

Designated Ethics Supervisor

March 29, 1991

663-91-0381

465-3600

Director's outside
employment as expert
witness; Executive Branch
Ethics Act (AS 39.52)

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Under AS 39.52.240 you have requested an advisory opinion on whether a public official serving as a director with substantial budget and management responsibilities may serve as an expert witness on behalf of a private litigant.

Background

Before accepting state employment the public official was engaged to serve as an expert witness by a party involved in civil litigation. The litigation concerns alleged damages incurred by a franchisee who lost or was denied a franchise. Before accepting state employment, the public official advised you, in your capacity as appointing authority, of the pending litigation and his commitment to serve as a compensated expert witness. The expert witness services include the rendering of opinions concerning lost profits of the franchisee. We are informed that the appointing authority expressly agreed to the continuation of the outside employment to the conclusion of the litigation.

Applicable law

The Executive Ethics Act (AS 39.52) establishes a standard to be applied to outside employment for determining whether the employment constitutes a violation. Under the Act, outside employment is permitted if it is reported to the designated supervisor, is compatible, and does not conflict with the proper discharge of official duties. AS 39.52.170.

Analysis

Based on the information available to us, it does not appear that the outside employment is incompatible or conflicts with the current duties of the public official. Those duties include the supervision of a division that prepares the executive budget, provides research and analysis on public policy issues, and audits the operations of state agencies. The expert witness services relate to a commercial activity that is unrelated to the

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state agency employing the state official. The public official claims that the commercial activity has no state contracts or other significant involvement. The public official also asserts that state time, equipment, and staff will not be used to perform the outside employment. Nor will confidential information gained through the official's official capacity be used in the performance of these services.

Based on the information supplied and for the foregoing reasons, we conclude that the outside employment as an expert witness is permissible under the Executive Branch Ethics Act. If you have further questions, please feel free to call me.

JLB: jr