed new borough.

**Commission's Internal Procedures on Ethics**

The Commission considered the member's potential conflict under the Commission's bylaws and determined that the member did not have a prohibited conflict. The bylaws at issue are set out in Article IX, Ethics. Article IX, Section 1 is the Commission's policy statement on ethics. Article IX, Section 2 sets out the substantive ethics provisions; Article IX, Sections 2(a) and Section 2(c) are not applicable to the question presented.

As we understand the Commission's proceedings, the Commission determined that the member was not "employed by or had a contract with . . . a respondent." Therefore, the Commission member did not have a conflict under Article IX, Section 2(b) of the bylaws. The Commission next determined that the member owned property in the petition area, thus implicating Article IX, Section 2(d). However, the Commission also determined that this property ownership would not interfere with the member's full and faithful discharge of duties as a commission member. Therefore, under Article IX, Section 2(f), the Commission exempted the member from the prohibition set out in Article IX, Section 2(d).

The Commission also considered whether the member had a personal interest in, or was affiliated with, a respondent or an organization that advocates a position with respect to the proposal before the Commission under Article IX, Section 2(e). The Commission determined that the member was no longer a member of the municipal zoning board and, therefore, was not affiliated with a respondent. Also, the Commission determined that the member's personal interest in the matter, if any, was insignificant under Article IX, 2(f). Therefore, the Commission determined that the member could participate in the petition without any violation of the Ethics Act.

The Commission's determination appears to be supported by substantial evidence; therefore, we agree with the Commission's determination under its bylaws.

#### Ethics Act

The Ethics Act was passed in an effort to help ensure that public officers will not act improperly upon their personal and financial interests in the performance of their public responsibilities. The Commission is an entity created by statute whose members are appointed by the governor. The Ethics Act states that except as specifically provided, it "applies to all public officers within executive-branch agencies, including members of Boards and Commissions. AS 39.52.910(a). "Board or Commission" is defined to include any Board, Commission . . . established by statute in the executive branch." AS 39.52.960(4). Clearly, the Commission is established by statute within the executive branch and, therefore, its members are public officers subject to the provisions of the Ethics Act. The section of the Ethics Act applicable to the present matter is AS 39.52.120(b)(4): "A public officer may not . . . take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest."

With the facts before us, it does not appear that the commission member has a "personal" interest in the petition before the commission, because the commission member is no longer a member of the Planning Board. AS 39.52.960(18) defines "personal interest" as

an interest held or involvement by a public officer . . . including membership, in any organization, whether fraternal, non-profit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit.

(Emphasis added.) However, as noted above, the commission member is no longer a member of the Planning Board. Because (1) the commission member is not a member of the Planning Board; and (2) the Planning Board did not consider the petition at the time that the commission member was a member of the Planning Board, we do not believe that the commission member is barred by the Ethics Act from voting on the petition. See e.g., 1994 Inf. Op. Att'y Gen. at 6-7 (Jan. 1; 663-93-0257).

Similarly, we agree with the Commission's determination that the commission member's ownership of a cabin in the area covered by the petition is not a prohibited financial interest because it is insignificant. Whether the property value of the cabin would change as a result of action taken on the petition is a question of fact to be resolved, in the first instance, by the Commission. AS 39.52.220. The Commission determined that there was no conflict. AS 39.52.110(b)(2) (no conflict if "action or influence would have insignificant or conjectural effect on the matter.") We are aware of no evidence to suggest that this decision was wrong.

#### Conclusion

Given the lack of a significant personal or financial interest in the petition, we do not believe it would be a violation of the Ethics Act if the commission member votes on the petition.

SJF:clh

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**Law: Attorney General Opinions**  
**Tips Received by Marine Highway Employees**

**Publish Date:** 07/09/99

**Archive Date:** 07/16/99

**Location:** Statewide

**Body of Notice:**

MEMORANDUM            State of Alaska  
                                 Department of Law

TO:     State Supervisor  
DATE:   March 21, 1996  
FILE NO.:     663-96-0360  
TELEPHONE NO.:     465-3600  
FROM:   Craig Wm. Black  
           Assistant Attorney General  
           Transportation Section  
SUBJECT:   Ethics: Tips Received by Marine Highway Employees

I.        INTRODUCTION

The Marine Highway System recently issued a memorandum to its employees reminding them that, as state employees, they are prohibited under the Executive Branch Ethics Act from accepting, receiving, or soliciting tips for performing their shipboard duties. Attorney X, who works for a union that represents certain Marine Highway personnel, wrote to the attorney general in January to inquire about the prohibition. My research concludes that the ethics act prohibits these and other state employees from accepting tips.

II.       DISCUSSION

Under AS 39.52.120(b)(2), a public officer may not accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state. A previous opinion states that "[t]his provision was intended both to prevent bribes and to prevent employees from receiving double pay for performing their normal duties." 1987 Inf. Op. Atty Gen. at 2 (Apr. 24; 663-87-0389).

Certain shipboard ferry employees such as bartenders and wait persons occasionally receive gratuities from customers for their services. The tips come in addition to their state salaries. Because the state already pays its employees to perform their duties, any additional sum received by the employees for performing their duties amounts to additional compensation from a person other than the state. This is just the sort of double pay that AS 39.52.120(b)(2) is meant to eliminate.

The meaning of the term "compensation" in AS 39.52.120(b)(2) has not been set by case law or regulation. However, its meaning in the area of federal income tax collection is well established and may fairly be applied in this context.

Congress has defined gross income to include compensation for services. 26 U.S.C. 61(a)(1) (1995). Numerous taxpayers have attempted to avoid paying income tax on tips by claiming that tips are not compensation. The courts have had no difficulty in rejecting these arguments. *Allen v. U.S.*, 976 F.2d 975 (5th Cir. 1992); *Killoran v. Commissioner*, 709 F.2d 31 (9th Cir. 1983); *Cracchiola v. Commissioner*, 643 F.2d 1383 (9th Cir. 1981); *Olk v. U.S.*, 536 F.2d 876 (9th Cir. 1976); *Andrews v. U.S.*, 295 F.2d 819 (Ct. Cl. 1961); *Roberts v. Commissioner*, 176 F.2d 221 (9th Cir. 1949). Given this line of authority, it appears that tips must be considered compensation.

