

Chair  
Commission

March 3, 1992

663-92-0416

465-3600

Potential conflict  
of interest on issue  
pending before commis-  
sion (AS 39.52.120)

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You have expressed concern that you have a potential financial conflict of interest that may prohibit you from voting on a matter (Y) presently pending before the \* Commission. Under the authority of AS 39.52.240(a) of the Alaska Executive Ethics Act (Ethics Act), we have reviewed the facts and issue the following advisory opinion. 1/

#### SHORT ANSWER

We conclude that the potential financial conflict of interest you describe does not constitute a violation of the Ethics Act. You do not have a personal or financial interest in the outcome of the vote on the Y matter. Therefore, it is the opinion of this office that you need not abstain from voting on the Y matter at the Commission's decisional meeting.

#### FACTS

As we understand it, at the last meeting of the Commission, you stated for the record that your firm currently has several service contracts with Z and that you received a call from an official at Z concerning the Y matter. Then, in a letter to the Commission staff the day following the last meeting, you clarified your earlier comments. 2/ In the letter you state that you have been working closely with the Z official on a specific project ("Project") and that you communicate regularly with this official. The Z official is aware of your membership on the Commission.

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1/ The Commission is subject to the provisions of the Ethics Act by virtue of AS 39.52.960(4).

2/ At your direction, this letter was to be faxed by staff to the primary parties who had attended the meeting.

During a discussion with the Z official the day before the last meeting, about a cost estimate for the Project, the official began to discuss the Y matter. He knew of some communications certain proponents of the Y matter had recently sent to each member of the Commission. 3/ The official said that Z intended to take this (presumed) opportunity to also add information to the record regarding the Y matter. 4/ You indicate, however, that the official made no attempt to influence your opinion on the Y matter by means of this comment or at any time earlier.

#### LAW AND ANALYSIS

The primary provision of the Ethics Act that comes into play in this matter is AS 39.52.120, which reads in relevant part:

(a) A public officer may not use or attempt to use, an official position for personal gain and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not . . . .

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest."

(Emphasis added.) "Financial interest" is defined in AS 39.52.960(9) as

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

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3/ Evidently, since the last meeting regarding the Y matter, and after the administrative record on the Y matter was closed, the attorney for the proponents of Y mailed more materials to the members of the Commission for their consideration before the most recent meeting.

4/ It is our understanding that Z is currently on record as opposing the Y matter. We surmise that any materials Z intends to add to the record would also be in opposition.

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management[.]

"Gain" includes actual or anticipated gain, benefit, profit, or compensation. AS 39.52.960(10). "Official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer. AS 39.52.960(14).

There is no definition of the term "matter" as it is used in AS 39.52.120. However, AS 39.52.180 (relating to employment restrictions after state service) defines it to include "a case, proceeding, application, contract, or determination." In the instant situation, the Y matter presently pending before the Commission is the "matter" in which you, as a public officer, may not have a direct personal or financial interest when voting to approve or disapprove the matter.

Based on the above facts, we conclude that you do not have a personal or financial interest in the Y matter that precludes you from voting on the question. While you have business contracts with an entity (Z) that apparently opposes the Y matter, your contracts with Z are not related to the "matter" which is at issue. The contracts do not constitute even an "insignificant" financial interest of yours in the Y matter. 5/ When enacting the Ethics Act for public officials, the legislature specifically recognized that

(1) 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;

(2) people who serve as public officials retain their rights to interests of a personal or financial nature . . . .

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5/ We note that under the Ethics Act public officers are not precluded from participating in matters where there would be only insignificant or conjectural effects on the matter before them. AS 39.52.110(b) provides that "there is no substantial impropriety if, as to a specific matter, a public officer's . . . financial interest in the matter is insignificant."

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AS 39.52.110(a)(1) and (2). 6/

Also relevant to our conclusion that you are not precluded from voting on the Y matter is that you have indicated that the Z official, with whom you work closely and regularly, has not attempted to influence your opinion on the Y matter. There is no indication that any comments made to you by this person will interfere with the full and faithful discharge of your duties and responsibilities as a member of the Commission with respect to the pending matter.

We hope this addresses your concerns. Please do not hesitate to call me if you have any questions.

MLO:ck

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6/ Accord, S. Robert, Robert's Rules of Order, • 46 (1979)  
(member prohibited from voting on question only if member has direct personal or pecuniary interest in subject matter).