

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th Ave., Suite 217
Anchorage, AK 99501
(907)269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK
99510-1468

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ADVISORY OPINION 2015-02

Questions Presented

The Select Committee on Legislative Ethics asks the following questions:

Question (1): *Does a lunch and learn event held in a state facility at the request of a legislator provide a private benefit to the event presenter, under AS 24.60.030(2), if the presenter is someone other than a legislator or a legislative employee?*

Question (2): *Does the opportunity of a person other than a legislator to provide a free meal to legislators and legislative staff, at a lunch and learn event in a state facility, raise ethical concerns under the Legislative Ethics Act?*

Statement of Facts

The committee relies on the following facts:

Lunch and learn events during legislative sessions have become increasingly popular in the Capitol since 2007.¹ Attendees are provided with a free presentation on one or more topics, in a state facility. The presenter generally also provides attendees with a free meal, but the presentation, not the meal, is the main purpose of the event. The presenter is not charged a fee to use the state facility for the lunch and learn event.

Lunch and learn events in the Capitol are typically set up by a request from a legislator to the appropriate Rules Committee chairperson, through Rules Committee staff. The events are listed in the legislature's public daily meeting calendar, and sometimes advertised on flyers posted in the Capitol and possibly other state facilities. A sampling of flyers reviewed by the committee in this instance indicates that typically, for lunch and learn events in the Capitol, all legislators and legislative session staff are the target audience, regardless of partisan political alignment. A presentation at a lunch and learn event may be teleconferenced.²

¹ A list of lunch and learn events held during the period of March 12, 2015 -- March 25, 2015, is attached to provide examples.

² Sample flyers that encourage attendance at particular lunch and learn events are attached.

Discussion

Question (1): *Does a lunch and learn event held in a state facility at the request of a legislator provide a private benefit to the event presenter, under AS 24.60.030(2), if the presenter is someone other than a legislator or a legislative employee?*

Three separate uses of legislative assets and resources are prohibited under AS 24.60.030(a)(2). They are (1) use for a nonlegislative purpose, (2) use for a partisan political purpose, or (3) use for the private benefit of any person.³ Within AS 24.60.030(a)(2) there are several exceptions to these prohibitions, although some may not apply to all three. The prohibitions and the relevant exception read:

Sec. 24.60.030. Prohibited conduct and conflicts of interest.

(a) A legislator or legislative employee may not

. . . .

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, legislative employee, or another person; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use. . . .

In AO 09-03 we considered whether the weekly use of a legislative committee room in the Capitol by an informal, faith-based group of legislators and staff was prohibited by AS 24.60.030(a)(2). We determined as follows:

The meetings held by the informal group of current legislators and staff, as well as the participation of individual legislators and legislative employees in those meetings, have a personal and nonlegislative purpose, but as described (in AO 09-03) they do not interfere with the performance of public duties, and the cost to the legislature is nominal. For these reasons we determine that the limited personal use exception in AS 24.60.030 applies. The group's use of the Capitol facility is permissible under the exception in AS 24.60.030(a)(2)(A).

A legislator who sets up a lunch and learn event as described, for another person to present information about a matter of legislative concern, confers a private benefit on the presenter

³ See *also* AO 13-04.

by creating an opportunity for the presenter to have access to legislators and legislative employees, and providing the presenter with free and convenient use of space for that purpose. Nevertheless, a legislator or legislative employee may attend as long as the event does not interfere with the legislator's or legislative employee's legislative duties, and the cost to the state for facilitating the event is nominal, the "personal use" exception under AS 24.60.030(a)(2)(A) applies.

Generally lunch and learn events as described meet the requirements of AS 24.60.030(a)(2)(A) because they result in only a nominal cost to the state, they occur during a period designated for a meal break, and they do not require the state to expend additional resources. However, in some instances, depending on additional applicable facts, a lunch and learn event's use of space in the Capitol might interfere with the duties of legislators or legislative employees by displacing them from the space at a time their duties require them to have access to it, or by causing a delay in the carrying out of a legislative duty. Likewise, in some instances an event's use of space might be on a scale that results in more than a nominal cost to the state. In either of these instances we may find that setting up a lunch and learn event violates the prohibition, under AS 24.60.030(a)(2) or (a)(5), against using government assets or resources for the private benefit of a person, depending on the facts before us.

Question (2): *Does the opportunity of a person other than a legislator to provide a free meal to legislators and legislative staff, at a lunch and learn event in a state facility, raise ethical concerns under the Legislative Ethics Act?*

The answer is yes, depending on the nature of additional facts. For example, AS 24.60.030(a)(1) prohibits legislators and legislative employees from soliciting, agreeing to accept, or accepting a benefit other than official compensation for the performance of public duties, but also contains an exception for "the acceptance of a gift under . . . AS 24.60.080." The free meal provided at a lunch and learn event is a gift. The Act provides that legislators and legislative employees are allowed to receive gifts worth less than \$250.00. AS 24.60.080(a)(1) provides that legislators and legislative employees may:

(1) solicit, accept, or receive, directly or indirectly, a gift worth \$250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$250 that in a calendar year aggregate to \$250 or more in value. . . .

