

# Alaska Administrative Code - The Regulations

## Chapter 52 Executive Branch Code of Ethics

### **9 AAC 52.010. APPEARANCE OF IMPROPRIETY**

An appearance of impropriety does not establish that an ethical violation exists.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.110  
AS 39.52.950

### **9 AAC 52.020. IMPROPER MOTIVATION**

A public officer may not take or withhold official action on a matter if the action is based on an improper motivation.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.110  
AS 39.52.950

### **9 AAC 52.030. WHEN MEMBERSHIP IS SIGNIFICANT**

(a) If a public officer is required by statute to be a member of a class and the public officer takes or withholds official action in a matter that affects all members of that class, the action is not a violation of the Ethics Act or this chapter unless the officer receives significant financial or personal benefit from the action or takes or withholds the action based on an improper motivation.

(b) A public officer's interest in a matter by reason of the officer's membership in a large organization or class is significant if the officer or an immediate family member of the officer has a significant personal or financial interest in the matter.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.110  
AS 39.52.950

### **9 AAC 52.040. UNWARRANTED BENEFITS OR TREATMENT**

- (a) As used in AS 39.52.120(a), "unwarranted benefits or treatment" includes
- (1) a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and
  - (2) an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.
- (b) A public officer may not grant or secure an unwarranted benefit or treatment, regardless of whether the result is in the best interest of the state.

(c) Subject to the requirements of AS 39.52.110, 39.52.120, 39.52.150, and AS 39.90.020, neither the Ethics Act nor this chapter prohibits a public officer from

(1) considering a person who has a relationship with an officer for a state contract or job if the person is considered on an equal basis with other applicants; or

(2) considering an individual's political affiliation or political support in determining whether to appoint the individual to a state board or commission or to hire the individual for an exempt or partially exempt state job.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.120

AS 39.52.950

## **9 AAC 52.050. USE OF STATE TIME, PROPERTY, EQUIPMENT, OR OTHER FACILITIES**

A public officer who uses state time, property, equipment, or other facilities to benefit the officer's personal or financial interest is not in violation of AS 39.52.120(b)(3) if the officer's designated supervisor determines that the use is insignificant, the attorney general has not issued a general opinion against the use, and the attorney general does not advise the officer against the use.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.110

AS 39.52.120

AS 39.52.950

## **9 AAC 52.060. GIFTS**

(a) As used in the Ethics Act and this chapter, a gift is a transfer or loan of property or provision of services to a public officer for less than full value. Unless rebutted by other evidence, an occasional gift worth \$50 or less is presumed not to be given under circumstances in which it could be reasonably inferred that the gift is intended to influence an officer's performance of official duties, actions, or judgment.

(b) For purposes of AS 39.52.130, travel or lodging of any value received by a public officer in connection with a trip that the public officer takes as part of the officer's official duties is not an improper gift if the monetary value of the travel or lodging is comparable to the cost that the state would have had to pay for the travel or lodging and

(1) the head of the officer's agency determines that the gift is to the state, not to the officer; or

(2) the travel or lodging is incidental transportation by or hospitality at the residence of an individual.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.130

AS 39.52.950

Publisher's note: This regulation is set out above, as of Register 133 (April 1995), pursuant to directions from the Department of Law, in order to correct a typographical error in the second sentence in (a).

## **9 AAC 52.070. INFORMATION DISSEMINATED TO THE PUBLIC**

(a) For purposes of AS 39.140, information has been disseminated to the public if it has been published through newspaper publication; broadcast media; a press release; a newsletter; a legal notice; a nonconfidential court filing; a published report; a public speech; or public testimony before the legislature, a board, or a commission.

(b) Information that is available to the public but that has not been published as described in (a) of this section has not been disseminated to the public.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.140

AS 39.52.950

## **9 AAC 52.080. STATE GRANTS, CONTRACTS, LEASES, AND LOANS**

(a) For purposes of AS 39.52.150(b), a state grant, contract, or lease is competitively solicited if the grant, contract, or lease

(1) is awarded by competitive sealed bidding under AS 36.30.100 - 36.30.190 or competitive sealed proposals under AS 36.30.200 - 36.30.270; or

(2) is awarded by procedures substantially similar to competitive sealed bidding or competitive sealed proposals and AS 36.30 does not apply to the awarding of the grant, contract, or lease.

(b) If a state grant, contract, lease, or loan is awarded by or for a public corporation, board, or commission within a department but not by or for the office of the commissioner of that department, then an employee of the office of the commissioner in that department is not considered to be employed by the administrative unit awarding the grant, contract, lease, or loan.

