

Designated Ethics Supervisor

May 21, 1991

663-91-0464

465-3600

Board member as plaintiff
in federal lawsuit:
Executive Ethics Act
(AS 39.52)

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You have asked whether the fact that a member of a state board is one of the plaintiffs in a federal court lawsuit challenging a federal law would, under the Executive Branch Ethics Act, AS 39.52, constitute a conflict of interest that would preclude the member's participation in the implementation of a similar, but significantly different, state law. 1/ On the facts presented by this situation, it does not appear that an Ethics Act problem is presented by the board member's position as a plaintiff.

1/ We note that the Executive Branch Ethics Act specifically supersedes the common law on conflicts of interest applicable to public officers. AS 39.52.910(b).

This question arises because the chairman of the relevant state board ruled that the member could not be involved in certain deliberations as a result of being a plaintiff in a federal lawsuit. 1/ The federal district court case challenges a federal law which is similar, but not identical, to a state law implemented by the state board on which the member serves. The state law does not contain the elements of the federal law that are being challenged in the case. Further, the relevant state board is not involved in implementing the federal law at issue in the lawsuit, nor is the State of Alaska a party to the lawsuit.

The board member's position as a plaintiff does not appear to conflict with the state board duties under the terms of the Executive Branch Ethics Act.

There is no doubt that the board member is a "public officer," governed by the Ethics Act. AS 39.52.960(21). The only provision of the Act that could conceivably be implicated by the situation presented here is a section that prohibits public officers from taking or withholding "official action in order to affect a matter in which the public officer has a personal or financial interest." 1/ AS 39.52.120(b)(4). In this instance, it

2/ A review of the tape of the board discussion after which the chairman ruled that the member was disqualified from being involved revealed that the board members, including the chairman, were concerned in large part with what they perceived as a potential public perception problem if the member participated on the issue before the board. For good or ill, the legislature in enacting the comprehensive Executive Branch Ethics Act chose not to prohibit acts by Alaskans as public officers because of individual beliefs or philosophies. The Ethics Act thus only prohibits the conduct specified therein as improper. As described in this memorandum, it does not appear that any action the member could take as a member of the relevant state board could further a personal interest as a member of a group of plaintiffs challenging the validity of the federal subsistence law.

3/ The Ethics Act defines "personal interest" as "an interest held or involvement by a public officer . . . including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit." AS 39.52.960(18). The

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is not at all apparent that any action the individual, as a member of the relevant state board, would take in implementing the state statutes would in any way affect the outcome of the lawsuit filed in federal court challenging the federal law.

Based on the facts presented by this situation, including the scope of the federal lawsuit and the scope of the duties and powers of the relevant state board, we do not believe that the Executive Branch Ethics Act would preclude the member's involvement in implementing the state law similar to, but significantly different from, the challenged federal law.

DLB:nml

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act defines "benefit" as "anything that is to a person's advantages or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." As 39.52.960(3).