# MEMORANDUM

# State of Alaska

### Department of Law

TO: Designated Ethics Supervisor

DATE: June 24, 1997

FILE NO: 663-96-0576

TEL. NO: 465-3600

SUBJECT: Employment of Former State Employee With a Private Entity for Which Employee Administered a Grant: Executive Branch Ethics Act (AS 39.52)

FROM: Marjorie L. Vandor
Assistant Attorney General
Governmental Affairs Section - Juneau

You have requested our advice about whether a former state employee, Employee X, is in violation of the Executive Branch Ethics Act, AS 39.52, because Employee X, within two years of leaving state service, became employed by a private entity, Company A, which was the recipient of official action taken by Employee X while in state service. Employee X was project manager of a grant made by the division to Company B (a company serviced by Company A). Employee X was involved in Company B's grant project through the completion of construction. Company A apparently was benefited to some degree by Company B's grant project. Evidently, since leaving state service and while acting in his/her new position with Company A, Employee X has been involved in assisting with an application for a change in Company B's PCE level with the Alaska Public Utilities Corporation (APUC), which relates back to the state grant.

You ask if Employee X is in violation of AS 39.52 for the above actions. In brief, we find no violation of AS 39.52.180(a) based upon the fact scenario provided us in your initial letter and follow-up memorandum. AS 39.52.180(a) prevents a public officer from representing, advising, or assisting a person for compensation regarding a matter in which the public officer participated personally and substantially through the exercise of official action.[1] We have previously opined that for a "matter" to be prohibited for the

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[1] AS 39.52.180(a) restricts former state employees from accepting employment 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."

purposes of AS 39.52.180(a), it requires the former employee's personal and substantial participation on a specific application, project, program or effort on behalf of the state while in state employ. *See* 1989 Inf. Op. Att'y Gen. (February 27; 663-89-0294). Each application process constitutes a "new" matter under AS 39.52.180(a). *See* Inf. Op. Att'y Gen. (February 26; 663-91-0302).

Therefore, with respect to the case you have presented us, Employee X would only be in violation of AS 39.52.180(a) if he/she had been employed at the time and was personally and substantially involved in Company B's approval process for the current APUC application (that occurred while he/she was in state employ). The fact Employee X was a state program manager on Company B's earlier grant, and Employee X's new employer (Company A) was benefited thereby, does not automatically prohibit Employee X from utilizing the knowledge he/she has of the process and agencies' policies for Company A and B after leaving state service.[2]

We hope this addresses your concerns. Please do not hesitate to call us if you need further clarification.

MLV:jn

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"Matter" is defined in AS 39.52.180(a) as ". . . 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 measure; or the proposal consideration, or adoption of administrative regulations." AS 39.62.960(1). "Official action" means "a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction by a public officer." AS 39.52.960(14).

[2] We note no allegation that Employee X has utilized information to which he/she was privy while in state employ which has not been disseminated to the public and from which he/she somehow benefited personally or financially. *See* AS 39.52.140.