

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907)269-5100
FAX: (907)276-3697

February 7, 2011

Designated Ethics Supervisor

Re: Advisory Opinion: Family Relationships with Lobbyists
AGO File No. AN2010100304

Dear Ethics Supervisor:

This opinion addresses the Request for Ethics Determination from Public Officer which you forwarded to us on January 18, 2011. You serve as ethics supervisor for your agency and requested this opinion under AS 39.53 240(a).

I. PUBLIC OFFICER'S DISCLOSURE

Public Officer seeks guidance with respect to the employment interests of her husband, her father, and her mother. She reports that her husband will be working part time sorting mail and depositing checks under contract to Lobbyist A, a registered lobbyist. Her father is a registered lobbyist whose clients include Company, which also employs several other registered lobbyists. Her mother is working during the legislative session as a receptionist for Company.

You advised that Public Officer has responsibility for postings on and maintenance of the agency's web page. She also assists with various events or presentations.

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

¹ AS 39.52.010.

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. Public Officer’s disclosure suggests that she appreciates that under the Ethics Act, she must consider the interests of her immediate family members and their status as or connection to lobbyists. There are several provisions of the Act that may be important for her to review based on the information provided.

A. Interests of Immediate Family Members

Under the Ethics Act, the interests of a public officer’s immediate family members are treated as though they are interests of the public officer. For example, a public officer is prohibited from taking or withholding action in order to affect a matter in which the officer has a personal or financial interest.⁵ The definitions of “personal interest” and “financial interest” include the interests of immediate family members.⁶ And a public officer or an immediate family member may not acquire or have a personal or financial interest in a state grant, contract, lease or loan, with some exceptions.⁷

² AS 39.52.010(a)(4).

³ AS 39.52.110(a)(1).

⁴ AS 39.52.110(a)(2) & (3).

⁵ AS 39.52.120(b)(4).

⁶ *See* AS 39.52.960(9) & (18).

⁷ AS 39.52.150.

The term “immediate family member” includes a spouse and parents.⁸ Your description of Public Officer’s duties does not suggest that she will be taking actions that directly implicate her private interests or those of her family members. But you should advise her that if she is presented with a matter relating to an immediate family member, she must refrain from action and seek specific advice from you.

B. Misuse of Official Position to Provide Unwarranted Benefit.

The Ethics Act also provides that a public officer “may not intentionally secure or grant unwarranted benefits or treatment for any person.”⁹ The related regulation includes a deviation from established procedures to give a benefit, when accompanied by improper motivation, as an unwarranted benefit.¹⁰ “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.¹¹ So, you should advise Public Officer to ensure that if she is involved in any matter related to her family members, she must exercise caution to ensure that the matter is handled in a way that does not result in an unwarranted benefit.

C. Gifts from Lobbyists.

One provision of the Ethics Act relates to contacts with lobbyists, AS 39.52.130 regarding improper gifts. It addresses gifts given to public officers because of their state position and prohibits the receipt of a gift when the circumstances suggest an intention to influence the officer’s official duties and actions.¹² The term “gift” means anything transferred for less than full value and includes “hospitality.”¹³ 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.¹⁴

⁸ AS 39.52.960(11).

⁹ AS 39.52.120(a).

¹⁰ 9 AAC 52.040(a).

¹¹ 9 AAC 52.990(b)(4).

¹² AS 39.52.130(a).

¹³ AS 39.52.130(a); 9 AAC 52.060.

¹⁴ AS 39.52.130(b).

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.¹⁵ 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, who are not immediate family members. Instead we presume that gifts from such lobbyists are improper and public 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 of impropriety and lead to the conclusion that there is no impropriety if the gift is accepted.

Absent unusual circumstances, a gift from an immediate family member is not encompassed by the prohibitions in AS 39.52.130 because such gifts are given as a result of the relationship and on occasions when gift gifting is traditional. Thus, such gifts are not typically connected to the recipient’s state status. And for the reasons set out above, a state officer should not be in a position to take action regarding a family member’s interests. Thus the circumstances of a gift from a family member would not ordinarily suggest an intention to influence. You may advise Public Officer that she may accept gifts of any value given to her by her husband, father and mother and no disclosure is required, unless she finds herself in a position to take some action regarding the family member or has some concern about the circumstances and would like your review.

Neither Public Officer nor her husband should accept any gifts from her husband’s employer, Lobbyist A, or any other lobbyist, except her father, unless she seeks your review. For example, if Lobbyist A offers to pay a meal in a restaurant or other hospitality during her husband’s employment or afterwards based on any continuing social relationship, Public Officer should disclose it for your review, regardless of value, and if possible, before acceptance.¹⁶

¹⁵ See 2000 *Inf. Op. Att’y Gen.* (Mar. 20; 663-00-0156); 2000 WL 875887 (Alaska A.G.).

¹⁶ If advance review is impractical, disclosure should be made as soon as possible, so that in the event the circumstances do suggest an impropriety, you can take prompt action to have Public Officer reimburse Lobbyist A. But generally, the nature of Public Officer’s position suggests that most likely the circumstances would not reasonably reflect an intention to influence her action. The disclosure is still necessary for Public Officer’s protection.

Finally, the Ethics Act gift provision requires public officers to disclose gifts given to immediate family members, if the officer knows or reasonably should know that the gift is connected to her state position and if the gift had been given to her, it would have to be disclosed.¹⁷ While this possibility may be remote with respect to gifts given to her parents, Public Officer should be aware of the requirements and make a disclosure if she becomes aware of gifts to family members and has any concerns.

We commend Public Officer for seeking guidance regarding these personal relationships 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:

Julia B. Bockmon
Senior Assistant Attorney General

JBB/slc

¹⁷ AS 39.52.130(f).