

September 3, 1991

Employee X
Address
City, State Zip

Re: Representation of client
before agency you were
formerly employed by --
Executive Branch Ethics Act
(AS 39.52)
Our file: 663-92-0096

Dear Employee X:

This letter is written pursuant to AS 39.52.250, in response to your inquiry whether you may accept certain post-state employment.

In your letter dated August 21, 1991, you stated that you had been employed at Commission X in Department Y from January 1985 until June 1, 1990. From July 1988 through November 1988, you were the Commission X's Acting Executive Director.

Your primary duties while employed with the state were to analyze submittals from companies in Alaska and calculate rates to be paid through a program. Your analyses were submitted to the Executive Director and Commission X for final decision regarding rates.

On June 1, 1990, you terminated state employment to attend college. On June 18, 1990, you obtained a business license in order to support yourself part-time as a consultant on rate matters while attending school. Subsequently, Company A requested that you review the 1991 rate package issued by Commission X. You asked the attorney general whether accepting the contract would constitute a violation of the Executive Branch Ethics Act, AS 39.52.010--39.52.960. In a letter, an assistant attorney general expressed concern that your acceptance of the contract might violate the Ethics Act, specifically

AS 39.52.180(a), which restricts employment after leaving state service, and AS 39.52.140, which restricts use or disclosure of information gained in the course of state employment. Based on that letter, you turned down the offer from Company A.

In an August 28, 1991, telephone conversation with me, you stated that Company B is interested in hiring you as its director of finance. As part of your duties, you would work on Company B's rates for 1992. You have inquired whether you are barred by AS 39.52.180 and AS 39.52.140 from accepting employment with Company B.

AS 39.52.180(a) restricts a public officer who leaves state service from representing, advising, or assisting a person for compensation for two years after leaving state service on a matter that was under consideration by the administrative unit served by the officer, and in which the officer participated personally and substantially through the exercise of official action. AS 39.52.180(a) defines "matter" to include a case, proceeding, application, contract, or determination but not proposals or considerations of legislative bills or administrative regulations. AS 39.52.180(a)'s definition of "matter" is narrowly drawn and has been restrictively applied in the past. 1991 Inf. Op. Att'y Gen. (Feb. 25; 663-91-0291), 1987 Inf. Op. Att'y Gen. (May 12; 663-87-0427), 1986 Inf. Op. Att'y Gen. (Nov. 13; 663-98-0203).

In our February 25, 1991, opinion, we found that a former state employee who had been responsible for decisions on appeal respecting rates and licensing could represent companies concerning prospective rates, so long as the company's rate or audit appeal had not been pending during the former employee's tenure with the state. Your circumstances appear to be similar. So long as your duties encompass prospective rates, they would not violate AS 39.52.180.

You are precluded from challenging decisions concerning rates for 1991 and prior years, because you worked on rates for those years while employed by the state. To the extent that your new duties may require you merely to gather data on past years' rates without challenging their accuracy, however, that would not be improper under AS 39.52.180.

Finally, the information gained in the course of your former official duties is available to the public. Therefore, your new duties would not conflict with AS 39.52.140.

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

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Tina Kobayashi
Assistant Attorney General

TK:tg