

# MEMORANDUM

State of Alaska

Department of Law

TO: Kevin M. Jardell  
Assistant Commissioner  
Department of Administration

DATE: November 3, 2003

FILE NO: 665-04-0045

TEL. NO.: (907) 451-2811

FROM: Paul R. Lyle  
Sr. Assistant Attorney General  
Opinions, Appeals & Ethics

SUBJECT: Executive Ethics Act  
SHARE Campaign  
Issues

You have requested an opinion as to whether the annual United Way SHARE campaign violates the Executive Ethics Act (AS 39.52). The state has long participated as an employer in this annual event that invites state employees to contribute money to the United Way or to designate their giving to other charitable organizations through the United Way.

## Summary of Advice

The Executive Ethics Act does not preclude the solicitation of voluntary service or contributions to the SHARE campaign from state employees so long as state employee board members of the United Way are not assigned to be SHARE coordinators or key workers and do not otherwise solicit general contributions to the United Way from other state employees using state time or resources.<sup>1</sup>

SHARE campaign coordinators and key workers must truly volunteer for those positions. Employees may not be coerced to serve in the SHARE campaign or make contributions to it.

## Legal Analysis

State employee participation in the SHARE campaign implicates three sections of the Executive Ethics Act: AS 39.52.120(a)(Use of Official Position for

---

<sup>1</sup> In this memorandum, the phrase “state employee board members” means state employees who are board members of the United Way or its member agencies, or whose immediate family members are board members of the United Way or its member agencies. An “immediate family member” means an employee’s spouse, a person in a conjugal relationship with an employee, an employee’s child, adoptive child or step child, a parent, sibling, grandparent, aunt, uncle, or the parent or sibling of the employee’s spouse. AS 39.52.960(11).

Personal Gain), AS 39.52.120(b)(3)(Unauthorized Use of State Resources), and AS 39.52.120(b)(5)(Coercion of a Subordinate). We address these issues seriatim.

### **1. AS 39.52.120(a) (Use of Official Position for Personal Gain)**

AS 39.52.120(a) precludes a state employee from using “an official position for personal gain.” We recently issued an opinion addressing solicitation of charitable contributions by public employees who are board members of independent charitable organizations. 2003 *Inf. Op. Att’y Gen.* (Oct. 1; 665-04-0038). We determined that public employees **who are on the boards of independent charitable organizations** possess a “personal interest” in the charitable organization by virtue of their board membership.<sup>2</sup> *Id.*; see also 1996 *Inf. Op. Att’y Gen.* (Mar. 12; 663-96-0272)(a state employee has a personal interest in a charitable organization if the employee or an immediate family member is a member of the organization); 1991 *Inf. Op. Att’y Gen.* (Jul. 1; 663-91-0489)(same).

If state employee board members use their official positions to benefit the charitable organization of which the employees are members, they obtain a “personal gain” in violation of section .120(a). 2003 *Inf. Op. Att’y Gen.* at 2. Therefore, our recent opinion concluded that state employee board members may not “trade” on their official state officer status to solicit contributions for their charitable organizations, may not allow their state titles to appear on any fundraising materials for the charity, and must avoid referring to their official positions when personally requesting charitable contributions for that organization regardless of when those solicitations occur. *Id.*

In the case of the SHARE campaign, so long as volunteer coordinators and key workers are not state employee board members, they do not have a “personal interest” in the United Way or its member agencies. Because they neither possess nor benefit a “personal interest” in the United Way, the ethics act does not preclude SHARE volunteer coordinators and key workers from requesting contributions to the SHARE campaign from state employees. However, if volunteer coordinators, key workers, or their immediate family members are state employee board members of the United Way or its member agencies, they should be re-assigned from these tasks because they have a direct personal interest in the

---

<sup>2</sup> “‘Personal interest’ means an interest held or involvement by a public officer, or the officer’s immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit.” AS 39.52.960(18).

SHARE campaign and may not use their state position to obtain a gain for the United Way.

