

July 30, 1993

Former Employee

Re: Request for ethics opinion
regarding post-state
employment.
AGO File No. 663-94-0048

Dear Former Employee:

I am writing to respond to your request for an advisory opinion pursuant to AS 39.52, the Alaska Executive Branch Ethics Act, (hereafter the "Ethics Act" or the "Act"). You ask whether it is a violation of the Act if you assist a private group submit a proposal in response to Request for Proposal ("RFP") issued by a department of the State of Alaska, your former employer, and then work for the group on the awarded contract.¹

¹ You have asked also for an opinion from our office concerning an interpretation of the state's procurement code. AS 39.52.250(a) only allows you to request an opinion from our office concerning an interpretation of the Ethics Act. Nonetheless, I refer you to 2 AAC 12.020, which states:

A procurement officer may exclude a prospective contractor from submitting a bid or proposal, or may reject a prospective contractor's bid or proposal, after making a written determination that the prospective contractor assisted in drafting the invitation to bid or request for proposal, or gained substantial information regarding the invitation to bid or request for

FACTUAL BACKGROUND

The following is our understanding of the facts based on information provided by you in a letter dated July 20, 1993, and upon information obtained from the project director for the RFP at the department.

You worked for the department in the position of Coordinator.² As a Coordinator, you supervised a staff of three persons, including the project director for the RFP, in implementing duties under the Act and the Alaska Statutes, which included working to establish and then assist the Committees in the development of plans and work related to statewide analysis.

Under the RFP, the department is soliciting bids for work relating to a statewide analysis. Your only involvement with the RFP appears to be that at the time the department authorized the RFP you were the Coordinator supervising the staff in charge of this RFP. The department issued the RFP in June 1993, and the project director informs us that he did not begin working on this RFP until some time in April 1993, long after you resigned from your position in September 1992. The project director confirms that you did not work on this RFP.

We also understand that during your tenure with the department, your staff had done work relating to an earlier RFP for a statewide analysis that was cancelled and never issued by the department. The project director, who worked on the statewide analysis under the earlier RFP, states that the statewide analysis under the RFP is "similar" yet "significantly different" from the statewide analysis under the earlier RFP that was never issued. The project director confirms that all the information relating to the earlier RFP and this RFP is information that has been shared with the public.

(..continued)

proposal that was not available to the public.

² An Alaska statute established a Commission with the commissioner of the department serving as chair and staff from the Division serving as staff for the Commission.

ANALYSIS

In your letter of July 20, 1993, you correctly point out that the applicable provision of the Ethics Act regarding post-employment by a former state employee is AS 39.52.180(a), which states:

A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action.³ . . .

However, AS 39.52.140(a) also may apply, and it states:

A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

Based on the foregoing facts, we do not believe that it is a violation of the Ethics Act for you to do private contract work relating to the submission of a proposal in response to the RFP or to work on the contract awarded under this RFP. With respect to AS 39.52.180(a), the "matter" here in question is the statewide analysis under the RFP, in which your only involvement was your supervision of the staff in charge of the RFP at the time the department authorized its issuance. You did not personally work on this RFP, and the staff whom you supervised did not begin to work on it until long after you had resigned from the department. Your involvement with the RFP does not constitute the type of personal and substantial involvement that would trigger

³ AS 39.52.960(21) defines "public officer" to include a public employee.

the prohibition in AS 39.52.180(a).

Additionally, we do not believe that your involvement with the statewide analysis under the earlier RFP never issued by the department, triggers the prohibition in AS 39.52.180(a). The statewide analysis under the RFP is significantly different from the statewide analysis that was the subject of the earlier RFP. Accordingly, we believe that the work relating to the statewide analysis under the earlier RFP that was never issued by the department should not be considered the same "matter" in this case. See 1989 Inf. Op. Att'y Gen. (July 1; 663-89-0259) (confirming that the legislative history and our prior opinions narrowly interpret the prohibition in AS 39.52.180(a)).

With respect to AS 39.52.140(a), because all information relating to the statewide analysis under both the earlier RFP and this RFP has been shared with the public, there does not appear to be any risk of your running afoul of this provision.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:

Martin M. Weinstein
Assistant Attorney General