Attorney X's letter attempts to avoid the double compensation prohibition in AS 39.52.120(b)(2) by claiming that tips are not compensation. Instead, Attorney X's letter asserts that tips are gifts, which are permitted to an extent under AS 39.52.130. That section of the ethics act bars a public officer from soliciting, accepting, or receiving a gift under circumstances that suggest that the gift is intended to influence the officer's performance of official duties, actions, or judgment. AS 39.52.130(a).

The two sections of the ethics act, AS 39.52.120 and 39.52.130, contain different prohibitions and operate independently of one another. The courts consistently reject the argument that tips are gifts, not compensation. In Killoran, 709 F.2d at 31, a cab driver contended that his tips were not taxable income, but non-taxable gifts. The driver claimed that his customers tipped him out of a detached and disinterested generosity because they lik(ed) and respect(ed) him, and that he accepted the tips only on the condition that they were given as gifts and not compensation for cab services performed. *Id.* Attorney X's letter makes the same argument about tips for Marine Highway employees.

The court disagreed. It found an element of compulsion in tipping, an element not found in gifts. The court also found that tips are given as compensation in return for services rendered. *Id.* See also, *Olk*, 536 F.2d at 879 (tip given to a craps dealer is compensation, not a gift); *Andrews*, 295 F.2d at 819 (tips given to taxi drivers are taxable income, not gifts); *Roberts*, 176 F.2d at 223, 234 (tipping lack[s] the essential element of a gift, -- namely, the free bestowing of a gratuity without consideration; tips are additional compensation for services).

Even if deemed a gift, a tip given to a state employee in connection with the employee's performance of official duties would likely not be acceptable under AS 39.52.130(a). That subsection requires determining whether it is reasonable to infer that the tip was intended to influence the employee's performance. Without implying any wrongdoing by the employee, it could reasonably be inferred that a passenger would tip an employee in order to receive additional service.

It might be argued that by enforcing the elimination of tips required by the ethics act, the incomes of Marine Highway personnel will be unfairly reduced. In our discussions, I learned that tipping was significantly reduced on the ships in the early 1980s when the dining halls were removed from most ships. To compensate wait persons for the anticipated loss of tips, their salaries were increased. (Note that at that time, the ethics act had not been enacted.) Furthermore, since the mid 1980s, all of the ships have carried signs stating that tipping is not required. As a result, the impact on income from enforcement of the ethics act is expected to be minimal.

### III. CONCLUSION

Alaska Statute 39.52.120(b)(2) prohibits Marine Highway personnel from accepting, soliciting, or receiving tips because tips are compensation for performance of official duties that are paid for by passengers, not the state. I hope that this assists you in providing guidance to Marine Highway personnel.

CWB/bap

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**Military & Veterans Affairs: Agency Meetings**  
**State Emergency Response Commission Meeting**

**Publish Date:** 07/08/99

**Archive Date:** 07/22/99

**Location:** Anchorage

**Body of Notice:**

The State Emergency Response Commission (SERC) will conduct its quarterly meeting in the National Guard Armory, Room B-201, Fort Richardson, Alaska, on Wednesday, July 21, 1999, from 8:30 AM until 5:00 PM.

Anyone interested in addressing the SERC should be present at the designated starting time and should sign in on the register to be provided. Anyone interested in observing the meeting may be present at any time. If you are a person with a disability who may need special accommodations in order to attend or comment may contact Jim Harris, Department of Military and Veterans Affairs, Division of Emergency Services, at 428-7021, not later than July 12, 1999, to make necessary arrangements. Written comments may be addressed to Commissioner Phil Oates, Department of Military and Veterans Affairs, P.O. Box 5800, Ft. Richardson, AK 99505-5800.

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**Natural Resources: Agency Meetings**  
**State Forest Planning Team To Meet**

**Publish Date:** 07/08/99

**Archive Date:** 07/13/99

**Location:** Fairbanks

**Body of Notice:**

The Tanana Valley State Forest Planning Team will hold a work session to consider modifications of the Tanana Valley State Forest management plan. The meeting will be at the Alaska Department of Natural Resources Building at 3700 Airport Way in Fairbanks on July 13th beginning at 8:30 A.M. For more information, call 451-2661.

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**Natural Resources: Agency Meetings**  
**State Forest Subcommittee To Meet**

**Publish Date:** 07/08/99

**Archive Date:** 07/12/99

**Location:** Fairbanks

**Body of Notice:**

A subcommittee of the Citizens' Advisory Committee for the Tanana Valley State Forest will meet to propose and discuss solutions to resolve competing land uses in the Cache Creek watershed. The meeting will be in the Large Conference Room of the Alaska Department of Natural Resources Building at 3700 Airport Way in Fairbanks on July 12th, beginning at 6:00 P.M. For more information, call 451-2661.

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**Natural Resources: Competitive & Other Solicitations**  
**Final Decision & Best Interest Finding & Timber Sales**

**Publish Date:** 07/09/99

**Archive Date:** 08/01/99

**Location:** Delta Junction

**Body of Notice:**

Notice of Final Decision and Best Interest Finding  
Under AS 38.05.035(e)  
And  
Notice of Timber Sales  
Under AS 38.05.945 & AS 38.05.035(e)

The Division of Forestry, Delta Area, as part of its forest management program will offer the following timber sales for competitive open bid:

NC-997-D Great Timber: The sale area is located within Section 15, Township 12, South, Range 15 East, Fairbanks Meridian in three cutting units that encompasses an estimated 42 acres, as shown on the

attached map. An estimated 1,329 CCF of spruce will be offered at a minimum price of \$11.01/CCF for a total of \$14,632.29. Bidders must submit a bid deposit in the amount of \$1,463.23 prior to the auction to qualify to bid. The amount of the performance bond is \$2,000 or 10% of the final bid price whichever is greater. The contract period is 60 months.

NC-998-D Gerstle Clean-Up No. 2: The sale area is located within Section 2, Township 12 South, Range 14 East, Fairbanks Meridian in four cutting units that encompasses an estimated 68.6 acres, as shown on the attached map. An estimated 1,692 CCF of spruce will be offered at a minimum price of \$10.33/CCF for a total of \$17,478.36. Bidders must submit a bid deposit in the amount of \$1,747.84 prior to the auction to qualify to bid. The amount of the performance bond is \$2,000 or 10% of the final bid price whichever is greater. The contract period is 60 months.

