

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

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July 18, 2003

Mr. Roe [A Former Public Official]

Re: Post-State Employment  
Our File No. 665-04-0009

Dear Mr. Roe:

You have requested advice under AS 39.52.250(a) concerning a prospective contract with a non-executive branch agency of state government (“the Agency”) to provide professional services regarding the completion of one of the Agency’s projects.

You were involved in a project for the Agency during your tenure with an executive department of state government (“the Department”). You served on the selection committee that chose the Agency’s private contractor for the project and advised the Agency throughout the various phases of the project on project-related issues. In your position with your former Department, you were responsible for post-contractual issues related to the operation of the project.

A portion of the project was left unfinished under the original contract. The Agency now plans to finish the project and has asked you to act as its representative for the follow-on project.

The Agency anticipates that the original private contractor will be used on this project. As the Agency’s representative, you will be the liaison between the Agency and your former Department’s personnel. Among other duties, you will be responsible for review, inspection, and will recommend approval or disapproval of contract-related orders and payments. We have determined that you may accept this employment under the Executive Ethics Act (AS

39.52).

For two years after leaving state service, AS 39.52.180(a) precludes a former state officer from representing a person for compensation with regard to any matter that was under consideration by the administrative unit of state government in which that officer served and in which the officer participated personally and substantially. However, AS 39.52.180(b) carves out an exception to section 180(a). Section 180(b) provides:

This section [*i.e.* AS 39.52.180] does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

The Ethics Act definition of the term “agency” does not include the subject Agency because the subject Agency is not in the executive branch of state government. However, the manifest intent of section 180(b) is to allow **the state** to contract with a former state employee to act on its behalf. Although the Agency is not an executive branch agency, it is a branch of state government. Under AS 39.52.180(b), you may enter this contract because you will be working “on behalf of the state.”

We also conclude that section 180(a)’s two-year prohibition on post-state employment does not apply to this particular contract. “The Department of Law has consistently read this subsection in accord with the legislature’s intent that AS 39.52.180 be narrowly applied.” 1997 *Inf. Op. Att’y Gen.* (Apr. 30; 663-97-0328)(citation omitted). Section 180(a) does not apply to your prospective contract with the Agency because it is a new “matter” in which you were not involved during your tenure with the state.

AS 39.52.180(a) defines “matter” to include a contract. However, with some exceptions not here relevant, each contract is treated as a separate matter for the purposes of determining whether the two-year employment bar applies. 1997 *Inf. Op. Att’y Gen.* (Jun. 24; 663-96-0576). The follow-on contract to complete the Agency’s original project is a separate contract and, therefore, a separate “matter” from the original project. 1994 *Inf. Op. Att’y Gen.* (Dec. 13; 663-94-0642).

Of particular importance for this case, this office has determined that AS 39.52.180 does not necessarily prevent a former employee from working on modifications or extensions to projects, even though the former employee could not seek private employment on the [original] project itself.

*Id.* (citations omitted). Therefore, you are not precluded from working on the follow-on contract for the Agency merely because you worked on the original project.

Furthermore, you advised us by e-mail (dated July 17, 2003) that you were not involved in the follow-on project during your state employment. Therefore, you were not substantially and personally involved in this matter while in state service even if the follow-on project was under consideration by your former Department before you left state service.

By law, this advice is subject to AS 39.52.250(b), which provides:

A former public officer is not liable under this chapter for any action carried out you in accordance with the advice of the attorney general issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice.

Based on the facts disclosed in your July 11, 2003 letter and your July 17, 2003 e-mail, we conclude that you may enter the contract with the Agency to provide services for the its follow-on project.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By:  
Paul R. Lyle  
Sr. Assistant Attorney General