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Guiding without
compensation: no

violation

of department's ethics
policy, or of ethics act

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You have inquired whether an individual employed by the Department of Fish and Game in one of the fisheries management divisions may act as an assistant big game guide without violating the Department of Fish and Game's approved ethics policy, if the individual is not compensated for the guiding. Apparently, the individual's incentive for engaging in the guiding without compensation is to accumulate credit toward achieving a higher level of guide license. Because of the wording of the department's ethics policy, we do not believe the proposed activity is problematic. Further, it does not appear that the proposed activity would violate the Executive Branch Ethics Act, AS 39.52.

The Executive Branch Ethics Act prohibits certain conduct. It also authorizes each agency to adopt a written policy, subject to the review and approval of the attorney general, which can further limit "the extent to which a public officer in the agency . . . may . . . acquire a personal interest in an organization or a financial interest in a business or undertaking that may benefit from official action taken or withheld by the agency" AS 39.52.920. The Department of Fish and Game has adopted such a policy, effective June 19, 1991, which was reviewed and approved by the attorney general as specified by statute.

Relevant to the situation you pose to us, the policy at page 7 prohibits "commercial harvest of fish or game resources within the region of employment, as defined by divisional geographic boundaries." The question presented here is whether an employee of one of the fisheries management divisions of the department can act as an assistant guide for big game in the region of the individual's employment, if this occurs without compensation.

The department's policy at page 4 defines "commercial harvest" as:

An activity which involves the taking or harvest of a resource managed by the department for compensation from a commercial processor, fur buyer, guide client, or retailer.

(Emphasis added.) Thus, taking the prohibition on commercial harvest within regional boundaries together with the definition, it is apparent that if the individual in question were compensated for the activity, the activity would be prohibited by the policy.

The policy at page 3, within the definition of "commercial activities," a term not immediately relevant to this analysis, defines "compensation" as it is set out in AS 39.52.960(7):

any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another

Although the individual in question proposes to engage in assistant guiding without receiving any money, the individual will be receiving a "thing of value" or an "economic benefit" from the activity, since the individual can use the time expended commercial guiding toward accruing credit toward a higher level guide license, with which the individual could presumably eventually earn more money. However, as already noted, the policy's incorporation of the statutory definition of "compensation" occurs within the definition of a term not directly relevant to this analysis. In contrast, the policy at page 3 does define "commercial guiding" as:

accompanying or being present with a hunter or fisherman in the field, personally or through an assistant, for direct financial compensation.

(Emphasis added.) Even though the term "commercial guiding" is also not directly implicated in this analysis, it is the activity in question in the situation presented to us. The policy, in the context of defining "commercial guiding," modifies the term "compensation" with the adjectives "direct" and "financial." The implication appears to be that the more amorphous "thing of value" which the statutory definition might cover, namely, credit for time

guiding which could be used toward a higher level license, does not appear to fall within the policy with respect to defining "commercial guiding." In other words, for purposes of the policy applying, it appears the department intended an individual to receive immediate remuneration from the client, rather than the more indirect benefit of accruing time served as an assistant guide. Thus, the policy as currently worded does not appear to prohibit an individual employed by the department in a fisheries management division from acting as an assistant guide for big game within the individual's region of employment, if the individual does so without receiving direct remuneration for the guiding.

Although your question focused on whether the proposed activity would violate the department's ethics policy, it is also worth inquiring whether the activity would violate the Executive Branch Ethics Act, since the scope of the policy and the Act are not identical. One of the relevant provisions is AS 39.52.120(a), which states in part:

A public officer may not use, or attempt to use, an official position for personal gain

Another potentially relevant provision is AS 39.52.120(b)(4), which 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; . . .

A final potentially relevant provision is AS 39.52.170(a), which states that a public officer may not engage in outside employment if it "is incompatible or in conflict with the proper discharge of official duties."

The individual in question is employed in one of the fisheries management divisions of the department rather than the wildlife management division. It is not apparent how the individual could use his or her official position to influence the success, either present or future, of a big game guiding endeavor. Nor is it apparent that the individual would be able to take or withhold any official action that would affect the success, either present or future, of a big game guiding endeavor. Indeed, the Department of Law has determined in a somewhat similar situation that these provisions would not be violated by an employee of the Commercial Fisheries Entry Commission crewing in fishery as long as

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the employee did not have any potential influence on a decision to limit entry into that fishery, or to establish a point system for eligibility for permits in that fishery. 1981 Inf. Op. Att'y Gen. (Aug. 16; 663-91-0323).

In summary, it appears that the proposed assistant big game guiding by an employee of one of the Department of Fish and Game's fisheries divisions within that employee's regional boundaries, but not for direct remuneration, would not violate either the department's approved ethics policy or the Executive Branch Ethics Act. We note, however, that to be on the safe side, the individual should in any case fill out the report of outside employment by July 1, and transmit that form to you, as described in AS 39.52.170(a).

LIS:lae

cc: Tina Kobayashi
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