

July 31, 1991

Re: Post-state service employment
Executive Branch Ethics
Act, AS 39.52.180
Our File 661-91-0604

Dear X:

Pursuant to AS 39.52.250, you have requested an advisory opinion as to whether the Executive Branch Ethics Act prohibits your representation before an executive branch board of which you are a former chairman, of an organization which is a party in a matter presently before the board.

Between August of 1990 and early February 1991, you acted as chairman of an executive branch board. The case in which you would like to appear began on February 15, 1991. You do not recall having actively participated in this matter, nor discussing it with any member of the board.

Your service as chairman of the executive branch board brings you within the scope of the Executive Branch Ethics Act. AS 39.52.910. Restrictions on former state employees covered by the act are found in AS 39.52.180, which provides:

(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.

The sectional analysis accompanying the legislation provides a further explanation of this provision:

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two year ban is narrowly drawn: an officer is only prohibited from representing, advising or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2) in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations.

(Emphasis in original.)

This department has consistently applied this provision in accordance with the apparent legislative intent that AS 39.52.180(a) be restrictively applied. 1991 Inf. Op. Atty. Gen. (Feb. 25; 663-91-0291).

It is not clear whether this case was filed with the executive branch agency prior to the end of your service on the board, but in any event, you had no personal or substantial participation in the matter. Based on the facts you have presented, it is our opinion that AS 39.52.180 does not bar you from representing the organization in the matter presently before the board.

Should you have any questions regarding this determination, please do not hesitate to contact this office.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

Janet L. Crepps
Assistant Attorney General