

MEMORANDUM

State of Alaska

Department of Law

TO: Wilson Hughes, Chairman
AIDEA/AEA Board of Directors

DATE: September 6, 1996

FILE NO.: 661-96-0816

TELEPHONE NO.: 269-5135

FROM: Keith A. Laufer
Assistant Attorney General
Governmental Affairs Section, Anchorage

SUBJECT: Request for Advice Pursuant to
AS 39.52.240

This Memorandum is provided in response to your request to Attorney General Botelho dated August 15, 1996, seeking advice pursuant to AS 39.52.240. You have requested advice as to what actions you should take with respect to certain fiber optic cable matters involving GCI.

Background

You are a member and serve as the chair of the Alaska Industrial Development and Export Authority (AIDEA). Under AS 44.83.030-44.83.040, you are also a member of and serve as the chair of the Alaska Energy Authority (AEA).

AEA is the owner of the Alaska Intertie (the AI). The AI is a 138kV electrical transmission intertie which runs from Willow to Healy, Alaska.¹ Several utilities use the AI for the transmission of power pursuant to an agreement between AEA and the utilities.

Under an agreement with the state Department of Administration, AIDEA serves as the grant administrator with respect to grant funds related to the proposed Northern and Southern Interties. The Northern Intertie, as proposed, will run from Healy to Fairbanks, Alaska, and will be owned by the utilities benefiting from the line. The Southern Intertie, as proposed, will run from Anchorage to Kenai, Alaska, and will be owned by those utilities benefiting from the line. As grant administrator, AIDEA has the discretion to make certain determinations regarding how grant funds will be disbursed

¹ The AI also includes a segment, approximately five miles long, from Teeland to Douglas. In addition, under an agreement between AEA and Matanuska Electric Association (MEA), an approximately 15 mile MEA-owned segment of intertie is included as part of the AI.

with respect to the interties and has entered into contracts with the beneficiaries of the grants.

You have been affiliated with GCI for some time. You serve as GCI's Executive Vice President and General Manager. In that capacity, you are generally responsible for the day to day operations of GCI. In addition, you are a GCI shareholder.

GCI together with AT&T/Alascom has formally requested permission to integrate fiber optic cable into the AI. In addition, GCI has made formal requests to AIDEA and to the utilities participating in the Northern Intertie to allow it to integrate fiber optic cable into that intertie as well. Other parties have also expressed interest in fiber optic cable opportunities on these and other interties.

At least one AIDEA board meeting, you disclosed, on the record, that GCI might have an interest in integrating fiber optic cable onto interties, including the AI and Northern and Southern Interties. Because, at the time, GCI's participation in any of the projects was speculative, you participated in two AIDEA grant administration actions related to the Southern Intertie. No formal AIDEA or AEA board actions have been required with respect to the AI or the Northern Intertie.

Because GCI has now made formal requests to AIDEA and AEA with respect to the interties, you have requested advice from this office as to what actions you should take as an AEA and AIDEA board member regarding intertie and fiber optic cable matters.

Governing Law and Analysis

Initially, we must determine what law governs the issues raised by your request. GCI, in essence, is requesting that AEA provide GCI with contractual or lease rights to integrate fiber optic cable onto the AI.² With respect to the Northern Intertie, GCI is requesting that AIDEA, as grant administrator, provide it with the legal right to integrate fiber optic cable into that intertie and that grant funds be permitted to benefit such fiber optic cable.

Generally, conflict of interest issues related to contractual and lease rights are governed under AS 39.52.150, a section of the Executive Branch Ethics Act (the Ethics Act). In this case, however, statutes governing both AEA and AIDEA have specific provisions governing these issues.

² At this point, it is unclear what form these contractual relationships might take, what parties might be involved, or what procurement or public leasing requirements may be applicable.

Under the statutes governing AEA, AS 44.83.040(d) provides:

A director of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the director is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that is a party to the contract or lease. When abstaining from voting, the director must disclose the reason for abstention. . . . A resolution of the authority that is approved by a majority of the directors present who are not barred from voting under this subsection is a valid action of the authority for all purposes.

Similarly, under the statutes governing AIDEA, AS 44.88.180 provides:

Conflicts of interest. A member of the authority may not vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if the member is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association that may be a party to the contract or lease. A resolution of the authority that is approved by a majority of the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.

Both of these specific statutes predate the adoption of the Ethics Act. At the time of the adoption of the Ethics Act, the legislature did not elect to repeal the specific AEA and AIDEA statutes governing conflicts of interest. It is an accepted rule of statutory construction that a general statute such as the Ethics Act will not be deemed to impliedly repeal a specific statute absent a clear expression of intent to do so. *See Warren v. Thomas*, 568 P.2d 400 (Alaska 1977); *Colonial Ins. Co. v. Tumbleson*, 889 F. Supp. 1136 (D. Alaska 1995). Where two statutes attempt to control the same subject matter, the more specific statute will control over the more general one. *See Matter of Hutchins Estate*, 577 P.2d 1074, 1075 (Alaska 1978). In this case, both AEA and AIDEA have specific statutes governing potential contract and lease conflicts regarding board members. Accordingly, the conflict of interest issues raised here are governed by the specific AEA and AIDEA statutes.

Under the specific AEA and AIDEA conflict of interest statutes, board members are not permitted to vote on resolutions relating to contracts or leases if the board member is a party or has a direct ownership or equity interest in a party to the contract or lease. AS 44.83.040(d), AS 44.88.180. As you are a substantial shareholder

in GCI, you have a direct ownership interest in that company.³ Accordingly, under both the AEA and AIDEA statutes you are precluded and must abstain from voting on matters pertaining to GCI's integration of fiber optic cable onto interties. In accordance with AS 44.83.040(d), you should clearly disclose your interest in the matter when abstaining from voting on such matters coming before the AEA board. While not required under the AIDEA conflict of interest provision, we nonetheless recommend that you make a similar disclosure when abstaining from votes coming before the AIDEA board.

While the AEA and AIDEA conflict of interest statutes govern the specific actions you must take with respect to contract and lease matters coming before those boards, other provisions of the Ethics Act govern your conduct as a public officer generally.⁴ For example, AS 39.52.120 prohibits you from using your official position to seek contracts or to affect matters in which you have a personal or financial interest.

While the AIDEA and AEA statutes only require that you abstain from voting with respect to those matters directly affecting GCI, in order to avoid violating the Ethics Act we recommend that you also abstain from participating in all other fiber optic and intertie issues that could affect GCI.

Conclusion

Under the specific statutes governing AIDEA and AEA, you are required to abstain from voting on board matters affecting GCI contract and lease issues. Moreover, under the Ethics Act you should abstain from voting on all other fiber optic or intertie matters that could materially affect GCI.

If you have any questions regarding these matters, do not hesitate to contact me.

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³ Even in the absence of your share ownership, your role as Executive Vice President and General Manager of GCI is so significant we believe that, for purposes of these conflict of interest provisions, you could be considered the party. Clearly, as a managing officer of GCI, you have the ability to influence and direct the actions of GCI. Under these circumstances, your role is analogous to that of a party to the contract. Accordingly, we believe you would be required to abstain from voting on matters relating to GCI even if you owned no shares in the company.

⁴ Under the Ethics Act, as an AEA and AIDEA board member, you are considered a public officer. AS 39.52.960(21)(B). Moreover, because of your status as a shareholder and officer of GCI, actions that benefit GCI are considered to be in your financial interest. AS 39.52.960(9)(A), (B).