(c) For purposes of AS 39.52.150(b)(1), if the public officer was not employed by the administrative unit at the time a state grant, contract, or lease was competitively solicited, the officer's subsequent employment by that administrative unit does not constitute a violation of AS 39.52.150 unless the officer takes or withholds official action with respect to the administration of the grant, contract, or lease.

(d) For purposes of AS 39.52.150(c), a loan is not subject to fixed eligibility standards if the award of the loan is subject to review for adequacy of security or other discretionary judgment concerning repayment ability.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.150

AS 39.52.950

## **9 AAC 52.090. OUTSIDE EMPLOYMENT OR SERVICE**

For purposes of AS 39.52.170, a public employee's outside employment or service, including volunteer service, is incompatible or in conflict with the proper discharge of official duties if the employee's designated supervisor reasonably determines that the outside employment or service

(1) takes time away from the employee's official duties;

(2) limits the scope of the employee's official duties; or

(3) is otherwise incompatible or in conflict with the proper discharge of the employee's official duties.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.170  
AS 39.52.950

### **9 AAC 52.100. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE**

- (a) For purposes of AS 39.52.180(a), "matter" does not include the general formulation of policy by a public official.
- (b) 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.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.180  
AS 39.52.950

### **9 AAC 52.110. ETHICS FILES**

- (a) A designated supervisor shall maintain an ethics file containing Ethics Act reports, advisory opinions, advisory opinion requests, complaints, disclosures, and determinations relevant to that supervisor's agency or administrative unit.
- (b) A designated supervisor shall segregate confidential material from other ethics file material that is available for public inspection.
- (c) An executive director of a board or commission may maintain the ethics file of the chair of the board or commission. The ethics file of the chair of a board or commission may be combined with the ethics file of the designated supervisor of the staff of the board or commission.

History: Eff. 4/24/94, Register 130  
Annotations  
Authority: AS 39.52.210  
AS 39.52.220  
AS 39.52.230  
AS 39.52.950

### **9 AAC 52.120. DECLARATION OF POTENTIAL VIOLATION BY MEMBER OF A BOARD OR COMMISSION**

- (a) A declaration by a member of a board or commission of the facts and circumstances about a matter that may result in a violation of AS 39.52.110 - 39.52.190 or this chapter may serve as the disclosure in writing to the designated supervisor required by AS 39.52.220 if
- (1) the declaration is made at a recorded public meeting of each board and commission on which the member serves;
  - (2) a tape or transcript of each meeting is preserved in accordance with the records retention schedule of the board or commission; and

(3) a method for identifying each portion of tape or transcript containing the declaration is used and the identifications are preserved.

(b) A member of a board or commission who takes or withholds an action that violates the Ethics Act or this chapter will not be held liable under the Ethics Act for the action if

(1) the action is taken or withheld in accordance with a determination by the chair as designated supervisor or the board under the procedures set out in AS 39.52.220;

(2) the member fully discloses all facts reasonably necessary to the determination of the chair or the board; and

(3) the attorney general has not advised the member, chair, board, or commission that the action violates the Ethics Act or this chapter.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.220

AS 39.52.240(d)

AS 39.52.950

### **9 AAC 52.130. DESIGNATED SUPERVISOR'S REPORT**

(a) A designated supervisor shall submit the quarterly report described in AS 39.52.260 during the 45 days following the end of each calendar quarter.

(b) An executive director of a board or commission may file a quarterly report on behalf of the chair of the board or commission. The quarterly report filed on behalf of a chair and the quarterly report of a designated supervisor of the staff of a board or commission may be combined into one report.

(c) If a board or commission does not meet during a calendar quarter, and the designated supervisor of the board or commission notifies the attorney general that no meeting, or activity reportable under the Ethics Act or this chapter, occurred during the calendar quarter, then neither the chair nor the designated supervisor of the staff must file a report for the board or commission for the quarter.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.260

AS 39.53.950

### **9 AAC 52.140. COMPLAINTS**

(a) The attorney general will, in the attorney general's discretion, conduct a preliminary ethics investigation before initiating or accepting a complaint. A preliminary ethics investigation and information discovered in the course of a preliminary ethics investigation is confidential to the same extent as information discovered in an ethics investigation conducted after the acceptance of a complaint.

(b) The attorney general will, in the attorney general's discretion, refer a complaint to the subject's designated supervisor under AS 39.52.310(e) and, at the same time, accept the complaint for an ethics investigation under AS 39.52.310(f) and (g).

(c) If the attorney general refers a complaint under AS 39.52.310(e) and the designated supervisor determines that a violation of the Ethics Act or this chapter has occurred, the designated supervisor shall forward those findings to the attorney general for review under AS 39.52.310 - AS 39.52.350.

