

# Alaska State Legislature

## Select Committee on Legislative Ethics

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May 29, 2014

### ADVISORY OPINION 2014-01

#### **SUBJECT: Close Economic Association – Cell Phone Plan**

RE: Does the Legislative Ethics Act require an employee who shares a cellphone service plan with a legislator to report a close economic association?

You are a legislative employee and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions.

#### **Statement of Facts**

You are employed as staff to a member of the legislature. You are responsible to a cellphone carrier for the cost of a personal cellphone service plan shared by five users: your spouse, your parent, your sibling, and, since April 2014, a member of the legislature. Users share 10 gigabytes (GB) of data each month, have their own phone and phone number, and are responsible for making a monthly contribution toward the cost of the shared plan. With four users sharing the plan, three would each contribute approximately \$48.00 a month, and one, by agreement of all users, would contribute \$15.00 a month. With five users sharing the plan, four contribute approximately \$40.00 a month and one, by agreement of all users, contributes \$15.00 a month.<sup>1</sup> As a result of adding a fifth user to the plan in April, you, your spouse, and your parent each pay approximately \$8.00 per month less than you would pay without adding the fifth user.

Although the committee relies on the facts you have described, we visited the website of the cellphone service provider you named in order to determine the cost a single user would pay in order to obtain service comparable to the service they obtain as a user of your shared plan. According to the website, a single user would pay \$40.00 monthly for two GB of data, and at least \$25.00 monthly for a phone line. The website indicates that users on any of the provider's service plans may be responsible for taxes and other additional costs assessed by the state or federal government.

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<sup>1</sup> Based on information you provided, the \$40.00 amount is comprised of a \$15.00 line charge and \$25.00 for data surcharges.

## Discussion

Generally "Ethics disclosure requirements are based in part on the principle that certain potential conflicts of interest, once out in the open, pose less of a threat to the public's confidence in government than they might if they were not revealed."<sup>2</sup> As a legislative employee, you are required to disclose a close economic association with a legislator.

In a previous opinion we discussed further the purpose underlying the Act's close economic association disclosure requirement.<sup>3</sup>

The Legislative Ethics Act generally encourages legislators and legislative staff to avoid conflicts of interest that could undermine public trust in government. The formation or maintenance of a close economic association involving a substantial financial matter creates a potential conflict of interest because it puts two or more persons under obligation to each other; it tends to set each up for potential financial gain, or loss, depending on how they treat each other, and in so doing it may complicate their relationship to an extent that might interfere with their legislative mission. Nevertheless, the Act allows the formation and maintenance of certain close economic associations, requiring only that they be disclosed in a particular manner and at particular times.

According to AS 24.60.070(a), a close economic association is:

[T]he formation or maintenance of a close economic association involving *a substantial financial matter* with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions; this paragraph does not apply to a public member of the committee;

(2) legislators;

(3) a public official as that term is defined in AS 39.50;

(4) a registered lobbyist; or

(5) a legislative employee if the person required to make the disclosure is a legislator.

(Emphasis added.)

AS 24.60 does not define "substantial financial matter." However, in AO 03-02 we applied the Act's close economic provision (AS 24.60.070) to hypothetical facts

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<sup>2</sup> AO 09-05.

<sup>3</sup> AO 09-05.

involving a loan by a legislator to a legislative employee. In that case we said "[t]he committee determines in this opinion that if the amount of a loan exceeds the maximum value of a gift that can be accepted under AS 24.60.080, then it should be considered a substantial financial relationship under AS 24.60.070." In making the determination that the \$250.00 annual gift limit provided a reasonable benchmark we considered the narrow exception for gifts and the need to avoid even the appearance of a conflict of interest, citing AS 24.60.010(2), of the Act's "legislative findings and purpose" section, as follows:

[A] fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest.

The facts you provide describe an informal agreement between you and the legislator to share use of a cellphone service plan. With regard to formation of a close economic association, we have said that such an association can exist based on a "hand-shake" agreement or a written agreement.<sup>4</sup> Furthermore, although you have indicated that the agreement can be terminated on short notice by either of you, it is also possible for the agreement to be maintained for a year or longer.

Based on the facts you provided, and the facts we obtained from your service provider's website, the addition of the legislator as a fifth user of your shared cellphone service plan would save you and two members of your immediate family an approximate total of \$96.00 each, or \$288.00 combined, in a 12-month period;<sup>5</sup> and, in that same period, the legislator would save approximately \$300.00 over the cost of a single-user plan with the same provider.<sup>6</sup> Therefore, applying the rationale we adopted in AO 03-02, based on the \$250 annual gift limit in AS 24.60.080, the four of you share a substantial financial interest in the five-user arrangement you have described.<sup>7</sup> For purposes of this opinion,

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<sup>4</sup> AO 09-05.

<sup>5</sup> "Immediate family" is defined by the Act in AS 24.60.990(a)(6), as:

- (A) the spouse or domestic partner of the person; or
- (B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

<sup>6</sup> These numbers are approximated because they do not include additional incidental charges that may apply to the shared plan or the single-user plan, including possible state and federal government assessments.

<sup>7</sup> Based on the facts we rely on for this opinion, your sibling, one of the four users who originally shared the plan, does not directly benefit from the addition of a fifth user.

and the applicability of AS 24.60.070, we attribute the relevant financial interests of your spouse and your parent to you.

In AO 87-01, we found that a legislative aide should treat a spouse's close economic associations as his or her own for purposes of disclosure under AS 24.60.070. We apply that rule here and, in this instance, we extend it to your parent as well. Your parent's interest in the association is facilitated by a cellphone plan for which you are responsible, and an agreement that you have made with a legislator. Your parent shares with you a substantial financial interest under AS 24.60.070 and is therefore a member of your immediate family for the purpose of applying the Legislative Ethics Act in this instance.

### **Conclusion**

For reasons stated above, the committee finds that:

- 1) You have entered into an agreement with a legislator to share a cellphone service plan.
- 2) The agreement results in a combined savings of at least \$288.00 a year for you and two members of your immediate family, and a savings of at least \$300.00 per year to the legislator.
- 3) Each of these amounts constitute a substantial financial interest under AS 24.60.070 because they exceed \$250 in one year, and therefore you, your immediate family, and the legislator share a substantial financial interest in the agreement.
- 4) The agreement you have described constitutes the formation and maintenance of a close economic association under AS 24.60.070(a) and is subject to the disclosure requirements of that subsection.

As a separate matter, it is worth noting that your disclosure of this close economic association will not excuse the legislator with whom you share a cellphone plan from the disclosure requirements of AS 24.60.070 or other applicable requirements of the Legislative Ethics Act.<sup>8</sup>

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<sup>8</sup> In AO 09-05, which involved a staff employee who also provided private professional consulting services to legislators as an independent contractor, we advised as follows:

Initially, it is each person's own responsibility to determine if they are required by AS 24.60.070 to file a disclosure. We note that any of your clients who are subject to the Legislative Ethics Act are required by AS 24.60.070 to disclose a close economic association with you, even if you have already filed your own disclosure report.

Adopted by the Select Committee on Legislative Ethics on May 29, 2014

Members present and concurring in this opinion were:

Gary J. Turner, Chair

Representative Andy Josephson

Senator Berta Gardner

Janie Leask, public member

H. Conner Thomas, public member

Dennis "Skip" Cook, public member

Senator Anna Fairclough, alternate member

Members dissenting from this opinion were: None.

Members absent were:

Representative Charisse Millett

Herman G. Walker, Jr., public member

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