NC-1150-D By The Way: The sale area is located within the SE1/4 Section 12, NE1/4 Section 13, Township 12 South, Range 14 East, and the SW1/4 Section 17, NW1/4 Section 18, Township 12 South, Range 15 East, Fairbanks Meridian in one cutting unit that encompasses an estimated 105.5 acres, as shown on the attached map. An estimated 2,088 CCF of spruce will be offered at a minimum price of \$11.90/CCF for a total of \$24,847.20. Bidders must submit a bid deposit in the amount of \$2,484.72 prior to the auction to qualify to bid. The amount of the performance bond is \$2,500 or 10% of the final bid price whichever is greater. The contract period is 60 months.

Pursuant to AS 38.05.945(a)(e) this notice is intended to inform the public that the Division of Forestry has made a final determination under AS 38.05.035(e) that this timber sale is in the best interest of the State and has decided to initiate these forest management actions. The public is invited to review the decision documents. Copies of the decision documents are available at the Delta Area Office at Mile 267 ½ Richardson Highway, Delta Junction, Alaska 99737 or by mail at PO Box 1149, Delta Junction, AK 99737.

A person who meaningfully participated in comment on this decision and who is affected by the decision may appeal it, in accordance with AS 38.05.035(i)-(j), to John Shively, Commissioner, Department of Natural Resources, 3601 C Street, Suite 1210, Anchorage, Alaska 99503-5921. Please include the appeal code number provided below. Any appeal must be received at the above address, or received by being faxed to 1-907-269-8918, by July 28, 1999. The appeal must comply with AS 38.05.035(j) and 11 AAC 02.030 (a)(1)-(2) and (a)(4)-(8). If no appeal is filed by that date, this decision then becomes final and goes into effect. It is the Division of Forestry's intent to offer these timber sales on August 10, 1999.

Appeal Code Number for NC-997-D Great Timber Timber Sale:

FODA070999ADL415949.035

Appeal Code Number for NC-998-D Gerstle Clean-Up No. 2 Timber Sale:

FODA070999ADL415950.035

Appeal Code Number for NC-1150-D By The Way Timber Sale:

FODA070999ADL416113.035

The Alaska Department of Natural Resources hereby gives notice that it is in the best interest of the State to offer this timber for sale by oral outcry auction at 10:00 a.m. on August 10, 1999 at the Delta Area Forestry Office at Mile 267 ½ Richardson Highway, Delta Junction, Alaska 99737.

To qualify for bidding, all bidders must, prior to the auction, submit a copy of their current Alaska Business License and the minimum bid deposit specified above, in the form of cash, certified check, cashier's check, money order, or any combination thereof, payable to the State of Alaska, Department of Revenue. Personal checks will not be accepted for the opening bid deposit. If bidding as an agent for an individual, partnership, or corporation, prior to the start of bidding the agent must present a notarized power-of-attorney authorizing such agency to the auctioneer. No agent may represent more than one principal, or bid in competition with the agent's principal.

The State neither expressly nor implicitly warrants its quantity estimate, or the quality or marketability of

the timber sold. Prospective bidders should visit the site and evaluate the timber before bidding. The State neither expressly nor implicitly warrants its improvement estimates. Estimates are used only to establish the minimum bid. Each operator is required to estimate his own costs and bid accordingly.

The State reserves the right to reject any or all bids. The State also reserves the right to waive technical defects in this advertisement in the best interest of the State. Unless all bids are rejected, the State will award the sale to the responsible qualified bidder offering the highest total bid value for all the timber. The successful bidder's bid deposit will forfeit to the State as liquidated damages, and the successful bidder will lose all claim to the contract, if the bidder does not execute the contract and furnish a satisfactory performance bond within 30 days of receipt of the contract for execution. The performance bond, plus any project bonds will be in the form of cash or certificate of deposit. In addition, a non-refundable \$100.00 document handling fee must be paid by the successful bidder prior to the State executing the contract.

More detailed information pertinent to the sales, prospectus and a sample contract may be obtained at the Division of Forestry office in Delta Junction or by calling 895-4225.

Al Edgren, Delta Area Forester

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**Natural Resources: Public Notices**  
**Issuance Of Right-Of-Way**

**Publish Date:** 07/08/99

**Archive Date:** 07/27/99

**Location:** Glennallen, Tok

**Body of Notice:**

The following project is proposed in your area and is out for review of the proposed issuance of a right-of-way from the State of Alaska, Department of Natural Resources (ADNR) - Division of Land. Your comments on the proposed issuance of the Division of Land's authorization, are requested.

**PROPOSED PROJECT AND LOCATION:** Right-of-way, approximately 1,150 feet in length, and 220 feet in width, for a bridge across the Chistochina River, containing approximately 5.8 acres, located within Section 34, T10N, R4E, CRM, Alaska.

**APPLICANT:** Department of Transportation and Public Facilities

**PROJECT NAME:** Right-of-Way, Application ADL 227643

**DEADLINE FOR WRITTEN COMMENTS:** July 26, 1999, 5:00pm

For more information or to submit comments, please contact Karlee Gaskill, Natural Resource Officer, State of Alaska, Department of Natural Resources, Division of Land, Southcentral Region, 3601 C Street, Suite 1080, Anchorage, AK 99503-5937, phone (907) 269-8553, fax: (907) 269-8913, email: Karlee Gaskill <karleeg@dnr.state.ak.us>.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may contact the ADNR Public Information Center from 11 a.m. - 5 p.m., Monday - Friday at TDD (907) 269-8411.

The ADNR, Division of Land, reserves the right to waive technical defects in this publication.

