

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

January 4, 2005

CONFIDENTIAL ADVICE LETTER

[Former State Employee]

Re: Post-State Employment
Our File No. 663-05-0097

Dear Former State Employee,

You have requested advice under AS 39.52.250(a) of the Executive Branch Ethics Act with regards to AS 39.52.180(a), restrictions on employment after leaving state service. Until recently, you worked for a Department of state government. You retired from state service on June 30, 2004 and are now employed by Private Firm, Inc. (PF)(a pseudonym). Your firm would like to bid on current and future Requests for Proposals (RFPs) being offered by the Department.

The following is a list of several RFPs that PF intends to respond to and you seek to participate in, and are currently being advertised or that may be advertised before the two year restriction under AS 39.52.180(a) expires:

Project "A"
Project "B"
Project "C"
Project "D"

On December 17, 2004 we provided you with oral advice you that you could be involved in the above projects for the reasons stated below. This letter serves as written follow-up to the oral advice.

This advice is based on information you provided to me in our telephone conversations and in your e-mail dated December 14, 2004. Person A, Person B, and Person C, with the Department, have verified this information to the best of their knowledge. If the advice in this letter differs in any respect from our oral advice, this letter controls.

Post-State Employment Restriction: AS 39.52.180

For two years after leaving state service, AS 39.52.180(a) precludes a former public officer from (1) representing a person (2) for compensation (3) with regard to any matter that (4) was under consideration by the administrative unit of state government in which that officer served and (5) in which the officer participated personally and substantially, (6) through the exercise of official action.

“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). In order to be disqualified from working on a matter during the two-year post-state-employment bar, your activity must fall within all six subsection .180(a) criteria.

Most of the terms used in AS 39.52.180(a) are defined in the Ethics Act and related regulations. A “public officer” includes any public employee in the classified, partially exempt, or exempt service. AS 39.52.960(20), (21). A “person” includes a business. AS 39.52.960(17). “Compensation” means the receipt of money in return for services rendered to another. AS 39.52.960(7). AS 39.52.180(a) defines “matter” to include a case, proceeding, application, contract, or determination. Whether involvement in a matter is “personal and substantial” depends upon the circumstances of each case. “Official action” is defined as “a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.” AS 39.52.960(14). We apply these definitions to the RFPs for projects you wish to be involved in as an employee of PF.

The two-year employment bar of AS 39.52.180(a) applies only to matters in which you participated personally and substantially, and through the exercise of official action. You indicated that you had no involvement with the above projects or their RFPs. This information was verified by Person A, Person B, and Person C. Because you were not involved in these matters, you are not barred under the Ethics Act from being involved in the above projects.

Undisseminated Information: AS 39.52.140(a)

With regards to post-state employment, AS 39.52.140(a) may also apply, and it states:

A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer’s official duties that could in any way result in the receipt of any

benefit for the officer or an immediate family member, if the information has also not been disseminated to the public.

Ethics regulation 9 AAC 52.070 describes when public information is “disseminated.” The prohibition of section 140 is permanent and does not expire at the end of the two-year employment bar of section 180. You have not indicated that you hold undisseminated information regarding any of the above projects or RFP’s. This information has been verified by Person A, Person B, and Person C, to the best of their knowledge. Please be advised, however, that if a situation were to arise with regards to the above RFP’s in which you found that you had gained undisseminated information in the course of your state service and were in a position to disclose or use that information to your benefit, you should refrain from any further participation in the matter and contact this office immediately.

Conclusion

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 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.

If you have any questions concerning the advice included in this letter, please do not hesitate to contact me.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:

Brita Patterson
Assistant Attorney General