MEMORANDUM

State of Alaska
Department of Law

TO: Joyce Michaelson
Chairperson
Alaska Public Offices Commission

DATE: September 21, 2000

FILE NO: 661-01-0087

TEL. NO: (907) 269-5135

SUBJECT: Disclosure of Clients by Public Officials and Legislators

FROM: Jan Hart DeYoung
Assistant Attorney General

You have asked for review of the extent to which the financial disclosure laws require public officials and legislators to disclose the identity of clients when reporting their financial interests. Public officials and legislators must report their income sources and business interests (and those of close family members) to the Alaska Public Offices Commission, AS 24.60.200 and AS 39.50.020, which then makes the reports available to the public. AS 24.60.230, AS 39.50.020(b). Some public officials apparently have objected to disclosing the identity of professional clients. You have asked this office to review its earlier advice that the law requires the disclosure of clients when the public official, legislator, or family member is a member of a partnership or professional corporation and consider whether the law limits disclosure to individuals who hold a *controlling* interest in the partnership or professional corporation.

After careful reflection, we affirm our earlier advice and conclude that the law does not support an interpretation that would limit disclosure of professional clients to business interests in which the individual holds a controlling interest. The law requires a public official, legislator, or close family member who is a sole proprietor or who has an interest in a partnership or professional corporation to disclose any clients who provide over $1,000 in income to that business. Only individuals holding minority interests in a corporation that is not a professional corporation do not need to report clients and customers.

DISCUSSION

The public official financial disclosure law requires the reporting of all sources of income over $1,000 in a calendar year. AS 39.50.030(b)(1). “Source of income” is

defined in AS 39.50.200(a)(9) to include in some cases the clients of businesses in which the public official, legislator, or close family member has an interest:

> "[S]ource of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation *in which the person, the person's spouse or spousal equivalent, or the person's children, or a combination of them, hold a controlling interest*, the "source" is the client or customer of the proprietorship, partnership, or corporation, but, if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;[1]

(emphasis added).

To answer your question, we must know whether the italicized phrase – "in which the person, person's spouse or children, or a combination of them, hold a controlling interest" – (quoted in the preceding paragraph) modifies only corporation or the entire list

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[1] The definition closely resembles the definition of "source of income" in the Alaska Executive Branch Ethics Act. AS 39.52.960(22) states:

> "[S]ource of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

We did not find any case law or opinions interpreting this definition.

of business interests.[2] If it modifies all of the business entities, the clients must be disclosed only if the public official, legislator, or family member owns a controlling interest in the business.

An earlier memorandum of advice from this office reviewed the definition of "source of income" in 1985 and concluded that any interest, however small, in a partnership or professional corporation triggered the requirement to disclose the clients and customers. The memorandum found that the modifying phrase requiring a controlling interest before clients or customers had to be disclosed applied only to corporations. The reason was that the alternative construction did not make "grammatical sense, nor does it make logical sense. There would be no reason to refer to the controlling interest in a sole proprietorship." 1985 Inf. Op. Att'y Gen at 1, n. 1 (Feb. 15, 366-298-85).

This interpretation has meant that public officials and legislators report, for themselves and their spouses and children, the clients of any partnership or professional

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[2] The phrase also appears in AS 39.50.030(b), which requires public officials or candidates to report interests in government contracts and natural resource leases:

> [E]ach statement filed by a public official or candidate under this chapter must include the following:
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> . . .
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> (7) a list of all contracts and offers to contract with the state or an instrumentality of the state during the preceding calendar year held, bid, or offered by the person, the person's spouse or spousal equivalent, or the person's child, a partnership or professional corporation of which the person is a member, or a corporation *in which the person or the person's spouse, spousal equivalent, or children, or a combination of them, hold a controlling interest*; and
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> (8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the person, the person's spouse or spousal equivalent, or the person's child, a partnership or professional corporation of which the person is a member, or a corporation *in which the person or the person's spouse or spousal equivalent or children, or a combination of them, holds a controlling interest*.

(emphasis added).

corporation in which they have an interest, however small. Requiring the disclosure of the clients of professional corporations, such as medical and legal firms, may be perceived as discouraging service on boards and commissions. Because you do not see a reason to distinguish between a partnership and professional corporation, on the one hand, and a corporation, on the other, you have asked this office to reconsider its 1985 memorandum of advice.