## Notice Of Lease Auction No. 407

**Publish Date:** 07/14/99

**Archive Date:** 08/13/99

**Location:** Anchorage, Kodiak

**Body of Notice:**

PUBLIC NOTICE OF LEASE AUCTION NO. 407  
ADL 223574

The Division of Mining, Land and Water is offering a parcel of state land to lease at public outcry auction under AS 38.05.070-075 for commercial recreation purposes. The parcel is located at the western end of Kiliuda Bay, approximately ten miles northeast of Old Harbor on the eastern shore of Kodiak Island, described as Alaska State Land Survey No. 99-13, located within Section 17, Township 33 South, Range 24 West, Seward Meridian, containing 5.00 acres. Robert A. "Rocky" Morgan II has applied for a long term lease for an existing lodge facility on the parcel. Alaska law requires that the lease be offered competitively to the public.

The auction will be held Friday, August 13, 1999, at 10:00 a.m. in the Public Information Center of the Department of Natural Resources, 3601 C Street, Suite 200 (Frontier Building), Anchorage, AK 99503-5929. Prospective bidders should contact Katharine Means at (907) 269-8555, FAX: (907) 269-8913 or email: [kathym@dnr.state.ak.us](mailto:kathym@dnr.state.ak.us) to obtain a brochure. The brochure contains the auction procedures, bidder qualifications, fees, deposits and payments, completion of bid requirements, lease terms and conditions, special stipulations and appeal procedures.

The term of the lease will be twenty-five (25) years. The minimum acceptable bid is the appraised fair market value of the leasehold. Prior to commencement of the auction, bidders must register, pay a \$100 non-refundable filing fee and pay a deposit by cash, certified check or money order for the cost of the survey and appraisal. The lease will be awarded to the highest qualified bidder who completes the bid requirements.

The state reserves the right to reject any and all bids and to adjourn, postpone, or vacate the auction, in whole or in part, at any time prior to or during the auction where such appears necessary to protect the interests of the state. The right is reserved to make minor additions, deletions or changes to the auction procedures and lease terms and conditions as deemed necessary.

The State of Alaska, Department of Natural Resources complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services and/or special modifications should contact the Public Information Center between 11:00 a.m. and 5:00 p.m., M-F at (907) 269-8400, email: [pic@dnr.state.ak.us](mailto:pic@dnr.state.ak.us) or TDD (907) 269-8411.

The Division of Mining, Land and Water reserves the right to waive technical defects in this publication.

/s/ Bob Loeffler, Director  
Division of Mining, Land and Water

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**Office of the Governor: Adopted Regulations - Text or Summary of Text**

### **Alaska Coastal Policy Council Revised Regulations, 6 AAC 80 - 6 AAC 85**

**Publish Date:** 07/11/99

**Archive Date:** 07/23/99

**Location:** Juneau, Statewide

**Body of Notice:**

Division of Governmental Coordination  
Alaska Coastal Policy Council

On January 13, 1999, the Alaska Coastal Policy Council (CPC) approved the revised regulations at 6 AAC 80 and 6 AAC 85 dealing with development and amendment of district coastal management programs, special area management plans, and areas meriting special attention. The regulations were then reviewed, amended, and approved by the Department of Law. Following the Department of Law review and approval, the regulations were submitted to the federal Office of Ocean and Resource

Management (OCRM) for incorporation into the Alaska Coastal Management Program (ACMP) as a routine program change. On June 7, 1999, the OCRM notified the Division of Governmental Coordination that it had approved the regulation revisions at 6 AAC 80 and 6 AAC 85 as a routine program change to the ACMP. Accordingly, the Department of Law submitted the revised regulations to the Lieutenant Governor for signing and filing.

The Lieutenant Governor signed and filed the revised regulations at 6 AAC 80 and 6 AAC 85 on June 16, 1999, and established the effective date as July 16, 1999 (AS 44.62.180). The revised regulations, dealing with development and amendment of district coastal management programs, special area management plans, and areas meriting special attention, will be printed in Register 151, October 1999.

For further information or to order a copy of the revised regulations, contact Randy Bates, District Program Coordinator, at the Division of Governmental Coordination, P.O. Box 110030, Juneau, AK 99811-0030, telephone (907) 465-8797, fax (907) 465-3075.

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**Office of the Governor: Notices of Proposed Regulations**  
**AAC Title 6, Electronic Signatures**

**Publish Date:** 07/08/99

**Archive Date:** 08/11/99

**Location:** Juneau, Statewide

**Body of Notice:**

**NOTICE OF PROPOSED CHANGES IN THE  
REGULATIONS OF THE OFFICE OF THE LIEUTENANT GOVERNOR**

Notice is given that the Office of the Lieutenant Governor, under the authority of AS 09.25.510, proposes to adopt a new chapter of regulations in Title 6 of the Alaska Administrative Code, dealing with the registration of certifying authorities for electronic signatures, to implement AS 09.25.500 and 09.25.510, including

- registration requirements
- application procedures for initial registration and renewal of registration
- term of registration
- revocation of registration

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to the Office of the Lieutenant Governor, P.O. Box 110015, Juneau, AK 99811-0015 or by electronic mail to [[paula\\_scavera@gov.state.ak.us](mailto:paula_scavera@gov.state.ak.us)] so that they are received no later than August 10, 1999.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Paula Scavera at 465-3520 no later than July 28, 1999, to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to: Office of the Lieutenant Governor, P.O. Box 110015, Juneau, AK 99811-0015.

After the close of the public comment period, the Office of the Lieutenant Governor will either adopt

these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

DATE: July 6, 1999  
/s/John Lindback  
Chief of Staff  
Office of the Lieutenant Governor

The attached HTML file contains the text of the proposed regulations.

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**Office of the Governor: Public Notices**  
**ACMP Consistency Review, Hope Area Placer Mining**

**Publish Date:** 07/14/99

**Archive Date:** 08/16/99

**Location:** Anchorage, Central  
Region

**Body of Notice:**

Alaska Coastal Management Program  
Division of Governmental Coordination (DGC)

The following project is proposed in your area and is being reviewed for consistency with the Alaska Coastal Management Program. Your comments, particularly on the proposed project's consistency with the affected local coastal district management program, are requested.

Proposed Project & Location: Placer Mining along streams in the vicinity of Hope according to a US Forest Service Plan of Operations. Mining may include use of a self-contained, floating 15" cutting suction dredge approximately 28' wide, 105' long and 30' high. At maximum capacity, the dredge would mine approximately 500 cubic yards per hour for 20-24 hours per day.

