

Designated Ethics Supervisor

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Regulated company
presenting a cash award

for

achievement to a state
regulator (Executive

Ethics

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Act; AS 39.52)

You have requested an opinion from this office concerning whether it is permissible under the Executive Ethics Act for a state regulator to accept a cash award from a company that the employee regulates. The employee was a finalist in the 1991 North Slope Environmental Achievement Awards program sponsored by an Alaskan company and the Alaska Support Industry Alliance. The employee did not solicit the company's award, but was independently nominated for it. The employee is responsible for regulating companies for compliance with state statutes and regulations. Winners were announced on May 29, 1991. Prior to the announcement of the winners of the achievement awards, an assistant attorney general received information that the employee was likely to be awarded \$10,000. On the day of the awards ceremony the assistant attorney general notified the company that it should not make any award to the employee. On the same day, while the employee was at the awards ceremony, the assistant attorney general also notified the employee not to accept any award. This oral advice was given because, under AS 39.52.130(a),

a public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

As the employee is responsible for directly regulating the company, and as the award is very large, we think that "it could reasonably be inferred that the gift [was] intended to

influence [the employee's] performance of official duties, actions, or judgment." Id. As we previously noted, the employee did not receive the assistant attorney general's advice until the employee was at the awards ceremony. The employee tried to keep the company from giving the award, but because no one was supposed to know who was receiving an award, no one would talk about the award. Although the company had been notified not to give the employee an award, at the awards ceremony the company presented the employee with a plaque and a letter indicating that the employee would be awarded \$10,000. The employee notified us immediately and has asked for advice as to what should be done.

Due to AS 39.52.130(a), it is our opinion that the employee should not accept the award from the company. However, the employee could request that the award be given to a charity (such as a scholarship fund) that the employee designates to the extent that the charity is not one in which the employee or an immediate family member holds a membership or other interest in. As the award would then not "benefit [the employee's] personal or financial interests" it would not violate the Executive Ethics Act.

We wish to be clear that the employee in no way violated the Executive Ethics Act. The employee correctly reported the possibility of the award to the designated supervisor and followed the assistant attorney general's advice. The employee had no control over being chosen to receive the award.

If you have any questions, please do not hesitate to call.

EJK:lmk