

**SELECT COMMITTEE ON LEGISLATIVE ETHICS
Alaska State Legislature**

THE ADVISOR

December 2007

Committee Members: Chair Dennis “Skip” Cook, Senator Gary Stevens, Senator Con Bunde, Representative Bob Roses, Representative Berta Gardner, H. Conner Thomas, Ann Rabinowitz, Gary J. Turner and Herman G. Walker Jr.

Alternate Legislative Members: Senator Hollis French, Senator Gary Wilken, Representative Carl Gatto and Representative Lindsey Holmes.

Staff: Joyce Anderson, Administrator; and Donna Grenier, committee staff.

QUOTE OF THE MONTH: “Always do the right thing. It will gratify some and astonish the rest.” Mark Twain

IMPORTANT: 2008 ETHICS TRAINING

Ethics training sessions for January 2008 have been scheduled. Remember, ethics training is mandatory for all those covered by the Legislative Ethics Act. Attendance will be taken at all training classes. It is important that you be prompt and attend the entire session. AS 24.60.150(a)(4) requires the mandatory training be conducted within 10 days of the first day of session.

PLEASE NOTE: The training will be customized to the individual needs of those attending each of the sessions. Please attend the session that corresponds to your duties. Some sessions are repeated. *You only need to attend one session.*

New ethics handbooks are being printed. You will receive a new 2008 Standards of Conduct Handbook at training.

Some positions are not covered by the Legislative Ethics Act. They include: Print Shop, Maintenance, Supply, Tour Guides, and Legal and Research range 15 and below. Individuals in these positions are not required to attend training.

Advisory Opinion 07-05: Requested by Representative Reggie Joule – May a legislator pay a portion of the cell phone cost of the Blackberry thereby allowing the use of the Blackberry cell phone for campaign and partisan political activity? The committee will again address the subject of Blackberrys at their January 16, 2008 meeting. No advisory opinion issued at the December 12, 2007 meeting.

Advisory Opinion 07-06: Requested by the Ethics Committee – May a legislator or legislative employee host or co-host a legislative candidate campaign fundraiser during session or endorse a legislative candidate if the endorsement is connected to a campaign fundraiser?

Recap of opinion: Directly or indirectly hosting, co-hosting, or soliciting participation in a fundraiser for a legislative candidate during a legislative session is prohibited.

Advisory Opinion 07-07: Requested by Representative Max Gruenberg – Questions concerning the use of a legislative phone number and legislative business card for campaigning.

Recap of opinion: Listing a legislative office phone number on campaign advertising fliers, whether preprinted or handwritten, violates AS 24.60.030(a)(5) which prohibits the authorization of legislative resources, including office staff, for a political fund raising or campaign purposes; and AS 24.60.030(b) which prohibits a legislator from requiring a legislative employee to perform campaign activity on government time.

A legislator may not distribute legislative business cards while campaigning for re-election, even if the cards are owned by the legislator for the same reasons as stated above, or if their distribution creates the appearance of impropriety under AS 24.60.010(1). A campaigning legislator may, if requested, give the legislative phone number or business card to constituents for a legislative purpose. Conversely, if given for campaign purposes, the legislator would be in violation of the Legislative Ethics Act.

WRITTEN OFFICE POLICY REQUIRED: In Advisory Opinion 07-07, the committee noted it is the responsibility of the legislator to have a **written office policy outlining procedures for handling incidental campaign related activities.** The legislator, if by act or omission, causes staff to believe communicating with callers on campaign matters and handling incoming campaign correspondence is permitted or required, the legislator could be found to be in violation of the Legislative Ethics Act.

If your legislative office does not have a written policy, the following guidelines from the 2007 Standards of Conduct Handbook may be helpful in drafting one.

A legislator or legislative employee may not use government assets for political fundraising or campaigning. The code does allow *minimal* use of government assets if the use does not interfere with the performance of state work, is applied infrequently and the use is considered nominal or

limited, or the legislator or employee reimburses the state for cost of the use.

Incidental political campaign activities while on government time are permissible if the activities are part of the normal legislative duties of the employee. A few examples of incidental political campaign activities include: answering telephone calls and handling incoming correspondence. An employee who engages in political campaign activities, other than of an incidental nature, is required to take leave time for the period of campaigning.

The committee has strictly interpreted this section of the code. Those covered by the ethics code should use caution when the line between campaigning and performing legislative duties becomes less than clear.

What if a campaign-related call comes into the legislative office?