Applicant/Agent: Hope Mining Company  
Project Number: AK 9907-03AA  
Project Name: Hope Area Placer Mining

Deadline for written comments: August 15, 1999

For More Information or to submit comments contact:  
Division of Governmental Coordination  
Southcentral Regional Office  
3601 C. Street, Suite 370  
Anchorage, AK 99503-5930

Contact: Tom Atkinson  
Phone: 269-7474  
Fax: 561-6134  
Email: [[tom\\_atkinson@gov.state.ak.us](mailto:tom_atkinson@gov.state.ak.us)]

Your comments, addressed directly to DGC, are required to preserve your rights to file a petition under Alaska Statute 46.40.100(B)(1). The State Of Alaska, Division of Governmental Coordination, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, or special modifications to participate in this review may contact the number above.

**Revenue: Agency Meetings**  
**Alcoholic Beverage Control Board Meeting**

**Publish Date:** 07/14/99**Archive Date:** 07/21/99**Location:** Fairbanks**Body of Notice:**

Pursuant to Alaska Statutes, 04.06.050, the Alcoholic Beverage Control Board is holding its regular meeting to consider its agenda covering liquor license applications, license suspension, regulations, and other matters that may come before it. The board will take public comment upon items of agenda business and other issues of public interest related to alcoholic beverages, including the conduct of business by licensees and the compliance by licensees and others with the statutes and regulations related to alcoholic beverages. Persons may appear at any time during the meeting. Comments may also be submitted to the board in writing by any person at any time or by contacting the board collect by telephone at 907-269-0350. Address: 550 W. 7th Avenue, Suite 350, Anchorage, Alaska 99501.

The meeting will be held in the City Council Chambers in Fairbanks on July 14 and 15, 1999. There will be a short briefing on July 14 at 9:30 a.m. with the Director; the meeting will begin at 10 a.m. On the 15th the meeting will begin at 8:30 a.m.

The State of Alaska Department of Revenue complies with Title II of the Americans With Disabilities Act of 1990 and the Rehabilitation Act of 1973. Individuals with disabilities who may need auxiliary aids or services or special modifications to participate in this public meeting should contact Verna Hallett at 269-0352 no later than Wednesday, November 18, 1998 to make any necessary arrangements.

Douglas B. Griffin, Director (907) 269-0350

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**Revenue: Notices of Proposed Regulations**  
**Alcoholic Beverage Control Board Reg. Change Relating To Golf Course Licenses**

**Publish Date:** 07/13/99**Archive Date:** 07/31/99**Location:** Anchorage**Body of Notice:**

Notice is given that The Alcoholic Beverage Control Board, under the authority of AS 04.06.090, 04.06.100, 04.11.070, 04.11.080, 04.11.115, 04.11.150, 04.11.210, 04.11.491, 04.11.610, 04.16.125, 04.21.070 proposes to amend regulations in Title 15 of the Alaska Administrative Code, dealing with licensing, control, and regulation of alcoholic beverages in the State, to implement and interpret the above Title 04 sections, including:

- (1) 15 AAC 104 is proposed to be amended by adding a new section to make specific how 04.11.080 and 04.11.115 pertaining to golf course licenses are to be implemented. This regulation will prohibit bringing alcoholic beverages on to golf courses and will require that food items and non-alcoholic beverages be offered at all locations where alcoholic beverages are served on the golf course and will clarify conditions for employment at golf courses for persons younger than 21 years of age;
- (2) 15 AAC 104 is proposed to be amended by adding a new section to implement 04.11.610 and 04.21.070 requiring timely reporting from municipal police departments of Title 4 violations and other significant violations of law on liquor licensed premises prior to refund of liquor license fees to municipalities;
- (3) 15 AAC 104 is proposed to be amended by adding a new section to make specific and define

recreation site liquor licenses;

(4) 15 AAC 104.645(n) is proposed to be amended to change the quantities of alcoholic beverages requiring notifications of the ABC Board to comport with the quantities set forth in AS 04.11.150. Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to the Alcoholic Beverage Control Board, Attention: Director, 550 W. 7th Avenue, Suite 350, Anchorage, Alaska 99501, so that they are received no later than July 13, 1999. Additionally, any interested person may present oral or written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed actions, at a hearing to be held in the Fairbanks City Council Chambers Building, Fairbanks, Alaska, at 10 a.m., on July 15, 1999. The hearing will be held from 10 a.m. to 10:15 a.m. and might be extended to accommodate those present before 10:15 a.m. who do not have an opportunity to testify. The public hearing will have a tele-conference connection with the ABC Board Office at 550 W. 7th Avenue, Suite 350, Anchorage, Alaska. The telephone number is 907-269-0350.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Verna Hallet at 907-269-0350 no later than July 2, 1999 to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to: Alcoholic Beverage Control Board at 550 W. 7th Avenue, Suite 350, Anchorage, Alaska 99501.

After the close of the public comment period, the ABC Board will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

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**Revenue: Public Notices**

**Quality Housing & Work Responsibility Act -- Alaska Housing Finance Corporation**

**Publish Date:** 07/12/99

**Archive Date:** 07/27/99

**Location:** Anchorage, Bethel, Cordova, Fairbanks, Homer, Juneau, Kenai, Ketchikan, Kodiak, Nome, Petersburg, Seward, Valdez, Wasilla, Wrangell

**Body of Notice:**

The Alaska Housing Finance Corporation (AHFC) will hold a public hearing to accept testimony regarding the Quality Housing & Work Responsibility Act of 1998 recently approved by Congress. This act affects Public Housing and Section 8 applicants and participants. This act revises the 1937 Housing Act and will change AHFC's policies and procedures for Public Housing and Section 8 Certificate/Voucher Programs. Parts of the legislation include:

- ! merging the certificate and voucher programs,
- ! changes to admissions and occupancy,
- ! ceiling and flat rents,
- ! more stringent screening for drugs and crime,
- ! community work and self-sufficiency programs for residents,
- ! income exclusions,
- ! pet policies, and

! waiting list preferences.

The U. S. Dept. of Housing and Urban Development (HUD) expects all housing authorities to implement the changes by October 1, 1999.

AHFC will hold a public hearing on Monday, July 26, 1999, 4 p.m. to 6 p.m. at the following locations.