This dollar limit raises a concern that in some cases a legislator or legislative employee might receive meals and other gifts from a person that in a calendar year aggregate to \$250 or more in value. However, an exception in the Act, under AS 24.60.080(c)(4), applies to a free meal provided at a lunch and learn event if the provider of the meal is not a lobbyist⁴

⁴ AS 24.60.080(c)(4) reads:

and the legislator or legislative employee accepts the meal for the purpose of obtaining information on matters of legislative concern.⁵ AS 24.60.080(c)(1)(B) provides a further exception to the limits, in AS 24.60.080(a)(1), on gifts from non-lobbyists.

The legislature has drawn a clear distinction between gifts from lobbyists and gifts from other persons, and has imposed stricter limitations on gifts from lobbyists. Therefore, even if a meal is accepted as a gift primarily for the purpose of obtaining information on a matter of legislative concern, the (c)(4) exception does not apply if the provider of the meal is a lobbyist, an immediate family member of a lobbyist, or acting on behalf of a lobbyist; exceptions under AS 24.60.080(c) apply only to AS 24.60.080(a)(1), not to the prohibition on gifts from lobbyists and their family members or agents under AS 24.60.080(a)(2). However, a separate exception, AS 24.60.080(a)(2)(A), allows legislators and legislative employees to receive from a lobbyist a gift of "food or beverage for immediate consumption," and that exception would apply to receipt of a free meal from a lobbyist at a lunch and learn event.

There are other lunch and learn event scenarios that might raise concerns under the Act. For example, if the event has a partisan political or campaign purpose, we may determine that setting it up or participating in it is prohibited by the provisions related to partisan political activity or campaigning under AS 24.60.030(a)(2), (a)(4), or (a)(5). The personal use exceptions under AS 24.60.030(a)(2)(A) and (a)(5)(A) apply only to personal use of government assets or resources, not to partisan political or campaign use.

Finally, any time legislators or legislative employees are provided a gift, including hospitality, with an expectation that they will do something in return for it, that may raise an issue under the Legislative Ethics Act. AS 24.60.010(1) and (2) provide:

(c) Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept

....

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern

AS 24.60.080(d) requires disclosure of gifts of travel and hospitality under this exception, within 30 days, if the value exceeds \$250. AS 24.60.080(j) requires that value, under AS 24.60.080, be determined by calculating fair market value.

⁵ The topics presented at the lunch and learn events advertised on the attached flyers -- the capital budget, tribal sovereignty, education, criminal recidivism, enriching and empowering communities, and children's justice -- are all examples of topics that are matters of legislative concern.

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) 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. . . .

These principles do not require the committee to find that receipt of a free meal at a lunch and learn event creates an appearance of a conflict of interest, or that a resulting appearance of a conflict of interest in this context would necessarily violate the Act. However, they inspire the committee to weigh all relevant facts when considering a complaint that has come before it.

Conclusion

For the reasons stated above, the committee finds:

(1) A lunch and learn event as described in the facts before us -- relating to a matter of legislative concern, held in the Capitol or another state facility at the request of a legislator, open to legislators and legislative session staff regardless of their partisan political alignment, and presented by another person -- provides a private benefit to the presenter, under AS 24.60.030(a)(2). However, under the personal use exception in AS 24.60.030(a)(2)(A) a legislator or legislative employee may promote or facilitate the event, and use state resources in doing so, if the state's cost of facilitating the event is nominal and the event does not interfere with the legislator's or legislative employee's legislative duties.

(2) Some instances in which a legislator or legislative employee facilitates the hosting of a lunch and learn event in the Capitol or other state facility by a person who is not a legislator or legislative employee may create a conflict of interest under the Legislative Ethics Act, or the appearance of one, depending on the applicable facts. We think it is important to avoid the appearance of impropriety. Flyers and other messages promoting the events should not list the name of the food caterer or food establishment. They should emphasize the learning opportunity on a matter of legislative concern more prominently than the free meal or the name of a sponsor of the event. However, specifically with respect to prohibitions on gifts under AS 24.60.080, we find that a legislator or legislative employee who attends a lunch and learn event primarily for the purpose of obtaining information on a matter of legislative concern may receive the gift of a free meal at the event under the exception in AS 24.60.080(c)(1)(B) or (c)(4), if the gift is from a person who is not a lobbyist, or under the exception in AS 24.60.080(a)(2)(A), if the gift is from a lobbyist.

Adopted by the Select Committee on Legislative Ethics on January 25, 2016.

