

Designated Ethics Supervisor

June 1, 1992

661-92-0692

269-5255

Private provision of free
transportation to state
inspectors
Executive Ethics Act
(AS 39.52)

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You have requested an opinion from this office as to whether it would violate the Alaska Executive Branch Ethics Act or other laws for a state agency's inspectors to accept free transportation to the vicinity where field inspections would be performed. The transportation would be provided by companies that are subject to inspection by the agency, though not necessarily on the occasions they would be providing the free transportation.

The agency has requested that this service be provided on a temporary, emergency basis to enable it to carry out its field inspection responsibilities in the face of an end-of-fiscal-year budget shortfall. Agency inspectors would be provided transportation on a space-available basis in order to continue to conduct routine field inspections through the end of the fiscal year. Under the circumstances you have described, we do not believe the provision of free transportation for field inspections would violate state ethics or other laws.

The Alaska Executive Branch Ethics Act ("Ethics Act"), AS 39.52, establishes certain restrictions concerning "gifts" to public officers. In particular, AS 39.52.130(a) provides:

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.

The legislative history of the Ethics Act shows that the qualification as to "the officer's personal or financial interests" was added specifically to exclude from the act's prohibition gifts to state agencies "from private companies such

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as transportation to see projects." House Judiciary Comm. Minutes on HB 706 (May 1, 1986). Accordingly, when the provision of free transportation services benefits the state, rather than a state employee's personal or financial interests, it is not a gift to the employee within the meaning of the Ethics Act. See 1988 Inf. Op. Att'y Gen. (May 17; 663-88-0490); 1988 Inf. Op. Att'y Gen. (Apr. 21; 663-88-0465); 1986 Inf. Op. Att'y Gen. (June 30; 663-86-0470).

Under the circumstances you describe, the purpose of the free transportation is to enable the agency to carry out its official responsibilities, not to benefit the agency's inspectors personally. In theory, if an inspector received some benefit, such as first-class service, beyond the transportation service needed for the inspector to carry out his or her official duties, such extra benefit would be a gift that would trigger the conditions and restrictions of the Ethics Act. Assuming this is not the case here, we see no violation of the Ethics Act in the agency's inspectors making use of free transportation for the purpose of carrying out field inspections.

Apart from the question of legality, this office has previously cautioned that, as a policy matter, it is inappropriate to solicit favors such as free travel from the private sector (as distinguished from accepting unsolicited donations). 1989 Inf. Op. Att'y Gen. (Oct. 5; 663-89-0556); 1989 Inf. Op. Att'y Gen. (Mar. 20; 663-89-0217). "[S]uch a practice might lend itself to abuse, and certainly would create an inappropriate impression." *Id.* However, this advice was given in the context of gifts that appeared to benefit the state employee personally, and perhaps it would be less applicable to a situation where the benefit is clearly restricted to the state itself. In any event, we assume you have determined, as a policy matter, that any such considerations are outweighed in the present case by other factors, including the temporary, emergency nature of the agency's request and the agency's determination to "continue to enforce, without influence," its statutes and regulations.

The fact that the agency took the affirmative step of requesting the free transportation raises another issue, the potential applicability of the State Procurement Code, AS 36.30.

In a memorandum of advice issued under the predecessor to that code, former AS 37.05, this office previously expressed the opinion that a state agency's solicitation of donations of goods and services is probably subject to state purchasing regulations and statutes. 1986 Inf. Op. Att'y Gen. (June 30; 663-86-0470). However, the current Procurement Code by its terms applies to "expenditure[s] of state money by the state." AS 36.30.850(b).

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No expenditure of state money would be involved under the circumstances you describe. While AS 36.30.850(b) has been construed to cover the exchange of other forms of valuable consideration in addition to money, 1991 Inf. Op. Att'y Gen. (Apr. 17; 663-91-0366), the free transportation requested by the agency here would be provided to the state gratuitously, with no consideration being supplied by the state. Consequently, we do not believe the agency's request would be subject to the requirements of the Procurement Code.

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