Anchorage  
AHFC Board Room, Suite 160,  
4300 Boniface Parkway

Bethel  
Bethel Heights, 122 Asaq

Cordova  
Eyak Manor, 700 Chase Avenue

Fairbanks  
Family Investment Center, 1441 22nd Avenue, Q Building

Homer  
601 E. Pioneer, Suite 123A

Juneau  
Family Investment Center, 3410 Foster Avenue

Ketchikan  
Schoenbar Park, 316 Schoenbar

Kodiak  
Pacific Terrace, 521 Maple Street

Nome  
Beringvue, 4th & G Street, Nome

Petersburg  
Vista View, 104 S. Third Street

Seward  
Glacier View, 200 Lowell Canyon Road

Sitka  
Swan Lake, 404 Lake Street

Soldotna  
44539 Sterling Highway, Suite 201-A

Valdez  
310-B Jago

Wasilla  
Mat-Su Section 8 Office, 851 East West Point Rd., Suite B06

Wrangell  
Etolin Heights, 709 Zimovia Highway

Written comments must be received by 5 p.m., August 25. Copies of the proposed changes will be available July 19 at the above location, or call Marge Arnold at 330-8431 or 1-800-478-2432 (outside Anchorage).

AHFC complies with Title II of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. If you plan to attend the meeting and require special accommodation because of a speech or hearing impairment, please contact Marge Arnold at 1-800-478-2432 no later than three days prior to the meeting so necessary arrangements may be made.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Invitation To Bid/Elfin Cove Boardwalks**

**Publish Date:** 07/14/99

**Archive Date:** 08/06/99

**Location:** Southeast Region

**Body of Notice:**

Sealed bids in single copy for furnishing all labor, materials, and equipment, and performing all work on Project No. 67619/STP-0003(56), Elfin Cove Boardwalks, described herein, will be received until 2:00 p.m. prevailing time August 5, 1999, at the Construction Contracts Office, 1st Floor, 6860 Glacier Highway, Juneau, Alaska.

The project consists of removal and reconstruction of boardwalk railing and decking, removal and reconstruction of two pedestrian foot bridges and a segment of boardwalk, concrete foundation repairs, resurfacing of dirt paths with aggregate base course and other related items.

The Engineer's Estimate is between \$100,000 and \$250,000. All work shall be completed by November 15, 1999.

Plans, specifications and other bidding documents may be obtained for bidding purposes from Southeast Regional Contracts, 6860 Glacier Highway, Juneau, Alaska, 99801-7999. Telephone Number: (907) 465-8904, Text Phone Number (hearing impaired): (907) 465-4647. Please include your company name, mailing address, phone number and fax number with your order. Companies owned by women, minorities, and people with disabilities are encouraged to bid.

Do not send payment now. You will be invoiced a non-refundable document fee of \$50.00 per plan set ordered. Bid results will not be available until after 4:00 PM on the bid opening day. The results can be obtained by calling (907) 465-8904.

Bidding Documents are available for inspection at the office of the Regional Department of Transportation and Public Facilities offices in Anchorage, Fairbanks and Juneau.

All technical questions regarding design and construction of this project should be directed to the office of Chuck Correa, Construction Engineer, telephone number (907) 465-1799. All questions regarding bidding and award procedures should be directed to the office of Marcine Tune, Contracts Officer, telephone number (907) 465-4489.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Itb/Aia Terminal Expansion Landside Civil Improvements, Phase I**

**Publish Date: 07/14/99****Archive Date: 07/31/99****Location: Anchorage****Body of Notice:**

Invitation to Bid/Project No. NH-0538(6)/53924/53614 Sealed bids for AIA Terminal Expansion Landside Civil Improvements, Phase I, will be received until 2:00 p.m., July 30, 1999 in the main conference room at 4111 Aviation Avenue, Anchorage, Alaska.

This Federally funded project consists of upgrading the terminal roadway network in support of the upcoming terminal expansion project. Work will include: realignment of the terminal arrival and departure roads; improve return to terminal route; realign Post Mark Drive; alterations and additions to parking and trails; and extend the curbside bridge to provide frontage on the new terminal expansion. The Project completion date is August 31, 2000. The Engineer's Estimate is between \$10,000,000 and \$20,000,000.

Bidding documents may be viewed at the DOT&PF offices in Anchorage, Fairbanks, and Juneau and purchased for \$100.00 per set, payable to the State of Alaska, from the Central Region Plans Room, 4111 Aviation Avenue, Anchorage, Alaska, 907-269-0408. Select "Contracting and Procurement" on the DOT&PF web site for additional information ([WWW.DOT.STATE.AK.US](http://WWW.DOT.STATE.AK.US)).

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Itb/Jnu-Glacier Hwy. Overlay & Egan Express Accel/Decel Lane Resurface & Jnu-Auk**

**Publish Date: 07/14/99****Archive Date: 07/30/99****Location: Southeast Region****Body of Notice:**

Invitation for Bids/Sealed bids in single copy for furnishing all labor, materials, and equipment, and performing all work on Project No. 67819/NH-0005(314) & 67827, Juneau-Glacier Highway Overlay & Egan Expressway Acceleration/Deceleration Lane Resurfacing and Juneau-Auke Way Pavement Rehabilitation, described herein, will be received until 2:00 p.m. prevailing time July 29, 1999, at the Construction Contracts Office, 1st Floor, 6860 Glacier Highway, Juneau, Alaska.

This project involves resurfacing the acceleration/deceleration lanes along Egan Expressway between Norway Point and Brotherhood Bridge and overlaying a section of Glacier Highway between Fritz Cove Road and Seaview Drive. This project also includes pavement rehabilitation of Auke Lake Way at the south entrance to the University of Alaska Southeast.

The Engineer's Estimate is between \$500,000 and \$1,000,000. All work shall be completed by September 15, 1999.

Plans, specifications and other bidding documents may be obtained for bidding purposes from Southeast Regional Contracts, 6860 Glacier Highway, Juneau, Alaska, 99801-7999. Telephone Number: (907) 465-8904, Text Phone Number (hearing impaired): (907) 465-4647. Please include your company name, mailing address, phone number and fax number with your order. Companies owned by women, minorities, and people with disabilities are encouraged to bid.

