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Designated Ethics Supervisor

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Employee involved in
outside employment;
Executive Ethics Act
(AS 39.52)

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INTRODUCTION

You have asked for our opinion on whether outside employment by a state agency computer specialist (hereinafter "Employee") in a computer store owned by the Employee's spouse violates the Executive Ethics Act. Our conclusion is that there is a conflict of interest regardless of whether the Employee actually works in the store.

FACTS

The Employee works for a state agency as a computer specialist. The position description questionnaire (hereinafter "PDQ") indicates that the Employee's essential functions, duties, and tasks at the agency are: (1) to utilize computers to interpret and display data from various projects; (2) to develop computer programs utilized by the agency; (3) to work on the overall regional agency computer system; (4) to help other agency personnel interface various elements of the overall agency computer system; (5) to organize training seminars in the use of micro computers and their applications for various agency personnel; and (6) to tutor agency personnel on how to utilize computers to increase their productivity.

The Employee's supervisor states that one of the Employee's most important functions at the agency is to evaluate and recommend what types of computers and programs the agency should acquire. In addition, the Employee spends a good deal of time working with and tutoring agency personnel on how to utilize computers and how to work with the agency computer system.

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On September 9, 1992, the Employee turned in an ethics disclosure form indicating work outside the agency as a computer consultant from 4:30 P.M. to 8:00 P.M Monday through Saturday. You have indicated that the outside employment involves a computer sales company (hereinafter "Company") that is owned by the Employee's spouse. This Company is on the agency's approved list as a source for acquisition of computers and related products for the same administrative unit in which the Employee works.

LAW

The "Alaska Executive Ethics Act" (hereinafter "Act") applies to all executive branch employees. AS 39.52 et. seq. The Act contains a number of prohibitions designed to prevent state employees from benefiting financially or personally from their employment with the state.

The Act generally provides that an employee may not use his or her state position for personal gain. AS 39.52.110. More specifically, the Act contains the following prohibitions which may apply to the instant inquiry:

1. use of state position to secure contracts (AS 39.52.120 (b) (4), AS 39.52.150);
2. taking or withholding official action on a matter in which the employee has a personal or financial interest (AS 39.52.120 (b) (3));
3. use of state time, equipment, property or facilities for personal or financial benefit (AS 39.52.120);
4. use of or disclosure of information gained from state employment which could result in a financial or personal benefit to the employee unless the information has already been disseminated to the public (AS 39.52.140 (a));
5. taking or withholding action which could affect the award or administration of a contract which the employee may have an interest (AS 39.52.150);
6. representing, advising, or assisting a person or business on any matter being handled by the employee's administrative unit for personal gain (AS 39.52.160 (a) (2)); and

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7. engaging in outside employment which is incompatible or in conflict with proper discharge of official duties (AS 39.52.170 (a)).

Not every apparent conflict is prohibited. The Act acknowledges that employees may have outside business interests which may appear to conflict with the employee's responsibilities to the state. AS 39.52.110 (a). The Act prohibits only those conflicts that are material. AS 39.52.110 (a) (3). The Act also allows an employee to hold an interest in an entity that competitively bids on state contracts as long as the employee does not work for the administrative unit that awards or administers the contract or the administrative unit for which the contract was let and the employee takes no official action with respect to the award or administration of the contract. AS 39.52.150 (b). Once a material conflict is discovered, the employee's supervisor may reassign duties to avoid the conflict or direct the employee to divest himself of or remove the personal or financial interest which caused the conflict. AS 39.52.210.

ANALYSIS

Since the Company is owned by the Employee's spouse, it doesn't matter whether the Employee is employed by the Company or not. Both of their interests are considered the same for purposes of the Act. AS 39.52.960 (9) (A).

The Employee's interest in the Company constitutes a conflict because the Employee is involved in the acquisition of computer equipment at the agency at least to the extent of officially recommending to the agency what types of computers and related equipment the agency should acquire. Furthermore, even if the Employee were not actively influencing computer acquisitions, the fact that the Employee works in the administrative unit that awards and administers competitively bid contracts for acquisition of computer equipment, or the administrative unit for which computer acquisition contracts are let, violates the Act. AS 39.52.150 (b) (1).

The question is whether the conflict is material. AS 39.52.110 (a) (3). I conclude it is a material conflict because the PDQ includes acquisition recommendations of computer equipment as one of the Employee's most important agency job functions.

The remaining question then is one of appropriate remedy. The Act provides that a material conflict is to be

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remedied by reassignment of the employee's duties to avoid the conflict or by direction to the employee to divest himself or herself of or to remove the personal or financial interest causing the conflict. AS 39.52.210. You may want to consider discussing with the Employee removal of the Company from the approved list of suppliers for the administrative unit for which the Employee works.

The Act requires that you now make a written determination as to whether there is a conflict of interest. AS 39.52.240. You must discuss alternative methods for resolving the conflict with the Employee. Id. You must also advise the Employee of the action required to resolve the conflict. Id.

CONCLUSION

Based on the authorities discussed above and the facts provided by you, it appears that the Employee's interest in the Company constitutes a conflict of interest.

RJT: jkm