

MEMORANDUM

State of Alaska Department of Law

TO: Bruce M. Botelho
Attorney General

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FILE: 663-97-0400

TEL NO.: 465-3600

SUBJECT: Service on a State Board
That Awards Grants

FROM: Stephen C. Slotnick
Assistant Attorney General

You have inquired whether a member of a state board may be a member of the board of directors of an organization that applies for a grant from the state board. Under the Executive Branch Ethics Act, the answer is no. The member will have to resign from either the state board or the board of the organization applying for the grant.

DISCUSSION

The Ethics Act has a general provision that bans “misuse of official position.” AS 39.52.120. Under this section, a public officer, including a member of a board or commission, may not take official action that affects the officer’s personal or financial interest. In general, an officer can avoid a misuse of official position by not participating in a matter in which the officer has a personal or financial interest.

The Ethics has a more specific provision, however, that applies to state grants. This provision, AS 39.52.150, is more strict than the general ban on misuse of official position. Under the state grant provision, a public officer may not have a personal or financial interest in a state grant, if the officer may take or withhold official action “that affects the award, execution, or administration” of the state grant.

We have always interpreted this section to mean that a public officer cannot “cure” the conflict by abstaining from participation on the grant that creates the conflict. *See, e.g.*, 1992 Inf. Op. Att’y Gen. (Dec. 14; 661-93-0376) (employee’s ownership interest in a computer sales company that seeks state contracts from the employee’s administrative unit would create conflict that cannot be cured). The tenets of statutory construction confirm this interpretation:

(1) **The plain language of the statute.** The statute says that “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 . . . if the public officer may take or withhold official action that affects the award, execution, or administration of the state

grant.” AS 39.52.150. This directive does not leave room for “curing” the conflict. Here, if an officer “may take action”--regardless of whether the officer actually does--the officer may not have the forbidden interest in the state grant. “Statutory construction begins with an analysis of the language of the statute construed in light of its purpose.” *Borg-Warner v. AVCO Corp.*, 850 P.2d 628, 633 n.12 (Alaska 1993).

(2) **The grant provision should not be rendered superfluous.** The Ethics Act already has a general provision that allows “curing” of conflicts by abstaining. If we interpreted the grant provision to allow abstaining, it would not be any different than the “misuse of official position” provision. We cannot interpret the grant section in a manner that makes it superfluous. *See Rydwell v. Anchorage School Dist.*, 864 P.2d 526, 530-31 (Alaska 1993) (“[w]e recognize a presumption that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.”). Therefore, we must interpret AS 39.52.150 to have a different effect than AS 39.52.120, which means that conflicts in grants cannot be cured.

In this case, the board member clearly has a forbidden personal interest in the grant in question. The Ethics Act defines “personal interest” to mean “an interest held or involvement by a public officer, or the officer’s immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit.” AS 39.52.960(18). Here, the public officer sits on the board of directors of the nonprofit entity applying for the grant. The entity would receive a benefit if awarded the grant. Under this definition, the public officer has a personal interest in the grant.

Finally, we note that the grants provision contains an exception that, in certain circumstances, allows the public officer to retain the personal interest in the grant. *See* AS 39.52.150(b). That exception applies, however, only when the grant is “competitively solicited.” The Ethics Regulations clarify that this exception applies only when strict objective procedures are used, such as the sealed bid procedures in the procurement code. 9 AAC 52.080(a). Here, the members of the state board must use their expertise and individual knowledge to evaluate grant proposals. In this situation, the awarding of grants does not qualify as “competitively solicited.” Accordingly, the exception does not apply.

CONCLUSION

A member of the state board may not sit on the board of directors of an organization that is applying for a grant from the state board. The member must either resign from the state board trust or from the board of directors of the organization. *See* 1993 Memorandum to Commissioner from Ass’t Att’y Gen. Baldwin (Confidential) (board member must either resign from board or not apply for contract let by board).