Do not send payment now. You will be invoiced a non-refundable document fee of \$100.00 per plan set ordered. Bid results will not be available until after 4:00 PM on the bid opening day. The results can be obtained by calling (907) 465-8904.

Bidding Documents are available for inspection at the office of the Regional Department of Transportation and Public Facilities offices in Anchorage, Fairbanks and Juneau.

All technical questions regarding design and construction of this project should be directed to the office of Edwin Johnson, Construction Engineer, telephone number (907) 465-1799. All questions regarding bidding and award procedures should be directed to the office of Marcine Tune, Contracts Officer, telephone number (907) 465-4489.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Itb/Kalskag Airport Improvements**

**Publish Date:** 07/14/99

**Archive Date:** 07/31/99

**Location:** Central Region,  
Other

**Body of Notice:**

Invitation to Bid/Project No. AIP3-02-0136-01/51818 - Sealed bids will be received until 2:00 p.m., July 30, 1999 in the main conference room at 4111 Aviation Avenue, Anchorage, Alaska.

This Federally funded project will extend the runway 257 meters to the west, construct a new taxiway, apron, 1030 meter gravel access road, snow removal equipment building and pad, and install a new airport lighting system. Project completion date is October 1, 2000, except for seeding (June 30, 2001). The Engineer's Estimate is between \$2,500,000 and \$5,000,000.

Bidding documents may be viewed at the DOT&PF offices in Anchorage, Fairbanks, and Juneau and purchased for \$100.00 per set, payable to the State of Alaska, from the Central Region Plans Room, 4111 Aviation Avenue, Anchorage, Alaska, 907-269-0408. Select "Contracting and Procurement" on the DOT&PF web site for additional information ([WWW.DOT.STATE.AK.US](http://WWW.DOT.STATE.AK.US)).

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Proposal To Lease On The Sand Point Airport**

**Publish Date:** 07/14/99

**Archive Date:** 08/14/99

**Location:** Central Region,  
Other

**Body of Notice:**

The Alaska Department of Transportation and Public Facilities proposes to issue a permit to use a portion of Lots 3A, and 2B, Block 100, consisting of 1,232 square feet of building on the Sand Point Airport under ADA-07645 (Applicant: City of Sand Point) for 5 years. Annual rent: \$2,465.00. Authorized uses: For the use of animal control, dog pound, and storage for the aforementioned use.

The Department reserves the right to correct technical defects in the premises description, lease term, or the purposes of any agreement issued and may reject any or all applications. A public hearing will be held, if in the opinion of the Commissioner, a hearing is justified.

This is an application filed under AS 02.15.090(c), which allows the Department to grant the proposed lease without competition. Written comment must be received by 4:30 p.m., August 13, 1999 after which the Department will determine whether or not to execute the lease. Information regarding this file is available from Leasing and Property Management, Department of Transportation and Public Facilities, P.O. Box 196900, Anchorage, Alaska 99519-6900. Persons with a disability who may need special accommodations may call (TDD) (907)-269-0473.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Proposal To Lease State Airport Space/Anchorage International**  
**Airport/Ada-30320**

**Publish Date:** 07/14/99**Archive Date:** 08/08/99**Location:** Anchorage**Body of Notice:**

The Anchorage International Airport, Department of Transportation and Public Facilities, State of Alaska, proposes to execute a supplement to an Airline Operating Agreement and Terminal Building Lease for space in the South Terminal at the Anchorage International Airport, summarized as follows:

File No.: ADA-30320

Applicant: Alaska Airlines, Inc.

Area/Use: Room SA-3611 for additional security training (approx. 362 sq. ft.)

Term: July 2, 1999 until June 30, 2000

Rate: \$34.64 per square foot per year.

This file is available for inspection during regular business hours, Monday through Friday, at the Leasing Office of Anchorage International Airport, located in Room NB-105 of the North Terminal, Anchorage, Alaska. Comments and competing applications must be submitted in writing to: Anchorage International Airport Leasing, Department of Transportation and Public Facilities, P.O. Box 196960, Anchorage, Alaska, 99519-6960, and must be submitted on or before August 7, 1999, after which the Department will determine whether or not to execute the agreement.

The Department reserves the right to correct technical defects in the premises' description, term, or the purposes of any agreement issued and may reject any or all applications.

Persons with a disability, who may need special accommodations for information on this file, should contact Stuart Gilbert at telephone number (907) 266-2688 or text telephone (TDD) 266-2686.

A public hearing regarding this contract will be held if, in the opinion of the Commissioner, a hearing is justified.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Proposal To Lease State Airport Space/Anchorage International**  
**Airport/Ada-30330**

**Publish Date:** 07/14/99**Archive Date:** 08/08/99**Location:** Anchorage**Body of Notice:**

The Anchorage International Airport, Department of Transportation and Public Facilities, State of Alaska, proposes to execute a supplement to an Airline Operating Agreement and Terminal Building Lease for space in the South Terminal at the Anchorage International Airport, summarized as follows:

File No.: ADA-30330

Applicant: United Airlines

Area/Use: Room SA-3510 for a crew lounge and additional office space (approximately 1,050 square feet).

Term: July 1, 1999 until June 30, 2000

Rate: \$34.64 per square foot per year.

This file is available for inspection during regular business hours, Monday through Friday, at the Leasing

Office of Anchorage International Airport, located in Room NB-105 of the North Terminal, Anchorage, Alaska. Comments and competing applications must be submitted in writing to: Anchorage International Airport Leasing, Department of Transportation and Public Facilities, P.O. Box 196960, Anchorage, Alaska, 99519-6960, and must be submitted on or before August 7, 1999, after which the Department will determine whether or not to execute the agreement.

The Department reserves the right to correct technical defects in the premises' description, term, or the purposes of any agreement issued and may reject any or all applications.

Persons with a disability, who may need special accommodations for information on this file, should contact Stuart Gilbert at telephone number (907) 266-2688 or text telephone (TDD) 266-2686.

A public hearing regarding this contract will be held if, in the opinion of the Commissioner, a hearing is justified.