To discover the meaning of a statute, we first look at its language:

> [B]ut if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or spousal equivalent, or the person's children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation . . . .

AS 39.50.200(a)(9).

We note that an article ("a") precedes only the first and last business concerns in the list. While subtle, this is a clue that corporations should be distinguished from the other businesses – sole proprietorships, partnerships, and professional corporations.

Second, we look to the case law. The Alaska Supreme Court applied the law in *Falcon v. Alaska Public Offices Commission.* Its application supports the interpretation that clients of partnerships and professional corporations must be disclosed. *Falcon v. Alaska Public Offices Comm'n*, 570 P.2d 469, 471 (Alaska 1977) (holding that professional ethical rules are not a legal privilege under AS 39.50.035 creating an exception to the disclosure rule). Dr. Falcon was a one-third owner of a professional corporation. The court concluded that the conflict of interest law required him to disclose his medical patients. *Id.*, at 472. While the Court did not examine the statutory interpretation question at issue in this opinion, the Court read the law to require the disclosure of clients of professional corporations without regard to whether the owner held a controlling interest in the professional corporation.

Third, a rule of statutory construction supports the conclusion that the phrase "in which the person, the person's spouse or spousal equivalent, or the person's children, or a combination of them, hold a controlling interest" modifies only corporation: "Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the

last antecedent." Norman Singer, 2A *Sutherland Statutory Construction* § 47.33 (5th ed. 1992 revision). A contrary intention can be shown by separating the antecedents from the phrase with a comma, *id.*, but in our statute a comma does not separate the modifying phrase from the word "corporation." The absence of a comma and the placement of the qualifying phrase after "corporation" support the conclusion that a minority interest in a corporation is the only self-employment interest that avoids the requirement to disclose clients.[3]

Another tool for interpreting a statute is the purpose of the law. Norman Singer, *supra* § 45.09. The statute does not provide an express reason to distinguish for purposes of disclosing self-employment income between income from corporations and income from the other businesses listed, but such reasons are not difficult to divine. For example, a member of a professional corporation is more likely to have a say in management and be more likely to be influenced by clients of the professional corporation than the holder of a minority interest in a regular corporation. Because of the ability to participate in management, membership in a partnership or professional corporation is more like self-employment than is holding an interest in a regular corporation. The law does state the general purposes of the financial disclosure law in AS 39.50.010. Alaska Statute 39.50.010(b)(3) provides that requiring candidates and office holders to disclose their personal and business financial interests is a compelling state interest. This larger purpose of the law – opening the financial interests of public officials and legislators to public scrutiny – supports reading any exceptions narrowly and requiring holders of interests in partnerships and professional corporations to report their clients.[4]

A fifth reason supporting the interpretation that clients of all partnerships and professional corporations must be disclosed is the law's legislative history. The conflict

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[3] *But see, Twenty-Eight (28) Members of Oil, Chem. & Atomic Workers Union, Local No. 1-1978 v. Employment Sec. Div. of Alaska Dep't of Labor*, 659 P.2d 583, 588 n. 4 (Alaska 1985) (referring to the rule but declining to apply it).

[4] We note an apparent anomaly. The list of business concerns in AS 39.50.900(b)(9) omits a new business interest, the limited liability company. See AS 10.50.010 – 10.50.995 (Alaska Revised Limited Liability Act). We believe that for purposes of reporting self-employment income the limited liability company is more like a partnership or professional corporation than a minority interest in a regular corporation. However, the Act was adopted in 1994, Ch. 99 SLA 1994, and the absence of an amendment to the list of forms of self-employment in AS 39.50.500(a)(9) was likely an oversight.

of interest law dates from a citizen initiative adopted in 1974. As adopted, the law required officials to report "the source of all income over $100" received by the official or the official's household. 1974 Initiative Proposal No. 2, "An Act relating to conflict of interest of public officials," § 3(b)(1). The term "source of income" was not defined. The initiative required the reporting of ownership interests in business but did not specifically require that the clients of the business be reported. 1974 Initiative Proposal No. 2, § 3(b)(2).[5]

The law first specifically required the disclosure of clients in amendments adopted in 1975. In 1975, the legislature added a definition for "source of income." The definition is the same in all essentials as the current definition in AS 39.50.200(a)(9), quoted above.[6]

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[5] Officials were required to report,

> the identity by name and address of each business in which he or a member of his household was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding 12 months.

