

DEPARTMENT OF LAW
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June 21, 2007

Executive Director

Re: Quarterly Ethics Report
AGO File No. 661-07-0014

Dear Designated Ethics Supervisor:

I recently reviewed your quarterly ethics report for January-March 2007 and the accompanying ethics disclosure from Employee. I compliment Employee on bringing his potential ethics concern to your attention and I do not disagree with your determination. I wanted to follow up with several comments, particularly in view of the recent amendments to the Executive Branch Ethics Act.

Employee has a "financial interest" in the companies whose stock he owns either directly or indirectly by definition under the Ethics Act.¹ We are concerned with whether his action relating to a company could affect his own interest. Generally he must refrain from taking any action that may affect his interests under AS 39.52.120. When reviewing actions that have been taken or considering potential actions, we can determine that no substantial impropriety has occurred or will occur by applying the factors in AS 39.52.110(b). These factors require considering whether the value off his interest is insignificant and whether the action had or would have only insignificant or conjectural effect on his interest.

Here we do not have any information about the actual value of his interest, which could be considered significant even though it is a small percentage of his personal net worth or the companies' stock. It does, however, seem entirely conjectural to even suggest that in participating in the interview of candidates for the noted subcontract to exercise Agency's right of refusal, Employee could have impacted Company A or the

¹ AS 39.52.960(9)(A).

other companies in a way that would have significantly affected his interests, given the size of the companies involved.

It was not clear to me whether the subcontract awarded to Company A would be considered a state contract and whether it was competitively bid. If it is a state contract, we would be concerned about the bar in AS 39.52.150(a) precluding a state officer who has authority to take action on a contract from having an interest in the contract. If the subcontract was competitively bid, there is an exception to the bar but the state officer still has to refrain from taking official action regarding the contract. In either case, we would still consider the AS 39.52.110(b) as discussed above.

Under the new amendments to the Ethics Act, the definition of “official action” has been expanded to include “advice, participation, or assistance.” The legislature also added a provision defining when an ownership interest may be considered insignificant. It reads: “Stock or other ownership interest in a business is presumed insignificant, if the value...is less than \$5000.” Even where an interest has significant value, we may still consider the second factor in AS 39.52.110(b), the effect of the action. If Employee is in a position to take other action regarding the Company A contract in the future, he should again consider how the action may potentially affect his interest, if at all.

Please do not hesitate to call, if Employee or you have any questions concerning this advice.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By

Julia B. Bockmon
Assistant Attorney General

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