

MEMORANDUM

State of Alaska

Department of Law

To: Director

Date: April 22, 1996

File No: 661-96-0841

Telephone No: 269-5161

From: Carolyn E. Jones
Supervising Attorney
Transportation Section, Anchorage

Subject: Ethics Opinion

You have asked whether it would be a violation of the Executive Branch Ethics Act if one of your employees rented his condominium to a company under contract to your department for an ongoing construction project. The short answer is no.

FACTS

As you have reported the facts to us, an employee has supervised one of your divisions in Anchorage since March 1995. His prior employment history includes a partnership in a private consulting firm and 28 years of employment with a construction company currently under contract with your department.

In January 1996, a different one of your divisions in Anchorage awarded a competitively bid contract to the construction company mentioned in the previous paragraph. The subject employee had no involvement in the planning, design, contract specifications, or contract award of the project. Nor will he have any involvement in the management of the contract.

The contract requires the successful bidder to provide housing facilities for all employees who will work on the project. The contractor has decided to lease private housing in the area of the project. There is a sufficient housing vacancy factor to make this option feasible.

The contractor estimates that the maximum number of individuals requiring housing will be 82 people, six to eight of whom would be housed in each unit. The contractor would need to lease about 11 to 14 units, depending on their size. The employee owns a condominium that the contractor wishes to lease.

You have requested this opinion because of your concern as to whether any ethical problems are posed by a high-ranking department official renting his condominium to a contractor under contract with the department.

LEGAL ANALYSIS

The Alaska Executive Branch Ethics Act is the code of ethics that guides public officers in the discharge of their public duties. AS 39.52.010. The Act is intended to discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities. However, a public officer may pursue other independent pursuits as long as it does not interfere with the full and faithful discharge of the officer's public duties and responsibilities. AS 39.52.110(a).

We have examined the various provisions of the Act that might conceivably apply to your request for advice. AS 39.52.120(b)(4) provides 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". The officer may not have a personal or financial interest in a state contract competitively solicited if he is employed by the administrative unit awarding the contract or takes official action regarding the award, execution, or administration of the contract. AS 39.52.150(a), (b)(1) and (b)(2).

None of these provisions would prohibit your employee from renting his condominium to the contractor. As you have stated the facts, the employee is not employed by the administrative unit that designed, awarded, executed, or administers the construction contract. As such, he has never been and will not be in a position to take or withhold official action with regard to the contract.

CONCLUSION

Under the facts as you have stated them, we conclude that it is permissible under the Alaska Executive Branch Ethics Act for an employee to rent his condominium to the department's contractor where the employee has not, is not, and will not be in a position to take or withhold official action with regard to the contract.

CEJ:sb