

# Ethics Training

For Alaska Executive Branch Employees  
and Public Officers

Maria Bahr

Ethics Counsel, Department of Law

## General Overview

- Background, 1986
- The Act – many pages long, but here summary of what is most important to you.

## Definitions

- You have to know the who's who and the what's what to really understand the Act.

## Public Officer

- A public employee
- A member of a board or commission
- *YOU*



## \$\$ Financial Interest \$\$

- An interest held by *you or an immediate family member* which includes *involvement or ownership in a business*, including property, or a professional or private relationship that is *the source of income* or from which you have received or expect to receive income.
- Also means *holding a position* in a business, such as officer, director, trustee, partner, employee, or a position of management.

## Personal Interest

- An interest held by *you or your immediate family*, including *membership* in any organization – fraternal, nonprofit, charitable, for profit, political – from which you *derive a benefit*.
- *“Membership” broad definition: not just voting member, even advisory, on the rolls.*

## Benefit

- ***Anything that is to your advantage or self-interest***, or from which you gain financially, including dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan, promise to pay, grant, contract, lease, money, goods, services, privileges, patronage, advantage, advancement, or anything else of value.
- Very broad definition: ***If you like it, it's a benefit.***

## Immediate Family Member

- Spouse
- Conjugal partner
- Children, step-children
- Parents, siblings, grandparents, aunts, uncles
- Parents-in-law, brother and sister-in-law
- *That's your family*



## Official Action

- Giving advice, *participating*, assisting, making a *recommendation*, making a decision, approving, disapproving, voting, or other similar action by a public officer.



## Partisan Political Activity

- Those activities that are intended to benefit or harm a candidate, potential candidate, political party or group.
- Exceptions – we'll get to those in a minute: home, phones, plane.

## Designated Ethics Supervisor

- The person you go to for assistance and guidance in navigating the provisions and requirements of the Ethics Act.
- Depends on the Agency. (ED for staff, Chair for board members and ED; Governor for Chair.)



## Basic Premise

- Avoid substantial and material conflicts of interest.
- You and your immediate family members may not benefit financially or personally from your position and actions as a state officer.
- You may not confer unwarranted benefits on others.

Let's jump in...



## Scope

- Prohibits substantial and material conflicts of interest.
- States that a public officer (and immediate family) may not improperly benefit financially or personally from their position and actions as state officers.



## However...

- The Act does recognize that *independent pursuits should not be discouraged*
- *Many of you are here precisely because of your independent pursuits and interests,*
- *And some minor and inconsequential conflicts of interest are unavoidable.*
- *Such as....*



## Stocks and bonds

- If your ownership interest or value in a company is less than \$5,000, it is presumed to be insignificant.





## Held by larger class of persons

- Your personal or financial interest in a matter is also presumed to be insignificant if it is held generally by the public at large, or by a larger class of persons.
- Example: PFD



## Insignificant or Conjectural

- If your action or influence would have insignificant or merely conjectural effect on a matter, the conduct is not prohibited.
- *Mere appearance of impropriety not enough, needs to be an actual conflict.*
- Example: using work phone to check on babysitter or make a personal call. (But not managing your rental unit.)

## Misuse of Official Position

- The Grand-daddy of them all.
- AS 39.52.120

## Misuse of Official Position

- Can't
- Can't
- Nope
- Sorry
- Cannot
- No way
- No sir
- No-can-do
- Can't



## Misuse of Official Position

- Can't use position for *personal gain*, or to give *unwarranted benefit or treatment* to another person; (*hiring a friend who is unqualified*);
- Can't use your position to secure other employment or contracts; (*I'll do this for you if you give me a job when I leave*);
- Can't use your position to accept or solicit outside compensation; (*no tips for doing your job*).

## Misuse of Official Position

- Can't use state resources to benefit a personal or financial interest, and
- Can't take or withhold official action on matters in which you have a personal or financial interest, unless...
- It's an *insignificant interest (less than \$5,000 in a business)*, or interest possessed generally by *public at large*, or action would have *insignificant or conjectural effect* on the matter.

## Misuse of Official Position

- Can't coerce subordinates to do something for your own personal or financial benefit *(for instance, giving to a charity or political party of your choice... or moving your furniture, or making them terminate someone because you don't like them).*



## Misuse of Official Position

- Can't attempt to influence the outcome of an administrative hearing by privately contacting the hearing officer *(but, you can respond to hearing officer's request for additional information).*



## Politics

- Cannot use state funds, equipment, or facilities for *partisan political purposes*.
- Remember, these are activities that are intended to benefit or harm a candidate, potential candidate, political party or group.
- For example, cannot use state computer or state time to send campaign letters in support of candidate or cause.

