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January 18, 2011

Designated Ethics Supervisor

Re: Advisory Opinion re Lobbyists
AGO File No. AN2010100308

Dear Designated Ethics Supervisor:

This opinion addresses the January 7, 2011 Request for Ethics Determination from Public Officer. You serve as ethics supervisor for the officer and requested this opinion under AS 39.53.240(a).

I. PUBLIC OFFICER'S DISCLOSURE

Public Officer seeks guidance with respect to personal relationships she and her family have with several individuals, who are registered lobbyists, and their families. Some of these individuals lobby or may lobby on her agency's matters.

She identifies Lobbyist A and Lobbyist B as close family friends. She advises that their families may share dinner at one another's homes, have birthday celebrations and exchange gifts for their children. She may go fishing on Lobbyist A's boat and he and his family on her family's boat; she may spend time at his family cabin. She shares holidays with the family of Lobbyist B and they may occasionally watch one another's children.

She describes Lobbyist C and Lobbyist D as family friends. She and her family may have dinner at their homes.

II. GENERAL PRINCIPLES FOR APPLYING THE ETHICS ACT

As you know, the Executive Branch Ethics Act is intended to ensure that public officers will not base their official decisions and actions upon their own personal or financial interests.¹ The Act mandates that “public officers conduct the public’s business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest.”² But the Alaska Legislature also acknowledged that “in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government.”³

Accordingly, “standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.”⁴ Thus, the Ethics Act acknowledges that public officers should be free to pursue personal and financial interests, and are valued for those interests, as long as the interests do not interfere or conflict with the officers’ public responsibilities in a significant way.

III. ETHICS PROVISIONS APPLICABLE TO DISCLOSED MATTERS

The Ethics Act focuses on improper influences on state action. There are two provisions that Public Officer should consider regarding her relationship with the identified lobbyists. One provision is specific to lobbyists.

A. Gifts from Lobbyists Are Presumed Improper.

The Ethics Act gift provision addresses gifts given to public officers because of their state position and the actions they may take in the course of their duties. It prohibits the receipt of a gift when the circumstances suggest an intention to influence the officer’s official duties.⁵ The term “gift” means anything transferred for less than full value and

¹ AS 39.52.010.

² AS 39.52.010(a)(4).

³ AS 39.52.110(a)(1).

⁴ AS 39.52.110(a)(2) & (3).

⁵ AS 39.52.130(a).

includes “hospitality.”⁶ Gifts valued at more the \$150 must be disclosed if the officer may take action regarding the giver or the gift is connected to the officer’s governmental status.

When reviewing most gifts given to public officers, we begin with the presumption that there is no impropriety and then examine the circumstances objectively to evaluate whether an impartial person could reasonably infer an intention to influence.⁷ However, in 2007 the Alaska Legislature amended AS 39.52.130(a) to add the following language: “[a] gift from a person required to register as a lobbyist under AS 24.45.041 to a public officer or a public officer’s immediate family member is presumed to be intended to influence the performance of official duties, actions, or judgment unless the giver is an immediate family member of the person receiving the gift.” Thus, the presumption that applies to others gifts does not apply to gifts from registered lobbyists; rather we presume that gifts from such lobbyists are improper. Consequently, state officers should in most instances decline such gifts. But, because the provision is stated as a presumption, not an absolute bar, we may look at particular gifts to determine whether the circumstances overcome the presumption that the gift is improper and lead to the conclusion that there is no impropriety if the gift is accepted.

Public Officer describes gifts arising from pre-existing family relationships with the identified lobbyists. The gifts involve the exchange of hospitality or giving of presents on occasions when they are traditionally given. This disclosed history supports a general conclusion that similar gifts given to her in the future by these individuals will not be connected with her governmental status and would not be improper. We do not believe that the legislature intended the 2007 amendment to interfere with private personal relationships, unless there is an impact on the integrity of state actions.

You may advise Public Officer that if the friend lobbyist does not lobby or conduct business with her agency, then the circumstances overcome the presumption and she may continue to accept gifts similar to those described from such a friend. No further disclosure is required as such gifts are not connected to her state position.

But Public Officer must be cautious regarding the circumstances of gifts from those who lobby her agency or may seek to lobby her directly regarding agency matters. Any gift of any value may potentially violate the Ethics Act. We recommend that she avoid any contacts regarding agency matters with these individuals in their lobbyist capacity. She could direct that such contacts be handled by the appropriate program

⁶ AS 39.52.130(a); 9 AAC 52.060.

⁷ See 2000 *Inf. Op. Att’y Gen.* (Mar. 20; 663-00-0156); 2000 WL 875887 (Alaska A.G.).

officer. We also recommend that she avoid engaging in contacts about agency business during any family or other social events with these individuals because those circumstances may suggest an intention to influence to others.

The Ethics Act requires disclosure of matters that may potentially violate the Act, which Public Officer has done generally in her request. In making your determination, you may conclude generally that her acceptance of gifts of similar character and circumstances as those described in her request and of small value would not be improper based on the past history, so long as the circumstances do not otherwise suggest an intention to influence.⁸ You should advise her to be alert to any change in the character or frequency of the hospitality or other gifts offered to her and her family or an offer of a particularly unusual or expensive gift, if matters of interest to her friends' clients may be pending agency review and decision. In these circumstances, the better choice would be to decline any gift or disclose it for review, regardless of value. If the value of a gift is greater than \$150, she must either decline the gift or submit a gift disclosure for review of the circumstances.

B. Misuse of Official Position to Provide Unwarranted Benefit.

AS 39.52.120(a) provides in part that a public officer "may not intentionally secure or grant unwarranted benefits or treatment for any person." The related regulation includes deviation from established procedures to give a benefit, when accompanied by improper motivation, as an unwarranted benefit.⁹ "Improper motivation" means a motivation not related to the best interests of the state, and includes giving primary consideration to a person's kinship or relationship with a public officer, financial association with a public officer, potential for conferring a future benefit on a public officer, or political affiliation.¹⁰ So, you should advise Public Officer to ensure that if she is involved in any action relating to interests of these friends, she must exercise caution to ensure that matters are handled in the state's best interest. As suggested above, it may be preferable to have matters connected to one of these lobbyists handle by another agency officer.

⁸ If you or Public Officer concludes that it would be difficult for her to avoid agency related contacts with these lobbyists, then, for her protection, we recommend that Public Officer make a monthly disclosure of all gifts received from these lobbyists so that they may be reviewed. Public Officer would need to identify whether there were any pending agency matters relating to the givers.

⁹ 9 AAC 52.040(a).

¹⁰ 9 AAC 52.990(b)(4).

We commend Public Officer for seeking guidance regarding these personal friendships and we are confident that she will exercise her state duties appropriately. Nothing in this opinion is intended to suggest otherwise.

If you have any question regarding this advice, please do not hesitate to call. Also, if you need further advice regarding the application of the standards outlined in this opinion to a particular matter, please let us know.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:

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JBB/slc