(d) If an ethics complaint does not allege a violation of the Ethics Act or this chapter by the governor, lieutenant governor, or attorney general but, in the course of an ethics investigation, evidence of a potential violation by the governor, lieutenant governor, or attorney general is discovered, then the attorney general will refer the matter to the personnel board. The personnel board shall retain independent counsel in the same manner as if the complaint initially alleged those violations.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.310

AS 39.52.950

### **9 AAC 52.150. PERSONNEL BOARD NOTIFICATION**

If independent counsel appointed under AS 39.52.310(c) recommends action under AS 39.52.330, the independent counsel shall notify the personnel board that action to correct or prevent a violation of the Ethics Act or this chapter has been recommended.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.330

AS 39.52.950

### **9 AAC 52.160. CONFIDENTIALITY**

(a) The attorney general will keep confidential the information obtained in the course of an ethics investigation that is not relevant to an accusation or subsequent ethics proceedings.

(b) The attorney general will, in the attorney general's discretion, forward information obtained in the course of an ethics investigation to the subject's designated supervisor or other appropriate superior for potential disciplinary action under AS 39.52.420. Information forwarded under this subsection remains confidential, and the subject's designated supervisor or other appropriate superior may share the information only with a person who needs to know the information to consider potential disciplinary action.

(c) A subject may not partially waive the confidentiality protection of AS 39.52.340 or this chapter.

(d) Nothing in AS 39.52.340 or this section prevents a person from disclosing to a third person information the person learned independent of the investigation conducted by the attorney general, unless prohibited by other laws.

(e) Nothing in this section prevents either the attorney general from withholding or a person from objecting to the release of information or materials in the possession of the attorney general on a legal ground other than one provided by AS 39.52.340.

(f) If, after an ethics investigation, the attorney general does not initiate formal proceedings, then information and material discovered in the course of the ethics investigation, as well as the existence of the ethics investigation, must remain confidential unless disclosure is otherwise permitted under the Ethics Act or this chapter.

(g) If the attorney general determines that a crime may have been committed or may be committed, the attorney general will, in the attorney general's discretion, release information obtained in a confidential ethics matter to an appropriate law enforcement agency.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.340

AS 39.52.420

AS 39.52.950

### **9 AAC 52.170. CIVIL PENALTIES FOR MULTIPLE VIOLATIONS**

If one act violates more than one provision of the Ethics Act, a civil penalty may be imposed for each provision violated. A civil penalty may be imposed each time a provision of the Ethics Act is violated.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.440

AS 39.52.950

### **9 AAC 52.180. ATTORNEY GENERAL REVIEW OF AGENCY POLICIES**

The attorney general will approve a written policy described in AS 39.52.920 if it is consistent with and furthers the purposes of the Ethics Act and this chapter. As a condition of approval, the attorney general will require that the policy be distributed to employees of the agency and to new employees of the agency upon employment, and require that the policy be centrally posted in the agency's offices.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.920

AS 39.52.950

### **9 AAC 52.990. DEFINITIONS**

(a) In AS 39.52.410, "blind trust" means a trust established under AS 39.50.040.

(b) In the Ethics Act and in this chapter

(1) "board or commission" has the meaning given in AS 39.52.960 and does not include an entity created under only a federal statute or other non-state action;

(2) "Ethics Act" means Alaska Executive Branch Ethics Act (AS 39.52);

(3) "executive director" includes an executive secretary to a board or commission under AS 08 or the marine pilot coordinator under AS 08.62.050;

(4) "improper motivation" means a motivation not related to the best interests of the state, and includes giving primary consideration to a person's

(A) kinship or relationship with a public officer;

(B) financial association with a public officer;

(C) potential for conferring a future benefit on a public officer; or

(D) political affiliation;

(5) "person" has the meaning given in AS 39.52.960 and includes governmental entities;

(6) "personal gain" means a benefit to a person's or immediate family member's personal interest or financial interest;

(7) "public employee" has the meaning given in AS 39.52.960 and includes a permanent employee of an agency on non-seasonal leave without pay status, but does not include an individual on layoff status, a seasonal employee of an agency during the period of time that the employee is not employed by the agency, or a temporary employee of an agency during the period of time that the employee is not employed by the agency;

(8) "state contract" includes employment with the state, regardless of whether that employment is evidenced by a written agreement, but does not include a license or other authorization from the state to do business or to perform a particular activity in the state; and

(9) "subject" means an individual who either

(A) is being investigated for a potential violation of the Ethics Act or this chapter; or

(B) is the individual against whom a complaint is filed under the Ethics Act or this

chapter.

History: Eff. 4/24/94, Register 130

Annotations

Authority: AS 39.52.120(a)

AS 39.52.410

AS 39.52.950

AS 39.52.960