

MEMORANDUM

State of Alaska
Department of Law

TO: Linda Perez
Administrative Services Director
Office of the Governor

DATE: November 8, 2004

FILE NO: 665-05-0090

TEL. NO.: 451-2811

THRU: Barbara J. Ritchie
Chief Assistant Attorney General
Opinions, Appeals & Ethics

FROM: Paul R. Lyle
Sr. Assistant Attorney General

SUBJECT: Attorney General's
Participation in
Stranded Gas Act
Negotiations

Facts

Senator Hollis French recently wrote a letter to Governor Murkowski questioning Attorney General Renkes' involvement in the state team responsible for negotiating contracts under the Stranded Gas Act. The attorney general referred the matter to you as his designated ethics supervisor. He requested a written determination on whether, under the Ethics Act, his prior work as a consultant and lobbyist for ARCO and BP during the period 1998-2002 precludes his involvement in the Stranded Gas Act negotiations. You requested a written advisory opinion on this matter.

Gregg Renkes worked as a consultant and lobbyist for BP and ARCO before his appointment as attorney general. His consulting firm was named The Renkes Group, Ltd. and is incorporated in the Commonwealth of Virginia. Between 1998 and 2002, The Renkes Group was paid approximately \$100,000 by BP and ARCO for consulting services. BP and Conoco Phillips, ARCO's successor, are parties to the Stranded Gas Act negotiations with the state.

Senator French's letter does not allege a violation of the Executive Branch Ethics Act, but claims that the attorney general's membership on the negotiation team creates an appearance of impropriety.

The attorney general reports that he does not own stock in either BP or Conoco Phillips. The attorney general's APOC disclosure forms confirm this information.

The attorney general reports that The Renkes Group, Ltd. is inactive and has no clients. A review of Virginia's corporation database reveals that the corporation has not paid its renewal fee for 2004.

Question

Does the Executive Branch Ethics Act prohibit the attorney general from being involved in Stranded Gas Act negotiations with BP and Conoco Phillips because he was employed as a consultant to BP or ARCO (Conoco Phillips' predecessor) before his appointment as a public officer?

Answer

No.

Legal Analysis

1. **The Ethics Act does not apply to pre-state service contracts that end when state service begins.**

The Ethics Act does not address relationships and interests pre-dating a public officer's state service that do not survive after the official's state service begins. In 1987 *Inf. Op. Att'y Gen.* (Apr. 7; 663-87-0398), 1987 WL 121066 (Alaska A.G. 1987), a public officer asked us whether they were precluded from dealing in their official capacity with an individual with whom they had had a contractual relationship before appointment to public office. The contractual relationship ended before the officer's appointment to public service. We concluded:

Contractual relationships and compensation for services before your state employment are not under the scrutiny of the Ethics Act. Only official actions **during your tenure, and** for two years **after you leave** state service, are covered by the Ethics Act. See AS 39.52.110 – 39.52.190.

Id. (emphasis added).

Although not directly on point, our opinion in 1995 *Inf. Op. Att'y Gen.* (Jan. 11; 663-95-0310), 1995 WL 325222 (Alaska A.G. 1995) underscores the fact that the Ethics Act addresses personal and financial interests held during state service. Our 1995 opinion concerned a commissioner whose partnership had been involved

in contracts with an executive department of the state before the commissioner was appointed to head that department. *Id.* at *1. Those contracts involved “matters of policy and agency discretion” in which “the Commissioner’s Office [had] been directly involved in previous contracts obtained by the partnership.” *Id.* at *5. We concluded that, if the commissioner severed all financial ties with the business, his former partnership could continue to contract with the state, presumably even though the commissioner’s office would be directly involved in those future contracts. *Id.* at *1, *5 (footnote omitted). Thus, the Ethics Act did not preclude the commissioner from being involved in decisions affecting his former partnership so long as he no longer retained a present financial or personal interest in that partnership.

In the present situation, the attorney general had contracts for consulting services with BP and ARCO before he was appointed to state service. The attorney general’s relationship with those firms ended when he was appointed attorney general. He reports that he does not own BP or Conoco Phillips stock. His lobbying firm, The Renkes Group, Ltd., is inactive and presently has no employees or clients.

Thus, we conclude that the Ethics Act does not preclude the attorney general from being involved on behalf of the state in the Stranded Gas Act negotiations with BP and Conoco Phillips. The Ethics Act does not cover past contractual relationships that do not survive appointment to state office.

2. Appearance of Impropriety

At common law, a public officer could be found to have a conflict of interest if there were an appearance of impropriety. 1982 *Op. Att’y Gen. No. 15*, (Dec. 3, 1982); 1986 *Inf. Op. Att’y Gen.* at *2 (Sep. 24; 663-87-0109), 1986 WL 81207 (Alaska A.G. 1986). The Ethics Act supercedes the common law on conflicts of interest. AS 39.52.910(b); 1986 *Inf. Op. Att’y Gen.*, at *2. Therefore, assuming an appearance of impropriety exists in any particular situation, that appearance would not establish a violation of the Ethics Act. 9 AAC 52.010.

Conclusion

The Ethics Act does not preclude the attorney general from being involved in stranded gas negotiations with BP and Conoco Phillips.