

# THE ADVISOR



**SELECT COMMITTEE ON LEGISLATIVE ETHICS**

**APRIL 2019**

## Conflict of Interest Scenarios HB 44 (2018)-related Advisory Opinions approved March 28, 2019

For detailed answers, please consult the full text of Advisory Opinions 19-02, 19-04, and 19-05 at <http://www.legis.state.ak.us/search/ethics/>.

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### Advisory Opinion 19-02 Questions and brief summaries

**Statement of Facts:** For purposes of this opinion, we rely solely on the hypothetical facts included within [the] questions.

#### Sec. 24.60.990. Definitions.

- (a) In this chapter,
- (7) immediate family means
- (A) the spouse or domestic partner of the person; or
- (B) a parent, child, including a stepchild and an adopted 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.

**1. Should a legislator (with a conflict) declare a conflict on the record when the bill will harm the financial interest of the legislator or the legislator's immediate family?**

The answer may be yes or no depending on applicable facts in a particular matter. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

**2. Can a legislator (with a conflict) sponsor or co-sponsor a bill when the bill will harm the financial interest of the legislator or the legislator's immediate family?**

No, not if the bill will "substantially benefit or harm" the financial interests of a person who is a

member of the legislator's immediate family under AS 24.60.030(e)(3). See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

**3. During a public committee meeting, can a legislator (with a conflict) participate in discussion, debate the bill, advocate for the bill, and testify on the bill when the bill will harm the financial interests of the legislator or the legislator's immediate family?**

Yes, AS 24.60.030(e)(3) allows a legislator to discuss, debate, advocate, or testify on a matter where the legislator has a conflict of interest under AS 24.60.030(e)(3), "while participating in a public discussion or debate."

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## Advisory Opinion 19-02 questions and brief summaries

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### **4. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other committee members when the bill *will harm* the financial interests of the legislator or the legislator's immediate family?**

Generally the answer is no. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **5. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with other legislators (that are not on the committee), including legislators in the other body, when the bill *will harm* the financial interests of the legislator or the legislator's immediate family?**

No, although it may depend on applicable facts in each situation. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **6. Can a legislator (with a conflict) discuss or advocate for the bill during private meetings with constituents, or, generally, other citizens, when the bill *will harm* the financial interests of the legislator or the legislator's immediate family?**

Although the answer to this question may depend on the applicable facts in each instance, generally the answer is no. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **7. Can a legislator (with a conflict), during the public committee meeting on a bill that *will harm* the financial interests of the legislator or the legislator's immediate family:**

#### ***a. Offer amendments to the bill?***

No. As we found in AO 19-01, while the offer of an amendment might occur during public discussion and debate, it is nevertheless official action or official influence prohibited by AS 24.60.030(e)(3). See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

**"[F]inancial interest"** means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit [.] AS 24.60.990(a)(6)

#### ***b. Vote on amendments offered by others?***

Yes, the legislator may vote. The prohibitions in AS 24.60.030(e)(3), against taking or withholding official action or official influence in certain instances, are limited by the provision "except as provided in (g) of this section," which requires a legislator who has a conflict of interest to declare it "before voting on a question before a committee of the legislature ...." We found in AO 19-01 that the provision "except as provided in (g) of this section" is an exception to the prohibitions in AS 24.60.030(e)(3) that allows a legislator to vote on a question before a committee of the legislature even though the legislator has a related conflict of interest under AS 24.60.030(e)(3), so long as the legislator declares the conflict before voting.

#### ***c. Vote on the motion to move the bill from committee?***

Yes, for reasons explained in (b) of this question. A vote on a motion to move a bill from committee is a vote "on a question before a committee of the legislature."

#### ***d. Sign the committee report with a recommendation ("do pass," "do not pass," "amend")?***

Yes, for reasons explained in (b) of this question. As we advised in AO 19-01, signing the committee report is part of voting "on a question before a committee of legislature." Depending on applicable facts in a particular matter, it may also encompass other official action closely related to voting.

#### ***e. Sign the committee report "no recommendation"?***

Yes. See answer to (d) of this question.