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**Transportation & Public Facilities: Competitive & Other Solicitations**  
**Proposal To Lease State Airport Space/Anchorage International**  
**Airport/Ada-30993**

**Publish Date:** 07/14/99

**Archive Date:** 08/08/99

**Location:** Anchorage

**Body of Notice:**

The Anchorage International Airport, Department of Transportation and Public Facilities, State of Alaska, proposes to execute a contract for space in the South Terminal on Anchorage International Airport, summarized as follows:

File No.: ADA-30993

Applicant: Frontier Flying Service, Inc.

Term: July 14, 1999 to June 30, 2000

Area: South Terminal room SA-1830A (approximately 325 square feet)

Use: Freight/Mail storage

Rate: \$34.64 per square foot per year.

The file for this application is available for inspection during regular business hours, Monday through Friday, at the Airport Leasing Office Room NB-105, North (International) Terminal, Anchorage International Airport, Anchorage, Alaska. Comments must be submitted in writing to Anchorage International Airport Leasing, Department of Transportation and Public Facilities, P.O. Box 196960, Anchorage, AK 99519-6960, on or before August 7, 1999, after which the Department will determine whether or not to adopt the programs. The Department reserves the right to correct technical defects in the premises' description, term, or the purposes of any permit issued.

Persons with a disability who need special accommodations for information on this file, should contact Stuart Gilbert at telephone number (907) 266-2688, or text telephone (TDD) 266-2686.

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**Transportation & Public Facilities: Public Notices**  
**Public Meeting/Uaf/New Geist Road Access, Project No. Stp-0002(90)-60395**

**Publish Date:** 07/14/99

**Archive Date:** 07/31/99

**Location:** Fairbanks, Northern  
Region

**Body of Notice:**

UAF/New Geist Road Access, Project No. STP-0002(90)-60395. The Alaska Department of Transportation and Public Facilities proposes to construct a new access for the University of Alaska in Fairbanks, connecting Geist Road, at Loftus Road, with Tanana Loop Road. This location is within the greater Fairbanks area designated by the Environmental Protection Agency to be in non-attainment with the National Ambient Air Quality Standards for carbon monoxide.

Pursuant to Environmental Protection Agency requirements, the project must be found to conform to the State (air quality) Implementation Plan. The project must contribute to reducing the severity and number of violations. A draft Conformity Determination has been made based on quantitative analysis of current and expected future emissions.

The Department will hold a public meeting on July 30 at 2:00 p.m. to receive comments on the draft Conformity Determination. The meeting will be at the Department's 2301 Peger Road conference room. Project air quality analysis will be available. If you cannot attend and have questions, please contact Randall Horner, Environmental Analyst, at (907) 451-5292. If you are a person with a disability who may need a special modification in order to participate in this meeting, please contact the Department as soon as possible. To correspond by text telephone, call (907) 451-2363.

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**University of Alaska: Competitive & Other Solicitations****UA Equipment Lease For Eleven (11) Copiers - IFB # 00B0001GY****Publish Date:** 07/09/99**Archive Date:** 07/22/99**Location:** Fairbanks**Body of Notice:**

Equipment Lease for Eleven (11) Copiers  
Invitation For Bids Number 00B0001GY

Notice is hereby given that sealed bids will be received by the University of Alaska Fairbanks until 3:00 p.m. local time on July 22, 1999, for Equipment Lease for Eleven (11) Copiers, Invitation For Bids Number 00B0001GY. Copies of the solicitation may be obtained from the UAF Purchasing Office, 3295 College Road, 103 Administrative Services Center, PO Box 757940, Fairbanks, AK 99775-7940, Telephone 907/474-7315.

The University of Alaska reserves the right to reject any or all bids, offers, or parts thereof it deems necessary, to waive any informality in the bid or offer received, and to award in the best interest of the University.

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**University of Alaska: Competitive & Other Solicitations****UA Hess Village Roof Replacement - Bid No. 20002****Publish Date:** 07/09/99**Archive Date:** 07/28/99**Location:** Fairbanks**Body of Notice:**

Hess Village Roof Replacement  
Invitation For Bids Number 20002, Project Number 99064 HVRD

Sealed bids, in single for the Hess Village Roof Replacement Project will be received by the University of Alaska, until 2:00 p.m., July 28, 1999, at the Office of Division of Design and Construction, 590 University Avenue, 2nd Floor, Fairbanks, Alaska, at which time bids will be publicly opened and read

aloud.

The work consists of: Remove and dispose of the existing roof systems, both the wood shingle roofs and the ballasted rubber roofs; install a new EPDM rubber roof system at the roof decks and a new SGS asphalt shingle roof system at the steep roofs.

Invitation for Bids may be obtained from the Office of Division of Design and Construction at the address listed above, phone (907) 474-5299.

A Pre-bid conference will be held on July 19, 1999, at 10:00 a.m. at Hess Village.

The University of Alaska reserves the right to reject any or all bids, offers, or parts thereof it deems necessary, to waive any informality in the bid or offer received, and to award in the best interest of the University.

The University of Alaska Fairbanks is an affirmative action/equal opportunity employer and educational institution.

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**University of Alaska: Competitive & Other Solicitations**  
**Ua Tanana Loop Intersection - Ifb # 20004**

**Publish Date:** 07/13/99

**Archive Date:** 07/28/99

**Location:** Fairbanks

**Body of Notice:**

Tanana Loop Intersection  
Invitation For Bids Number 20004, Project Number 98044 URTL

Sealed bids, in single for the Tanana Loop Intersection Project will be received by the University of Alaska, until 2:00 p.m., July 28, 1999, at the Office of Division of Design and Construction, 590 University Avenue, 2nd Floor, Fairbanks, Alaska, at which time bids will be publicly opened and read aloud.

The work consists of: Modification to the existing intersections of East Tanana Drive, Tanana Loop and South Chandalar Avenue, Fairbanks, Alaska

Invitation For Bids may be obtained from the Office of Division of Design and Construction at the address listed above, phone (907) 474-5299.

A Pre-bid conference will be held on July 20, 1999, at 2:00 p.m. at the Office of Division of Design and Construction.

The University of Alaska reserves the right to reject any or all bids, offers, or parts thereof it deems necessary, to waive any informality in the bid or offer received, and to award in the best interest of the University.

The University of Alaska Fairbanks is an affirmative action/equal opportunity employer and educational institution.