It is our understanding that employees may contribute to any charity through the SHARE campaign, not just United Way agencies. Therefore, state employees who are members of other charitable boards or whose immediate family members serve on boards that do not fall under the United Way umbrella likewise should not solicit contributions for these charities by “trading” on their official positions, by using state time or resources, or by soliciting designated giving to those charities through the SHARE campaign.

## **2. AS 39.52.120(b)(3)(Unauthorized Use of State Resources)**

### **a. State Employee Board Members**

Our October 1, 2003 opinion concludes that, under AS 39.52.120(b)(3), public employees who are members of charitable boards may not use state time or resources to pursue activities on behalf of the charity unless the appropriate designated supervisor determines in advance that the use is insignificant and the use of state time and resources remains within the parameters set by the supervisor. *Id.* at 3; *see also* 9 AAC 52.050 (public employees may make insignificant use of state time and resources to pursue personal interests with the prior approval of their designated ethics supervisor). The SHARE campaign falls within this rule. Therefore, although state employee board members may not solicit contributions for the SHARE campaign, they may make occasional and insignificant use of state time and resources to pursue other United Way interests if they first receive authorization from their ethics supervisor and keep their use within the parameters set by the supervisor.

### **b. Other State Employees**

SHARE coordinators and key workers who are **not** state employee board members are pursuing the state’s interest in its role as a participating employer in the SHARE campaign. They are not pursuing a “personal interest” when they use state time and resources on the SHARE campaign. Rather, the state has authorized the use of the necessary time and resources to pursue the campaign. Therefore, SHARE volunteers do not violate AS 39.52.120(b)(3) when they perform their SHARE duties using state time and resources. These employees have no personal interest in the United Way or its member agencies.<sup>3</sup>

---

<sup>3</sup> If a coordinator or key worker is a state employee board member, then they must be removed from those positions and other volunteers assigned, as we stated above.

### **3. AS 39.52.120(b)(5)(Coercion of a Subordinate)**

The ethics act prohibits a state employee from **coercing a subordinate** for the coercing employee's personal, financial, or private benefit. We have already determined that, so long as they are not state employee board members, SHARE coordinators and key workers have no personal interest in the United Way. Likewise, they have no financial interest in the United Way. That leaves for analysis the terms "coerce" and "private benefit."

"Coercion" connotes the constraint of the free will of one person through the threatened or actual use of power by another. *Black's Law Dictionary* at 324 (Rev. 4<sup>th</sup> ed. 1968). Memoranda from high level officials requesting or encouraging SHARE service or contributions are not coercive. On the other hand, a statement by a supervisor to subordinates that those who do not serve in or give to the SHARE campaign will receive poor performance evaluations, unfavorable work schedules or other unfavorable treatment is coercive.

The term "private benefit" is not defined in the ethics act. However, "benefit" is defined to include "anything that is to a person's advantage or self-interest." AS 39.52.960(3). A state employee who successfully recruits subordinate employees to be SHARE coordinators or key workers, or who successfully solicits contributions to the SHARE campaign from subordinates, naturally enhances their personal status with the sponsoring employer, and, in that sense, receives a "private benefit." The receipt of that "private benefit" for performing a volunteer duty for the employer does not violate the ethics act.

However, although we are unaware of any current SHARE campaign activities that violate the ethics act, if a supervisor were to coerce subordinate employees to serve in or make contributions to the SHARE campaign, that coercion would violate AS 39.52.120(b)(5). Therefore, those state employees who recruit their subordinates to be volunteers for the SHARE campaign, and those who ask subordinate employees to contribute to the campaign, should assiduously stress that SHARE service and contributions are entirely voluntary. Supervisors should avoid making statements to subordinate employees that a reasonable and objective person might construe as threatening adverse consequences if subordinates decline to volunteer for SHARE service or decline to make contributions.

### **Conclusion**

State employee participation in the SHARE campaign does not violate the Executive Ethics Act so long as SHARE coordinators, key workers and others

who engage in soliciting contributions to the campaign are not state employee board members of the United Way or its member agencies and so long as supervisors do not coerce subordinates to serve or contribute to the campaign.