## Exceptions: Governor's Residence



## Exceptions: Communications Equipment in Governor's Home



## Exceptions: Airplane



If you want to campaign, must do it on  
your own time

APPLICATION FOR A SHORT LEAVE OF ABSENCE			
Name	_____		
Employee Code	_____		
Department	_____		
This is to approve short leave for the day ,	_____		
Date	_____		
Leaving at (Time)	_____		
Short Leave	Approved	<input type="checkbox"/>	Disapproved
		<input type="checkbox"/>	<input type="checkbox"/>
Authorised By (Name & Sign)	_____		
Date of Approval	_____		

## Staff time

- When determining whether a state employee is considered to be performing a task on government time, the AG and the Personnel Board shall consider ***the employee's work schedule as set by the employee's immediate supervisor.***
- Default is 8:00 – 4:30.

## Even off work hours, cannot use state equipment for political purposes

- No midnight emails or epic copying jobs using state resources.



## More about politics and state time

- Our State Personnel Act allows that a state employee has constitutionally protected rights regarding political activity and free speech.
- But...
- A state employee may not display or distribute partisan political materials while on state time.
- A state employee may comment and participate in political activities in their personal capacity, if the employee does not purport to speak or act in an official capacity. AS 39.26.010(a)(5).



## No politics in the workplace



## Special Consideration

- Social Media Issues.
- SOA social media policy link:  
<https://oit.alaska.gov/media/1336/socialmediapolicy.pdf>
- Social Media FAQs:  
<https://oit.alaska.gov/media/1337/socialmediapolicy-faqs.pdf>

## Special Considerations for Board Members

- Declaration of Potential Violations by Members of Boards or Commissions
- AS 39.52.220
  
- Improper Representation
- AS 39.52.160

## Declaration of Potential Conflicts

- Special Provision for Members of Boards and Commissions
- A member of a board or commission who is involved in a matter that may result in a violation of any of the other provisions of the Ethics Act, must disclose the matter on the public record, in writing (the in writing requirement may be met by disclosing on the record at a public meeting if a written record or electronic recording is kept of the meetings).

## Declaration of Potential Conflicts, cont.

- The DES (the Chair) shall determine whether the member's involvement in the matter violates any of the provisions of the Ethics Act and will provide a written determination (or a determination on the record if the meeting is being recorded).
- If a member objects to the ruling/determination of the DES, the members present (minus the one with the potential conflict) will vote on the matter.

## Declaration of Potential Conflicts, cont.

- If the DES or a majority of the members determine there is a conflict, then the member will refrain from voting, deliberating, or participating in the matter.

AS 39.52.220



## Improper Representation (AS 39.52.160)

- General Rule: You cannot advise or assist a person in matters pending before your administrative unit for compensation, or if your assistance would in any way benefit your personal or financial interests.
- **But, non-salaried members of boards or commissions are allowed to represent, advise, or assist in any matter in which the member has a personal or financial interest regulated by the board, but must do so in accordance with AS 39.52.220.**

## Improper Representation?

- Wearing a different hat....



## Gifts

- Can't accept or solicit a gift if that gift is intended to influence your action or judgment in your official duties.
- Gifts are money, services, loans, travel, entertainment, hospitality, lunch, a place to stay, tickets to an event..



## Gifts

- All gifts from lobbyists are presumed to be improper (unless they are an immediate family member, or long-time family friend...but even that is risky.)



## Gifts

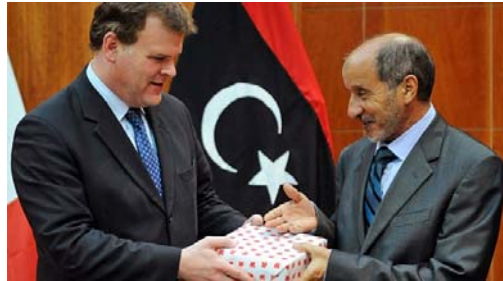
- A gift worth more than \$150 to you or your immediate family must be reported if:
- You could take official action that would affect the gift-giver, or
- The gift is being given to you because of your position as a public employee.

## Gifts

- A gift of an amount less than \$150 should still be disclosed if one could “reasonably infer from the circumstances” that the gift was intended to influence your action or judgment.
- When in doubt, DISCLOSE!

## Gifts

- Any gift received from another government, regardless of value, must be disclosed. This includes foreign, federal, state, municipal, and tribal governments.



## Gifts, Ethics Act, Family

- You must report a gift that a family member receives if it would be reportable if you received it.



## Questions

- Can I keep this gift basket?
- Can I keep this bottle of wine?
- Can I keep this gift card?
- \$50 presumption
- 9 AAC 52.060 (a)



## Information



- AS 39.52.140
- A ***current or former public officer*** may not disclose or use information gained in the course of official duties that could in any way result in a benefit to the officer or their immediate family member, if the information ***has not been publicly disseminated***, or is ***confidential by law***.



