

Designated Ethics Supervisor  
Alcoholic Beverage Control Board

April 21, 1992

661-92-0232

Employee's Outside  
Employment; Executive  
Ethics Act (AS 39.52)

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### Introduction

You inquired whether the outside employment plans of one of your investigative employees has the potential to violate the Executive Ethics Act, AS 39.52.010 -- 39.52.960. You are specifically concerned whether he may market products or services to persons associated with the industry he regulates.

### Background Facts

Your employee has regional responsibility to conduct routine monitoring of licensed premises to ensure compliance with state liquor laws and to conduct investigations of suspected violations. He is expected to inspect each licensed business in the region on at least an annual basis. In the past, his observations of licensed businesses during off-duty hours have been the basis for enforcement action. There is no other person to whom his job responsibilities could be reassigned.

The employee and his wife have formed a company which provides a broad variety of services and products to customers. Currently, he markets only to a restricted number of customers, but he plans to begin marketing to the general public. For the purpose of this advice, I am assuming that the services and products being sold by the business are unrelated to the functions of your agency. If a relationship later develops, then this issue would need to be addressed.

### Discussion

Your employees's ownership of and active involvement in the business does not, alone, constitute of violation of AS 39.52. The Executive Branch Ethics Act generally allows a state employee to engage in "independent pursuits" so long as there is no interference with the employee's public duties and responsibilities. AS 39.52.110(a).

An issue is raised, however, if your employee's

business markets products or services to licensees, their agents, or their employees or if it carries out any of its business activities on licensed premises. Under AS 39.52.170, a public employee may not "engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the discharge of official duties." Furthermore, AS 39.52.120(b)(4) states that a public officer may not "take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest." Nor may a public officer "seek . . . contracts through the use or attempted use of official position." AS 39.52.120(a). "Personal interest" and "financial interest" are defined to include a business interest held by a public officer or spouse of that public officer. AS 39.52.960(9)(A)(11) and (18). The concerns raised here are applicable even if your employee were to withdraw from the business and his wife continued to operate it.

The Act distinguishes between those conflicts that are "substantial and material" and those that are "minor and inconsequential." AS 39.52.110(a)(3). Under this distinction, business transactions with persons who are nonmanagement employees or agents of licensees would not be precluded. It would be your employee's responsibility to exercise caution in transacting business with nonmanagement employees of a licensed business to make certain that those activities did not infringe on the proper discharge of his public duties.

Transactions by your employee's outside business with persons who are licensees, or the managing agents or employees of the licensees, would not be permitted, because that conflict would be substantial and material. Your employee's job responsibilities for the regulation of the liquor industry is so pervasive that any personal financial dealings at that level would conflict with the Act.

It would be also be improper for the business to conduct any of its business activities on licensed premises or to solicit directly to licensed premises. Any contact by the business with the licensed premises, even during nonduty hours, would be seen to be related to your employee's state duties. Your employee would also find it difficult, if not impossible, to prevent private business transactions from being discussed while he was present on licensed premises for official reasons. Such activity would violate AS 39.52.120(b)(3), which precludes a public officer from using state time to benefit personal or financial interests.

In giving this opinion, I am distinguishing an opinion we wrote April 28, 1989. In that opinion, the department

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approved, with cautions, a state employee's ownership and work in a retail business operating from a storefront, that had the potential to serve customers regulated by the employee. 1989 Inf. Op. Att'y Gen. (Apr.28; 663-89-426) Here, the business relationship with customers is more regular and direct.

#### Conclusion

It would be a violation of the Executive Ethics Act if your employee's business were to transact business with persons who are licensees, or the managing agents or employees of the licensees, of the industry he regulates. Additionally, it would be improper for the business to conduct any of its business activities on or by direct solicitation to licensed premises.

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