

April 30, 1997

State employee

Re: Post-state Employment
Executive Branch Ethics Act
(AS 39.52)
A.G. File Number: 663-97-0328

Dear X:

This letter responds to your request for advice regarding post-state employment. Alaska Statute 39.52.250(a) authorizes the Department of Law to provide you advice. The factual background for this opinion is based upon your letter to the department of March 4, 1997, and a telephone conversation between you and me on April 21, 1997.

Your letter states that you are employed with a state agency, but that you will retire on May 4, 1997. Also, as stated in your letter, you have supervisory duties over management of natural resources found in specific regions of the state. Allocation of these resources among specific user groups is the duty of the an executive-branch board whom your agency serves in a staff capacity.

Allocation and other decisions by the Board are adopted as state regulations under the Administrative Procedure Act, AS 44.62. Part of this regulatory process is the solicitation of regulatory proposals or comments, which another section of your agency collects, compiles, and distributes to the public. You have informed me that you and your division do not see these proposals until their publication. Your job tasks include responding to public proposals and to proposals developed by your agency.

You have been offered employment with a private organization that represents the interests of a regional user group before the Board. The regions that this organization represents include at least one that you currently manage. You have stated that if you accept the offer, you will begin your job after you have retired from state service. You have described your prospective duties with that organization as follows:

1. to represent and assist the organization in commenting upon regulatory amendments for the region and those nearby;

2. to review and comment upon regulation proposals that the Board makes available for public review;
3. to present, and to help other organization members to present, public testimony to the Board;
4. to work with interested user groups to get support for the organization's position;
5. to work with state advisory committees, other user groups, the Board, and the state agency for whom you now work in drafting resource management plans, should the Board assemble a subcommittee for that purpose; and
6. to advise the organization on matters important to its members.

In your letter of March 4, 1997, you have also stated that the Board has called for proposals for changes in regulation of a number of the resources that the Board oversees in the region that your prospective employer represents. You identified April 10, 1997, as the Board's deadline for receiving proposals. You also doubted that your prospective employer intended to submit a proposal, and you stated that you did not help it draft one. You also stated that the proposals submitted would not be published until late May 1997, and thus would be unavailable to you or the public until after you retire from state service. You expect the Board to consider the proposals in December 1997 and January 1998.

Your service with your agency brings you within the scope of the Executive Branch Ethics Act. *See* AS 39.52.960(21)(A). The provision dealing with post-state employment reads as follows:

(a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. *For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.*

AS 39.52.180(a) (emphasis added). The Department of Law has consistently read this subsection in accord with the legislature's intent that AS 39.52.180 be narrowly applied.

See, e.g., 1991 Inf. Op. Att'y Gen. 175, 176 (Feb. 25; 663-91-0291). Thus limitations on post-state employment apply only to a "matter" that your agency considered during your tenure, and in which you "participated personally and substantially through the exercise of official action." AS 39.52.180(a). Expressly excluded from the definition of "matters" is the proposal, consideration, or adoption of regulations. *Id.*

As we understand the facts, the services that you expect to provide your prospective employer, as you described them in your letter of March 4, 1997, relate only to the proposal, consideration, or adoption of regulations. Accordingly, the Department of Law determines that your contemplated post-state employment would not be subject to a limitation under AS 39.52.180. This determination is subject to qualification: You may not disclose or use information gained from your state job in a way that benefits you, if that information has not been disseminated to the public. *See* AS 39.52.140. Additionally, work on other matters may fall within the scope of AS 39.52.180. Should you have any questions about this determination, please do not hesitate to contact this office.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Steven C. Weaver
Assistant Attorney General

SCW:prm