## No insider trading

Present and future



## Non-public and Confidential Information

- It is only publicly disseminated if follows 9 AAC 52.070:
- Newspaper, broadcast, press release, newsletter, legal notice, non-confidential court filing, published report, agency's website, Alaska Online Public Notice System, public speech, public testimony.



- NOT just if discoverable under FOIA request.

## Outside Employment or Services



## Outside Employment and Services

- AS 39.52.170
- A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency the employee serves, if the outside employment or service is ***incompatible*** or ***in conflict*** with the proper discharge of official duties.

## Second Job?

- Cannot be *incompatible* or *in conflict* with...
- Weekend ski instructor? Ok.
- Wedding photographer? Ok.
- Side consulting IT business? It depends.
- Member of certain trade associations? It depends.

## Outside Employment or Services

- Not in conflict with or incompatible....

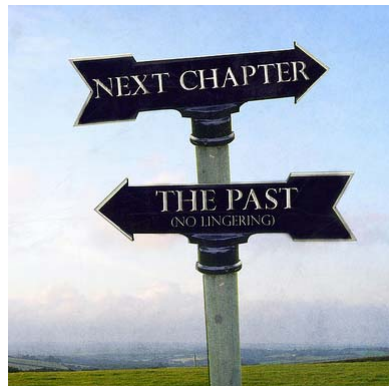


## Outside Employment or Services

- Must fill out disclosure form.
- Have it signed by work supervisor AND by your designated ethics supervisor.
- Update every July 1.
- Available on Department of Law website.

## Post-State Employment

- AS 39.52.180



## Ethics Act, 39.52.180

- After leaving state service
- **Two year restriction** on
- A **matter**
- For **compensation**
- In which you **participated personally and substantially**
- Through the exercise of **official action**
- *(each phrase subject to interpretation and analysis; all must be met)*

## What's the matter?

- **"Matter"** includes case, proceeding, application, contract, determination, proposal or consideration of a legislative bill, a resolution, a constitutional amendment, or other legislative measure, or proposal, consideration, or adoption of an administrative regulation. AS 39.52.180(a)
- "Matter" does not include the general formulation of policy. 9 AAC 52.100
- Construed narrowly *(a continuation or Part 2 not the same matter)*.

## Don't take it personally

- For purposes of AS 39.52.180(a), routine processing of documents, general supervision of employees without direct involvement in a matter, or ministerial functions not involving the merits of a matter under consideration by an administrative unit ***do not constitute personal or substantial participation in a matter*** by a public officer. 9 AAC 52.100

## Personal and Substantial

- 30,000 foot view



## Personal and Substantial

- 10,000 foot view



## Personal and Substantial

- Being a supervisor and being aware of the work of others does not necessarily constitute “personal and substantial” involvement for purposes of post-state employment restrictions.

## Personal and Substantial

- In the trenches



## Make it official

- **“Official action”** means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

AS 39. 52.960(14)





## Post-State Employment Exceptions

- Can contract with former agency.
- Can get public interest waiver (approved by your agency and the Attorney General).
- AS 39.52,180(b)(c)

## Restrictions on Employment After Leaving State Service

- The Ethics Act's restriction on employment after leaving state service prohibits certain former officials from working as paid **lobbyists** for **one year** after leaving state service.



## Restrictions on Employment After Leaving State Service

The one-year lobbying restriction applies to the following positions:

- Governor and Lt. Governor;
- head of an executive branch department;
- deputy head of an executive branch department;
- director of a division within an executive branch department;
- legislative liaison within an executive branch department;
- legislative liaison, administrative assistant, or other policy-making position in the Office of the Governor or Office of the Lt. Governor;
- member of a board or commission having regulation-adoption authority; and
- member of the governing board and executive officer of a state public corporation.

## Restrictions on Employment After Leaving State Service



The Ethics Act's restriction on employment after leaving state service prohibits certain former officials from **serving on certain boards** for **one year** after leaving state service.

## Restrictions on Employment After Leaving State Service

The restriction on board service prohibits, for one year, a **former head of a principal department** from serving on the governing board of any organization

- that was **regulated by** that department; or
- that the former department head **worked with** as part of his or her official duties.



## Confidentiality

- Ethics Act 39.52.140
- Forever and Ever



## Ethics Act, 39.52.140

- Penalties?
- Up to \$5,000/violation, pay back up to 2X the financial benefit received via the infraction, any other civil penalties, any actions related to the infraction (such as a contract or lease) are voidable.

## Who to call

- Maria Bahr, 269-5285
- Your Designated Ethics Supervisor; ED for Staff; Chair Trustees and ED; Governor for Chair.