1974 Initiative Proposal No. 2, § 3(b)(2).

[6] The definition, as enacted in 1975, stated:

> "[S]ource of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if he is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation *in which he or his spouse or his children, or a combination of them, hold a controlling interest*, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

1975 SLA, Ch. 25, § 19 (enacting AS 39.50.200(a)(8)).

The governor's transmittal letter[7] explains that the definition was added to avoid uncertainty and to close a potential loophole:

> Paragraph 6 of this amendment, defining "source of income", is intended to avoid uncertainty as to the meaning of that term in AS 39.50.030(b)(1), which requires reporting of all sources of income. Near the end of this paragraph, self-employment by way of a sole proprietorship, partnership, professional corporation or small, closely held corporation, which under present law could potentially be used as means of circumventing the disclosure requirements, is excluded from the definition so that the clients and customers of that organization must be identified.

1975 Senate Journal 51 (on SB 62) (Jay S. Hammond, Jan. 25, 1975). The intent, at least initially, appears to have been to exempt only corporations that were not closely held from the requirement to disclose clients and customers.[8] The bill defined source of income to include "any partnership, professional corporation or corporation of fewer than 10 shareholders." Minutes, Senate Judiciary, at 4 (Jan. 30, 1975) (nonverbatim transcript).

Committee minutes show that some consideration was given to exempting medical patients from disclosure, but not to exempting law firm clients. *See* Minutes, Senate Judiciary, at 2 (Feb. 4, 1975) (nonverbatim transcript) (AAG Art Peterson advising why a proposed occupational exemption covered doctors and nurses but not attorneys); *see also* Minutes, Senate Judiciary, at 2 (Feb. 11, 1975) (nonverbatim transcript) (David Walker, of Legislative Affairs, discussing the need to decide whether to exempt doctors, psychiatrists, nurses, and psychologists); see also Minutes, Senate Judiciary (not dated)

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[7] Executive messages can aid interpretation. Norman Singer, 2A *Sutherland Statutory Construction* § 48.05 (5th ed. 1992 revision).

[8] A corporation is closely held if one or a few persons hold substantially the entire ownership. *See Alaska Foods, Inc. v. Nichiro Gyogyo Kaisha, Ltd.*, 768 P.2d 117, 122 (Alaska 1989). An interest in a closely held corporation is not the same as holding a controlling interest in a corporation because a shareholder can hold a minority interest in a closely held corporation. *See e.g., Land Title Co. of Alaska, Inc. v. Anchorage Printing Inc.*, 783 P.2d 767 (Alaska 1989) (examining a closely held corporation owned by three sons who each held one-third of the corporation's voting stock).

(nonverbatim transcript) (David Walker discussing proposed amendment that would have allowed public official to state only that he practices medicine and has rendered medical services during the year and that expanded "source of income" to cover cases such as the insurance agent who must disclose both the client and the company paying him a commission). These discussions reflect an understanding that the law under consideration would require the reporting of clients of professional corporations.

The phrase also appears in two sections describing business interests that must be reported:

> Each statement filed by a public official or candidate under this chapter shall include:
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> . . .
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> (7) a list of all contracts and offers to contract with the state, or an instrumentality of the state, during the preceding calendar year, held, bid or offered by him, his spouse, dependent child of his or nondependent child of his who is living with him, his mother or father or a partnership or professional corporation of which he is a member, or a corporation *in which he or his spouse or his children, or a combination of them, hold a controlling interest*; and
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> (8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by him, his spouse, dependent child of his or nondependent child of his who is living with him, his mother or father or a partnership or professional corporation of which he is a member, or a corporation *in which he or his spouse or his children, or a combination of them, hold a controlling interest.*

1975 SLA, Ch. 25, § 4 (amending AS 39.50.030(b)) (emphasis added).

In debate in a Senate Judiciary Committee hearing on the bill, Attorney General Gross gave the opinion that law partners contracting with the state must be listed under the sources of income provision and the contracts provision, even though the public officials were not directly involved. He also stated that a medical exemption had been considered but that attorneys were too much a part of politics to be exempted. Minutes,

Senate Judiciary, at 2 (Jan. 30, 1975) (nonverbatim transcript). The intention to require disclosure of professional clients is clear.

The conclusion is inescapable. All of the tools at our disposal support the conclusion that public officials and legislators must report the clients or customers of any partnership or professional corporation in which they have an interest or in which their close family members have an interest. Any exceptions must come from the legislature.