The caller should be politely referred to the telephone number of the campaign headquarters or the home of the legislator.

What if an unsolicited campaign contribution arrives in the office mail during the legislative interim?

The legislator, not the staff, should take the contribution to the campaign headquarters or home for processing. It is inappropriate for staff to be doing campaign related activities while receiving a legislative salary. Campaign contributors should be provided the legislator's campaign or home address.

A legislative employee may not participate in political party or candidate activities, campaigning or fundraising on government time. Legislators may not require an employee to violate this prohibition.

“Government time” is interpreted to mean time for which the employee is being compensated by the state for work performed based upon a schedule set by the supervisor. Legislative employees have a wide variety of work schedules. The specific hours included in “government time” vary according to the work schedules set by the supervisor for each employee. The term “government time” is also used in AS 24.60.030(a)(4).

If a legislator sets a schedule, for example, that allows an employee to work for five hours, be on personal time in the afternoon and return to work for three hours in the evening, may a legislative employee participate in campaign activities on the designated personal time?

Yes, so long as the employee is not in a state building or using state resources while doing campaign work.

A person covered by the ethics code should note that, in the event a complaint is filed alleging campaign work on government time, the burden of proof would be on the employee to show a pre-approved work schedule.

FREQUENTLY ASKED QUESTIONS

Under the new statute, AS 24.60.175 Compassionate Gift, does a gift of flowers, candy, fruit basket or a flag from a Veteran's organization require approval by Legislative Council and the chair of the Ethics Committee prior to acceptance by a legislator or legislative employee?

No. Incidental gifts such as flowers and flags do not meet the definition of a "thing of value" in AS 24.60.990. A "thing of value" must be considered to be a material advantage, of material worth, use or service. Therefore, incidental gifts of flowers and flags and similar items do not fall under the "compassionate gift" requirement of pre-approval and the value of these type of gifts are not included in the \$250 gift limit.

May constituent information gathered by a legislator with the use of the state resources be available to that legislator for use as a candidate?

The short answer is yes. See Advisory Opinion 04-01 issued April 23, 2004. Constituent information maintained in a database for a legislative purpose, using legislative resources such as staff time and equipment, may be copied and used for personal or campaign use by a legislator as a 'de minimis' use of public assets. The database should be copied to a personally owned CD or other medium.

The database must have been created or maintained in the legislator's own office. Publicly available databases may be combined into the legislator's constituent database. Purchased databases may have copyright issues if copied rather than purchasing another license for separate use. If a legislator wants another copy of a commercial database, a separate license, if required, should be purchased with personal funds.

Note: Constituent information gathered by a candidate using private resources can be used by that person if subsequently elected to serve as a legislator.

May a legislative employee receive a gift of flowers or candy as a thank you for a job well done?

A legislative employee is permitted to receive a gift of flowers or candy as a thank you gift for legislative work performed. It is also acceptable to receive other similar gifts as a thank you. A legislative employee is not permitted to receive, for instance, a gift of money or airline miles as a thank you gift. These items would fall in the category of a "thing of value" as defined in AS 24.60.990. A thing of value includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred.

If the registration fee is waived for a conference and the amount is over \$250, is the legislator required to disclose the actual cost of the waived registration as a gift?

Yes. Any costs associated with a legislative trip that are either paid for by an entity other than the legislature or waived are considered gifts. If the aggregate amount of the gift(s) are valued at \$250 or more, they must be disclosed within 30 days of receipt.

ETHICS COMMITTEE MEETING

- Wednesday, January 16, 2008 at 1 p.m. in the State Capitol.
 - Room yet to be determined.
- The full committee will meet in open session. The House Subcommittee and Senate Subcommittee will meet in executive session.
- Agendas will be posted the week prior to the meeting.
- A formal, binding advisory opinion has been requested by the Ethics Committee and will be discussed at the January 16 meeting
 - Advisory Opinion 07-08 When a legislator or legislative employee travels on legislative business using state resources (funds) and then also conducts collateral campaign, political fundraising or partisan political activities on the same trip, what are the ethical considerations under AS 24.60?

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Ethics Committee Office
716 West 4th Avenue, Suite 230, Anchorage AK 99501
Mail: P.O. Box 101468, Anchorage AK 99510-1468
Phone: 269-0150 Fax: 269-0152
Pouch: Ethics/Anch LIO
www.legis.state.ak.us (click on Ethics)
<http://ethics.legis.state.ak.us>
Email: ethics_committee@legis.state.ak.us