

May 10, 1991

The Honorable Jim Duncan
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

Re: HB 221; Potential conflict
of interest arising from vote
on SBS annuity plan
Our file: 663-91-0459

Dear Senator Duncan:

You requested our advice concerning whether legislators have a conflict of interest to the extent that they will be unable to vote on HB 221, a bill establishing an investment loss trust fund for the benefit of participants in the supplemental annuity plan established under AS 39.30.150 - 39.30.180. Under this bill, participants in the plan will benefit to the extent that the trust fund is drawn upon to make up losses caused by the expected insolvency of an insurer that has issued guaranteed investment contracts to the plan. The plan provides a part of the benefits for public officers and state employees that were substituted when the state withdrew from the social security system. All sitting legislators are participants in the plan along with approximately 21,000 other persons.

In our opinion, even though legislators have a pecuniary interest in the passage of HB 221, a vote on the bill does not present a conflict of interest that would require a legislator to be excused from voting. The statutory standards of conduct applicable to legislators contains the following provision:

A conflict exists if benefits accrue to a person to whom this chapter applies beyond that which may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

AS 24.60.030(d); accord Mason's Manual of Legislative Procedure

• 552, • 1 (1989). The pecuniary interest gained through the enactment of HB 221 is identical to the benefit to be received by all other legislators and a large group of persons in the state. The benefit provided by the bill will be applied uniformly according to the valuation of guaranteed investment contracts on a date certain. The amount of the benefit will be set by factors which existed before HB 221 was voted upon by the legislature and over which individual legislators will have no control.

We believe that the pecuniary benefit realized by legislators under this bill does not go beyond that which accrues to all plan participants. The leeway granted under the standard of conduct cited above recognizes that there is no other lawmaking body in the state with the power to take the action necessary to repair the injury to the large number of persons affected by the pending insolvency of a major asset of the plan. Any apparent benefit to individual legislators will be offset by the benefit realized by the state treasury through an equitable settlement of potential liability claims without incurring substantial additional liability for consequential damages, costs, and attorney fees.

We hope this adequately answers your question.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:

James L. Baldwin
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