

Designated Ethics Supervisor

October 14, 1993

663-94-0034

465-3603

Employee owns travel
agency
(Executive Ethics Act --
AS 39.52)

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INTRODUCTION

You have requested an advisory opinion under the Alaska Executive Branch Ethics Act (the Act) regarding an employee in the department who is a part owner in a travel agency. You have asked whether the employee can direct that his or other employees' airline tickets for state travel be purchased through his own travel agency.

The short answer to your question is no. It would be a violation of the Act for him to do so. I am attaching an earlier Attorney General's opinion addressing a similar situation. 1988 Inf. Op. Att'y Gen. (May 3; 663-88-0213). The advice provided in that memo will provide you with additional guidance.

FACTUAL BACKGROUND

An employee of the department is an owner or part owner in a local travel agency. The employee's duties require that he travel regularly by plane. The division's current policy permits employees to purchase airline tickets through the travel agency of their choice. You have asked if choosing one's own travel agency would be a violation of the Act.

APPLICABLE LAW

In enacting the Alaska Executive Branch Ethics Act, the legislature recognized the need for high moral and ethical standards, as well as the need for public employees to be able to pursue personal interests. AS 39.52.110 provides:

(a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not

prevent an officer from following other independent pursuits. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

(2) people who serve as public officers retain their rights to interests of a personal or financial nature; and

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions.

AS 39.52.120 specifically addresses misuse of one's official position:

(a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate.

AS 39.52.150 prohibits the improper influence in state grants, contracts, leases, or loans:

(a) A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

. . . .

(d) A public officer shall report in writing to the designated supervisor a personal or financial interest held by the officer, or an immediate family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves.

"Financial interest" is defined as "an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit[.]" AS 39.52.960(9)(A).

DISCUSSION

1. May an employee purchase airline tickets or encourage others to purchase airline tickets from a travel agency in which he is a part owner?

In our opinion, the answer to this question is no. An employee who owns or whose spouse owns all or part of a travel agency has a financial interest in that travel agency. If the employee directed business to the travel agency through his position as a public employee, he would violate several provisions of the Alaska Executive Branch Ethics Act:

(1) using his official position for personal gain in violation of AS 39.52.120(a);

(2) seeking contracts¹ through the use of his official position in violation of AS 39.52.120(b)(1);

(3) using state time and property to benefit personal or financial interests in violation of AS 39.52.120(b)(3);

(4) taking official action in order to affect a matter in which he had a financial interest in violation of 39.52.120(b)(5); and

(5) attempting to be a party to a contract when he can take official action on the contract in violation of AS 39.52.150(a).

These violations would occur if he requested other employees to use his travel agency and if he arranged his own travel through the agency in which he has a private interest.

The employee may suggest that the purchase of tickets does not constitute "substantial impropriety" because the interest is insignificant or because the action taken would have an insignificant effect on the matter. AS 39.52.110(b)(1)-(2). In our opinion, neither the interest nor the effect is insignificant.

We believe this is the very type of personal benefit that the Act addresses and the legislature intended to prohibit. The Act specifically states that "each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust." AS 39.52.110.

¹ A simple buy and sell transaction is a contract.

Additionally, you asked if other violations could occur as a result of the employee purchasing state tickets through his own travel agency. A clear violation, possibly criminal, would exist if the agency sold the state a regularly priced ticket, but the employee/owner traveled on a special "travel agent" pass.

2. What steps should be taken to avoid a violation?

After an employee has disclosed in writing to the designated supervisor a potential violation of the Act, the designated supervisor

shall make a written determination whether an employee's involvement violates AS 39.52.110 - 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

AS 39.52.210(b).

One way to avoid a violation of the Act would be to eliminate the employee's choice of which travel agency to use for the purchase of his or other employees' airline tickets. Additionally, you may wish to consider instituting a random or rotating policy for selecting travel agencies. Staff may have other suggestions that would permit flexibility while avoiding any ethics problems. Please note that an employee who is a friend of the travel agency owners could violate the Act by directing business towards the travel agency in order to benefit the co-worker's business. AS 39.52.120(a) ("A public officer may not . . . intentionally secure or grant unwarranted benefits or treatment for any person.")

CONCLUSION

In conclusion, in our opinion it would be a violation of the Ethics Act for an employee who is a part owner in a travel agency to direct that his or other employees' tickets be purchased through that agency. Among other things, the department may direct that the employee have no say in the travel agency used for the purchase of airline tickets. If the employee is cooperative, this action should be sufficient to avoid a violation. If this solution is not effective, or if the department believes that the employee is making a knowing effort to attempt to benefit personal

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and financial interests, it can file a complaint with the Attorney General's Office.

If this does not resolve your questions, or if more facts come to light that alter the situation, please do not hesitate to contact us for additional guidance.

JGL/bap

Attachment