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THE ADVISOR

JUNE 2010

Ethics Committee approves New Opinion

The Select Committee on Legislative Ethics ("Committee") met on May 27, 2010, to consider a second opinion regarding an issue related to state paid travel expenses and collateral campaign activities. The Committee approved the following opinion, which became effective May 27th:

ADVISORY OPINION 2010-01

May 27, 2010

Question presented

What restrictions are imposed by AS 24.60 on a legislator or legislative employee who, while traveling on legislative business using state resources, engages in political campaigning or other partisan political activity?

Discussion

AS 24.60.030(a)(3) makes it an ethical violation for a legislator or legislative employee to "...make a false statement in connection with a request, or application for compensation, reimbursement, or travel allowance from public funds."

The Committee determined the nature of the business rather than whether it is paid for with state resources should be the governing standard in determining whether an ethical violation has occurred. Legislators are currently required to fill out a pre authorization travel form naming their purpose for engaging in the proposed travel. This statement, signed by a legislator, designating the primary nature and purpose of the business rather than whether it is paid for by state resources governs whether or not collateral activities can or cannot occur.

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The Committee determined there is a distinction between “direct costs” and “indirect costs” associated with travel by legislators. Another way to look at indirect costs is that they are incidental costs. Because of the nature of the expense, travel costs can either be a direct or indirect expense of a particular endeavor. If a legislator incurs travel expenses for the sole purpose of engaging in non-legislative purposes, or partisan political activity, or for his or her private benefit, then the use of state funds to facilitate those activities would not be appropriate or permitted. But when a legislator engages in multiple activities—legitimate legislative business and other activities which may have specific prohibitions in statute—while traveling, it is the primary purpose of the trip that dictates when state funds can be used to cover travel expenses.

The tenor of AS 24.60.030 is to preclude direct use of public funds for non-legislative purposes and it is not clear that travel expenses for mixed activities was intended to be prohibited. The primary harm that this subsection prevents is the use of state resources for the direct purpose of political campaigning or partisan political party activity. While this conclusion requires reliance on the “honor system,” legislators are held to similar standards in soliciting, accepting or receiving gifts.

Violations or false statements will be enforced pursuant to AS 24.60.030(a)(3). The pre authorization travel form could be challenged or evaluated in light of the legislator’s actual activities at a later time if a legislator made a false statement in this context. These statements are a part of the public record and can and may be scrutinized by citizens who could file a complaint based upon the actual activities of the legislator. The Committee would be called upon to make a determination of whether a violation has occurred under AS 24.60.170.

The committee determined that the enforcement provisions under AS 24.60.030(a)(3) provide sufficient protection against improper use of state funds for transportation costs. ■

Ethics Committee Meeting

On Wednesday, June 16, at Noon, the committee will revisit the subject of “state paid travel and collateral campaign activities” and accompanying committee action taken at the May 27 meeting.

The Ethics Committee’s discussion will take place in an open meeting and will be teleconferenced (1-877-763-5073). The meeting will take place at the Anchorage LIO, Room 220.

Any changes to the current policy will be noticed in the next **ADVISOR** newsletter.

PROHIBITION RELATING TO A “MASS MAILING” WITHIN 60 DAYS OF AN ELECTION

In Advisory Opinion 98-03, the Committee determined “a legislator or legislative employee may not use or permit another to use **state funds*** to print or distribute a “mass” mailing describing the accomplishments of legislators who are candidates for election during the period beginning 60 days before the primary election and ending with the general election.” AS 24.60.030(c)

“Mass mailing” is considered to be political if it is from or about a legislator, legislative employee, or another person who is a candidate for election or re-election to the legislature or another federal, state or municipal office. AS 24.60.030(c)(2)

Note: The Committee found in AO 98-03 an “End of Session Accomplishments” publication meets the test of being “about a legislator” even though it may not single out the actions of any particular legislator.

“Campaign period” begins 60 days before the date of an election and ends the day after the election.

**** (Campaign period begins June 25, and ends November 3.) ****

In AO 99-04, the Committee determined a legislator or legislative employee who is a candidate may use state equipment and resources, including staff time, for sending out an e-mail to constituents, including during a campaign period, **so long as there is no increased cost to the state for the use.**

The Committee cautioned that if a legislator or legislative employee were to make extensive use of committee or leadership-funded staff or equipment during a campaign period to print or distribute a mass-e-mail, the Committee might reach a different conclusion and find that the use was prohibited under AS 24.60.030(c).

Further, the Committee determined a legislative office may not make expenditures specifically for the purpose of printing or distributing a mass mailing using state funds. This prohibition applies to specific purchases for distributing a communication by e-mail as well as communication by print or other electronic means.

NOTE: The prohibition does not apply to legislators who are not candidates.

***State funds** do not include a legislator's Office Allowance Account (a non-state resource for purposes of this discussion). However, the Office Allowance Account must be used for a “legislative” purpose and cannot be used for a “campaign” purpose.





NEWSLETTER REMINDER



For Legislators Who Are Candidates

The last day for the Legislative Print Shop to print newsletters for legislators who are candidates is: **Thursday, June 24th**

Please be sure to have your newsletter to the Print Shop well ahead of the deadline to allow adequate time for the Print Shop staff to print and collate the newsletter. Note: The Print Shop needs a *minimum* of 3 working days to process your request but prefers to receive it earlier.

“AS 24.60.030(c) prohibits a legislator who is a candidate for election the use of state funds to print or distribute a legislative newsletter to individuals eligible to vote for the candidate during the 60 days before an election”.

REMINDER: Candidate contact information provided to the State Division of Elections for inclusion in the “Official Election Pamphlet,” mailed to voters statewide, must not include legislative contact information.



ETHICS TRAINING



If you are a **NEW** staffer working for a legislator or **NEW** support staff, you are required to complete the online ethics training video within 30 days of your hire date.

HERE'S HOW:

Go to the Ethics website at: <http://ethics.legis.state.ak.us>

1. Select **Ethics Training**
2. Select **On-line Ethics Training**
(Print the PowerPoint presentation for “Staff to Legislator” or “Support Staff and other employees”. Use it to follow along with while viewing the video.)
3. Log in with your **user name** and **password**

For any questions regarding training, contact
Linda Leigh at 269-8179.

*“ETHICS TRAINING IS
MANDATORY FOR ALL
EMPLOYEES UNDER THE
LEGISLATIVE BRANCH
(EXCEPT CERTAIN
HOURLY EMPLOYEES)
PURSUANT TO
AS 24.60.155 AND AS
24.60.150(A)(4)”*

TIP!

To view each training video segment, employees must sign in with their legislative “user name” and “password.”

Example:

- User Name: ldpjhh
- Password: *****

Note: If you do not have a user name and password, please contact Tim Powers at 465-6621.