### **8. According to Uniform Rule 24, committee reports are necessary to move a bill from committee and must be signed by a majority of the members of the committee. When a member has a conflict, and the bill *would harm* the financial interest of the legislator or the legislator's immediate family, would the member have to abstain from signing the report or sign the report "no recommendation" in order to comply with the law?**

No. We advised in AO 19-01 that signing a committee report, with or without a recommendation, is part of voting on a question before a committee of the legislature and therefore a member is not required to abstain from signing the report in order to comply with AS 24.60.030(e)(3). See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

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## Advisory Opinion 19-02 questions and brief summaries

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### **9. What constitutes "substantial harm" to a legislator or a legislator's immediate family under AS 24.60.030(e)(3)?**

The term "substantial harm" does not appear in AS 24.60.030(e)(3), or elsewhere in the Act. In order for a prohibition under AS 24.60.030(e)(3) to apply, the action or influence targeted by that provision must "substantially benefit or harm" the "financial interest" of a person under subparagraphs (A)-(D) of that paragraph, including "a member" of the legislators immediate family. For purposes of AS 24.60.030, "substantially benefit or harm" means "the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state."

### **10. Can a legislative committee sponsor a bill if the chairperson of that same committee is conflicted?**

Yes, if by conflicted you mean "has a conflict of interest under AS 24.60.030(e)(3)." However, the bill's sponsorship by the committee does not relieve the chairperson from compliance with the Act, including AS 24.60.030(e)(3) and AS 24.60.030(g).

See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **11. Can an office of the chairperson carry a committee bill if the chairperson is conflicted?**

No. Carrying a committee bill would require the chairperson's office staff to take official action as directed by the chairperson, and the chairperson's direction of staff would constitute official action.

See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **12. Can a legislator (with a conflict) request that Leg. Legal draft a blank sponsor bill on the conflicted subject matter?**

No. Requesting a legislative employee to draft a bill is an official action. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **13. Can a legislator (with a conflict) sponsor and/or draft amendments in committee or on the floor?**

No. Sponsoring or drafting an amendment, in a legislative committee or floor session or anywhere else, is an official action. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

### **14. Can a legislator (with a conflict) sponsor and/or vote on an amendment in committee, or on the floor, on the conflicted subject matter?**

If the conflict is under AS 24.60.030(e)(3) the answer is yes with respect to voting on an amendment or other legislation in a

Although "official action" is not defined in the Act, we have previously found the meaning of "official action" to be broad enough to include "legislative action," a term defined in AS 24.60.990(a)(10) as "conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction."

legislative committee meeting or floor session, because there is an exception under AS 24.60.030(e)(3) for voting. However, the answer is no with respect to sponsoring or drafting an amendment, in a legislative committee or floor session or anywhere else, because that is an official action. As noted throughout this opinion and AO 19-01, there is no exception in AS 24.60.030(e)(3) allowing a legislator who has a conflict of interest under that section to take official action other than participating in a public discussion or debate or voting.

### **15. Can a legislator (with a conflict) request that Leg. Legal draft amendments before there has been a committee or floor session about the conflicted subject matter and before the legislator has been able to give public notice of the conflict?**

No, based on our response to questions (12)-(14) of this opinion.

### **16. Can a legislator (with a conflict) hold a meeting in their office with a group that represents the topic of the conflict?**

Based on available facts and our answer to question 6 in this opinion, the answer to this question is no. Unless the applicable facts in a particular instance indicate otherwise, we will presume, as we do here, that a meeting like the one you have described is a private meeting.

See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for details.

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## Advisory Opinion 19-02 questions and brief summaries

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**17. Is it possible for a legislator to have a conflict one year (say 2017), not have a conflict next year (in 2018), then have a conflict again (in 2019)? For example: Take a self-employed commercial guide who makes over \$10,000 guiding in 2017, doesn't make any money guiding in 2018, then makes over \$10,000 in 2019. The guide would only have to declare a conflict for the times where they made over \$10,000 in the preceding 12 months, correct?**

Maybe yes, maybe no. If the legislator is self-employed, as in your example, AS 24.60.030(e)(3)(A), (B), and (C) do not apply. However, that still leaves AS 24.60.030(e)(3)(D), which prohibits taking or withholding official action or exerting official influence that could substantially benefit or harm the financial interests of "a person from whom the legislator or a member of the legislator's immediate family has, in the immediately preceding 12-month period, received more than \$10,000 of income." It is important to note that a 12-month period and a calendar year are two different things; if the 12-month period immediately preceding the official action being considered were to straddle two calendar years, then under your facts there may be a conflict under AS 24.60.030(e)(3)(D). It is conceivable that a legislator who is self-employed as a guide or in some other line of work might earn over \$10,000 in a 12-month period from one person. If so, and if the 12-month period immediately precedes the prospective taking of an official action or exerting of official influence, the prohibition in AS 24.60.030(e)(3)(D) may apply. However, if 2018 is the 12-month period at issue, there is no conflict under AS 24.60.030(e)(3)(D) because, under the facts included with your question, there was no income in that 12-month period.

