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January 26, 2011

Former Employee
Juneau, AK 99801

Re: Post-State Employment
AGO File No. AN2010100308

Dear Former Employee:

This letter responds to your request for an advisory opinion regarding the application of the post state employment restriction in the Alaska Executive Branch Ethics Act to your eligibility to work for a potential new employer on a particular project.¹ We conclude that the post state employment restriction in AS 39.52.180(a) does not preclude your involvement in the identified project and provide additional guidance below.

You retired from employment with the Alaska Department on January 1, 2011. At the time, you had been a division manager for six years. You advise that in that position, you managed the state's relationship with Company, which provides certain management services to the state, but that you did not manage Company's contract, which is overseen by another division of the Department. You also advise that you did not serve on the proposal evaluation committees involved in the state contracts for the management services, and although you helped structure the second request for proposals, you removed yourself from the actual decision making.

You explain that Company is bidding on a similar management contract with another state government, and if it is awarded the bid, Company may offer you a consultant position for implementation of that contract. You ask whether the post state employment provision would bar this work.

Under AS 39.52.180(a), a two-year prohibition applies to certain post-state

¹ You submitted a Request for Ethics Determination prior to leaving state service. Advice is provided to former state employees regarding post state employment matters in accordance with AS 39.52.250 and is confidential under AS 39.52.240(g).

employment. Specifically, for two years after leaving state service, a former state officer may not “represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action.” The Department of Law has consistently read this provision in accord with the legislature’s intent that AS 39.52.180 be narrowly applied. The goal is to protect the integrity of state actions but recognize that state employees gain expertise and knowledge on the job that they rightfully take with them when they leave state service. It is intended to prevent improper actions or influence on actions, that is, misuse of office to benefit an officer with respect to future employment.²

The Ethics Act does not preclude taking advantage of contacts made while in state service. Therefore, we focus on the “matter,” not the prospective employer, and whether the identified project for the prospective employer is a “matter” in which you participated “personally and substantially through the exercise of official action” while in state service.³ The definition of “matter” includes a contract.⁴ “Official action” is broadly defined to mean “advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.”⁵ It includes more than actions evaluating or awarding a contract; it includes actions relating to the administration or management of the services provided or activities occurring under the contract.

² 1986 Inf. Op. Att’y Gen. (Sept. 24; 663-87-0109); 1986 WL 81207 (Alaska A.G.).

³ 2006 Inf. Op. Att’y Gen. (Sept. 6; 661-07-0010). *See* Guide titled “Ethics Considerations When Seeking Other Employment and Post-State Employment Restrictions,” at <http://www.law.state.ak.us/doclibrary/ethics.html>, the Department of Law ethics web page.

⁴ “Matter” includes “a case, proceeding, application, contract, determination, proposal or consideration of a legislative bill, a resolution, a constitutional amendment or other legislative measure, or proposal, consideration, or adoption of an administrative regulation.” AS 39.52.180(a). It does not include the general formulation of policy or ministerial activities. 9 AAC 52.100. It also does not include promotional or educational types of activities, where no decision distributing state resources or determining rights is involved. *See* 1986 Inf. Op. Att’y Gen. (Sept. 24; 663-87-0109); 1986 WL 81207 (Alaska A.G.). *See also* 2007 Inf. Op. Att’y Gen. (Aug 3; 661-07-0027); 2007 WL 6030208 (Alaska A.G.)(research activity not matter).

⁵ AS 39.52.960(14).

In this case, you gained experience relating to the management of state services that you are entitled to use in subsequent employment. Although your role in the management of the State of Alaska's relationship under its contract would bar you from work for Company relating to Alaska's contract, it does not bar you from work for Company as a consultant on other non-State of Alaska matters, including the potential contract with another state government.

We remind you that there are other restrictions under the Ethics Act that can affect post-state employment. Under AS 39.52.140(a), 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 not also been disseminated to the public." For purposes of this restriction, information has been disseminated to the public if it has been published through an online posting, newspaper publication, broadcast media, a press release, a newsletter, a legal notice, a non-confidential court filing, a published report, a public speech, or public testimony before the legislature, a board, or a commission.⁶ In addition, current and former public officers "may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law."⁷ These restrictions on disclosure of undissemated or confidential information do not have a two-year time limit.

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.

This advisory letter is based on the facts set forth above. The legal protection afforded you by subsection 250(b) does not apply if your factual statements are inaccurate or incomplete. Therefore, you must notify us immediately if our description of the facts is incorrect so that we may reconsider our advice and ensure that you are adequately protected.

⁶ 9 AAC 52.070.

⁷ AS 39.52.140(b).

If you have questions about the advice in this letter or desire additional advice concerning particular situations as they develop during your post-state employment, please don't hesitate to contact this office.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:
Julia B. Bockmon
Senior Assistant Attorney General

JBB/slc