

MEMORANDUM

State of Alaska Department of Law

TO: Commissioner

DATE: March 12, 1996

FILE NO.: 663-96-0272

TELEPHONE NO.: 465-3600

FROM: Douglas D. Gardner
Assistant Attorney General
Human Services Section - Juneau

SUBJECT: Cash Award in Recognition
of Superior Job Performance
(Executive Ethics Act;
AS 39.52)

Pursuant to AS 39.52, the Alaska Executive Branch Ethics Act ("Act"), you have requested advice regarding whether Mr. A -- a state employee -- may accept a monetary award in recognition of his job performance. In accordance with AS 39.52.240(b), we previously provided you with our initial verbal advice that Mr. A should not accept the award from B.¹ We based that advice on AS 39.52.120(b)(2), which prohibits a state employee from accepting compensation for the performance of official duties from an entity other than the state. This written opinion confirms our initial advice.

BACKGROUND

The following is our understanding of the facts, based on information provided in your memorandum of January 5, 1995.²

1. Mr. A's Job Duties

Mr. A is employed by the State of Alaska. Mr. A's position is funded by an interagency personnel agreement between a department of the State of Alaska and B, an agency of the federal government. Mr. A serves at the pleasure of both agencies. The state pays Mr. A's

¹ Assistant Attorney General Neil Slotnick provided the initial oral advice confirmed by this opinion.

² The information attached to your memorandum of January 5, 1996, includes: (1) two letters dated May 8, 1995, and September 1, 1995; (2) Notice of Award; (3) State of Alaska Position Description Questionnaire (PDQ) dated March 21, 1995. In addition to the above information, on February 9, 1996, Mr. A submitted a copy of the personnel agreement applicable to his position for FY-XX.

salary and is later reimbursed by B. B is later reimbursed by C, a private corporation, for work performed by Mr. A.

Under the direction of the state and B's on-site officer, Mr. A provides technical assistance regarding policies, procedures, and enforcement of state statutes and safety regulations. These inspections ensure that regulations protecting the safety of the public and employees working on the project are properly observed.

2. The Award

During 1994, Mr. A directed the XYZ safety and inspection project. In recognition of his superior job performance in directing the XYZ program, Mr. A was nominated for a monetary award. As a result, Mr. A was awarded \$1,265 by B. This award was based on a percentage of Mr. A's annual salary. Prior to disbursing Mr. A's award, a department of the State of Alaska requested our opinion on whether such an award was prohibited by the Act. Pending the release of this opinion, B has retained possession of Mr. A's award.

DISCUSSION

In our oral advice we advised that Mr. A should not accept the monetary award from B because, under AS 39.52.120(b),

A public officer may not . . .

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state.

AS 39.52.960(7) defines "compensation" to include:

(7) "compensation" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another.

The award presented by B to Mr. A is a "bonus" directly correlated to Mr. A's salary and constitutes compensation to him for services rendered. BLACK'S LAW DICTIONARY defines "bonus" as "[a]n addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service." BLACK'S LAW DICTIONARY 182(rev. 6th ed. 1990).

We base our finding that this award constitutes compensation for services rendered on the following factors. First, and most significantly, B's "award" or bonus was directly related to the quality and quantity of work performed by Mr. A as part of his official duty as a state employee.

Next, in calculating the award, B multiplied Mr. A's salary for FY-94 (\$63,240) by 2 percent, resulting in an award of \$1,265. Thus, the "award" was work-related and based on the value of services performed by Mr. A.

As a state employee, Mr. A is prohibited by AS 39.52.120(b) from accepting compensation from B for performance of his official duties. One purpose of AS 39.52.120(b) is to prevent state employees from receiving "double-pay" for performing their normal official duties. *See* 1987 Inf. Op. Att'y Gen. (April 24; 663-86-0389). A second purpose of the Act is to assure the public that state officials are not influenced by remuneration from non-state entities. AS 39.52.010. If Mr. A accepted the monetary award or "bonus" from B, he would be receiving additional payment by a non-state entity for the performance of his official duties. Due to the restriction in AS 39.52.120(b)(4), it is our opinion that Mr. A may not accept B's monetary "award." However, Mr. A may request that B donate the award to a charity. The charity, however, must be an organization in which neither Mr. A or his immediate family members hold a membership or other interest. 1991 Inf. Op. Att'y Gen. (July 1; 663-91-0489).

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

DDG/bap