

Designated Ethics Supervisor  
Department of Commerce and  
Economic Development

May 14, 1991

663-91-0390

465-3600

state

Association of former

employee with a program  
designed by him  
Executive Ethics Act  
(AS 39.52)

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Assistant Attorney General

You have requested our advice about whether a former state employee would violate the Executive Ethics Act if the employee becomes employed by or a principal of a fisheries related organization under the following scenario:

The employee started employment with the department as a specialist in fisheries infrastructure development. The employee's primary work product was a paper on demand and viability assessments of community-based infrastructure proposals. The employee also did some work on financial strategies for these developments.

The employee proposed and drafted a rough outline for an organization to help maintain and enhance small community-owned processing facilities. The employee also promoted the idea within the division and to limited contacts from the private sector and other economic development organizations. While it was basically a good concept, the proposal was outside of the division's current work plan and responsibilities. The division elected not to pursue the proposal.

A representative of a fishing organization later requested a meeting with the department to discuss the possibilities for support for an organization similar to the original proposal. Interest in the concept clearly exists, though additional work needs to be done to develop and promote it within industries [sic] ranks.

It appears that the employee now wants to be an employee or principal of an organization spawned from the one originally proposed and promoted by that employee.

In our view, there is nothing in the Executive Ethics Act that precludes the employee from working in the private sector for an organization that may offer services like those conceived during the employee's tenure as a state employee. On the other hand, in the event that the employee or that organization decides to approach the state for money to promote those services, AS 39.52.180 may be applicable. It states as follows:

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. (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.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval.

Thus, for two years after leaving state service, if the employee or that organization intends to seek economic development money from the Department of Commerce and Economic Development for this organization, the prohibition under AS 39.52.180(a) may well be applicable. The employee should be guided accordingly. \*/

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\*/ A waiver of the prohibition may be granted if you determine that his activities as an employee or principal of the

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If you have any questions, please feel free to give me  
a call.

GIA/jf

(..continued)  
organization would not be "adverse to the public interest." The  
waiver must be in writing and approved by the attorney general.  
AS 39.52.180(c).