**18. Does a legislator have to declare a conflict if they think they'll make over \$10,000 in the upcoming year (for example: the summer of 2019), if they are reviewing 2019 legislation directly related to the activity the legislator anticipates earning the money (over \$10,000) from?**

No, absent additional facts, and based on our responses to question (8) of this opinion, the legislator in the circumstances you describe would not have to declare a conflict of interest under AS 24.60.030(e)(3), because only the legislator's financial interest would benefit and therefore the legislator would not have a conflict of interest under AS 24.60.030(e)(3). However, nothing in the Act would prohibit the legislator from mentioning the potential benefit to a financial interest, if only to forestall concerns that may arise if someone else knows of that potential benefit and misperceives the legislator's conduct as a violation of the Act.

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Learn more about the Select Committee on Legislative Ethics at <http://ethics.akleg.gov/>.

### Contact the Select Committee on Legislative Ethics

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## Advisory Opinion 19-04 questions and brief summaries

**Statement of Facts:** *You are a legislator, you are also employed part time, periodically, by an employer outside of the legislature from whom you have received less than \$10,000 in the immediately preceding 12-month period. The meeting described in the questions presented would be held in a legislative committee room, a legislative conference room, or the office of an individual legislator.*

1. Does AS 24.60.030(e)(3) prohibit a legislator who works part time for an employer who paid the legislator less than \$10,000 in the immediately preceding 12-month period from meeting privately, as a legislator, with that employer?

Because you have not received more than \$10,000 of income from the employer in the immediately preceding 12-month period, the conflict of interest described under AS 24.60.030(e)(3)(D) does not apply. However, because you remain employed by the employer, the conflict of interest under AS 24.60.030(e)(3)(B) does apply, but only to taking or withholding of official action or exerting official influence by you that could substantially benefit or harm the financial interest of your employer. If there is a piece of legislation that would substantially benefit or harm the financial interest of your employer, then AS 24.60.030(e)(3) prohibits you from taking or withholding official action or exerting official influence in connection with that legislation except for participating in a public discussion or debate or voting as provided in AS 24.60.030(g). Therefore, you would be prohibited from discussing that legislation with your employer privately.

2. Does the Act permit a legislator who has a conflict of interest under AS 24.60.030(e) to meet with a person, including a constituent, a group, or the employer described in question (1), in a legislative office or conference room, regarding the matter in which the legislator has the conflict of interest, if the legislator posts a public notice of the meeting and the meeting is open to the public?

We have advised previously that AS 24.60.030(e)(3) contains an exception allowing participation in public discussion or debate. Under the facts provided, a legislator with a conflict under (e) would arrange or agree to meet with someone about the matter in which the legislator has the conflict of interest, and would post a public notice of the meeting and allow members of the public to attend. Although this might constitute a public meeting, the legislator's conduct leading up to the meeting would constitute the taking of official action prohibited by (e)(3). See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for more information.

## Advisory Opinion 19-05 question and brief summary

**Statement of Facts:** *You are a legislator, and you are also employed as a residential property appraiser. Your spouse is employed by a financial institution as a mortgage loan originator. You are the sponsor of HB 76, a bill that if enacted into law, would adopt the 2018 International Residential Code (IRC) as the state residential code. The bill would make the new state residential code the minimum standard for residential construction in the state, however, it would allow the Alaska Housing Finance Corporation (AHFC) to replace the new state residential code by adopting either a later edition of the IRC or another nationally recognized code, in place of the 2018 IRC, as the minimum standard for residential construction in the state. Regardless of whether the new state residential code is based on the 2018 IRC or another code substituted later by the AHFC, HB 76 requires municipal building codes to meet or exceed the prevailing standards under a new state residential code.*

**Does the Legislative Ethics Act (the Act) permit a legislator, employed as a residential property appraiser and married to a spouse employed as a mortgage loan originator, to take official action or exert official influence, including sponsoring legislation regarding HB 76 or a similar measure relating to building codes?**

For the reasons stated [in the advisory opinion], and based on the facts presented, the committee finds that you do not have a conflict of interest under AS 24.60.030(e)(3), and therefore AS 24.60.030(e)(3) does not prohibit you from taking or withholding official action or exerting official influence, including sponsoring legislation, regarding HB 76 or a similar measure relating to building codes. See the full advisory opinion at <http://www.legis.state.ak.us/search/ethics/> for additional details.