Members present and concurring in this opinion were:

Dennis "Skip" Cook, Chair
Representative Chris Tuck
Representative Charisse Millett
Senator Gary Stevens
H. Conner Thomas, public member
Gary J. Turner, public member

Members dissenting from this opinion were:

Senator Dennis Egan

DCW:lnd
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Footnote 1: Lunch & Learns, March 12 - 25, 2015

03/12: Sen. Gardner – Sponsor

Sam Gottstein – Tribal Sovereignty and Criminal Jurisdiction

03/13: Rep. Tarr – Sponsor

Food Security Awareness

03/18: Sen. Meyer – Sponsor

Statewide Pathways to Prevention planning group

03/18: Rep. Reinbold - Sponsor

Symposium for Common Core

03/19: Sen. Gardner – Sponsor

Alaska State Hospital Nursing Association

03/20: Sen. Dunleavy – Sponsor

Alaska Policy Forum

03/25: Sen. Wielechowski

Alaska Community Action on Toxics



Limited Capital Budget? Options to Offer Constituents



Time: Noon

Date: March 14, 2014

Place: Finance Room #519

Join us for lunch on Friday, March 14th, for a discussion of capital projects on a limited budget . You don't want to just say "no" to constituents asking for capital funding so here is some advice you can share. We will talk about ways to reduce project costs and find additional sources of funding. A panel of Alaskan funders will talk about what they are seeing in project funding plans and the future of their capacity to fund projects.

♦ [Learn More](#) Chris Kowalczewski: 907 747-0590 ckowalczewski@forakergroup.org

Presenter: Chris Kowalczewski, The Foraker Group

Panel Participants:

Diane Kaplan: Rasmuson Foundation

Jeff Jessee: Alaska Mental Health Trust Authority

Elizabeth Ripley: Mat-Su Health Foundation

Catering By: Abby's Kitchen



LUNCH & LEARN: TRIBAL SOVEREIGNTY AND CRIMINAL JURISDICTION

**Thursday, March 12th
12:00-12:45 in the Beltz
Free Lunch from
*Abbey's Kitchen!***

The problems of domestic violence, alcohol abuse, and sexual assault are pervasive in rural Alaska Native communities. National coverage of this epidemic has prompted calls for reform to give Alaska Natives additional sovereignty to combat these problems.

Come eat FREE LUNCH from Abby's Kitchen on March 12th from 12:00-12:45 in the Beltz and learn about what the Alaska State Legislature can do to help.

Samuel Gottstein, an Academic Law Fellow at the Clough Center for the Study of Constitutional Democracy, will discuss how granting limited criminal jurisdiction to Alaska Native communities would be cost-effective, avoid federal overreach, and make rural Alaska Native communities safer. Be sure to bring questions and an appetite!

Sponsored by: Senators Ellis, Gardner, Wielechowski

YOU ARE INVITED TO LUNCH & LEARN

MEET AND HEAR FROM ALASKAN TEACHERS THAT LOVE WORKING
WITH ALASKAN STUDENTS EVERY DAY!

JACOB BERA, NATIONAL BOARD CERTIFIED ART TEACHER
MARY JANIS, NATIONALLY RECOGNIZED KINDERGARTEN TEACHER
JENNIFER WAISANEN, NATIONAL BOARD CERTIFIED TEACHER
BOB WILLIAMS, NBCT & 2009 ALASKA TEACHER OF THE YEAR

the smartest kids in Alaska!

A world class education for every child.

FRIDAY, FEBRUARY 27
NOON
CAPITOL ROOM 106
FREE LUNCH PROVIDED!

SPONSORED BY SEN. CLICK BISHOP



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Book
only





Partners Reentry Center

You're invited to a Lunch & Learn Sponsored by Representatives Keller and LeDoux

When: Monday, February 23rd 2015

Time: 12:00 - 1:00pm

Where: Capitol 106

- Learn about the Partners Reentry Center's success with reentry
- Join us for a discussion on "**Reducing Recidivism in Alaska**" including:
 - How to rethink reducing recidivism
 - How our program is financially impactful
 - Getting a glimpse at who we are helping
 - See what is new in Reentry



Legislative Lunch & Learn

Arts and Humanities Enriching and Empowering Alaska Communities

NOON | Wednesday, January 28, 2015

Butrovich-Fahrenkamp Room, State Capitol

Brought to you by
The Alaska State Council on the Arts
Alaska Historical Society
Alaska Humanities Forum
Museums Alaska
Representative Muñoz

Senator McGuire invites you to

A Lunch and Learn Presentation

on Child Maltreatment in Alaska &
Translating Research into Action



by Alaska Children's Justice Act Task Force

Beltz Room 105, TSLOB

February 5, 2015

12 – 1 p.m.



Common Core Lunch n' Learn

This is an opportunity for all to come learn about the four pillars of Common Core:

- Standards
- Assessments
- Data Systems
- School Accountability

Representative Reinbold will be discussing how the Common Core impacts Alaska education.

Lunch is provided!

Please Join Us:
This Wednesday,
February 18
12:00-1:00 PM
State Capitol, Rm. 106



Distributed By: Representative Reinbold