

THE ADVISOR



SELECT COMMITTEE ON LEGISLATIVE ETHICS

SEPTEMBER 2019

Approved August 14, 2019 **Advisory Opinion 19-03**

The Select Committee on Legislative Ethics adopted Advisory Opinion 19-03 at the August 14, 2019 committee meeting. Full text of the Advisory Opinion can also be found at <http://www.legis.state.ak.us/search/ethics/>.

Question Presented

Does the Legislative Ethics Act (the Act) permit a legislator to include, in the legislator's regularly scheduled legislative newsletter, information about a candidate forum?¹

You are a legislator and therefore covered by the Legislative Ethics Act (the Act). You have requested an advisory opinion concerning facts and circumstances that you have related.

Statement of Facts

In answering this question the committee relies on the facts you provided with your request. Those facts are as follows:

1. The forum is hosted by a non-partisan organization.
2. The legislator publishing the newsletter (A) is not a featured candidate at the candidate forum; (B) is not using the newsletter to advocate for a particular candidate, pack attendance² at the forum, or influence the outcome of the election in which the featured candidate is running; and (C) desires to include information about the forum in the newsletter in order to fulfill what the legislator perceives is an obligation to inform constituents of civic matters.

Discussion

The facts provided describe a legislator not using a newsletter to pack attendance at a forum. From this, we understand your question to be one relating to a future

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¹ For purposes of this opinion, we understand "candidate forum" to mean an event at which one or more candidates for election to political office appear, make a presentation, and perhaps field questions, although not necessarily in a debate format.

² For purposes of this opinion, we understand "pack attendance" to mean an effort to encourage attendance at the event by certain persons – perhaps based on their real or perceived affiliations, beliefs, and behaviors – for a partisan political purpose and not merely to fill available seats.

Committee Members

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Skip Cook

Deb Fancher

Lee Holmes

Sen John Coghill

Sen Tom Begich

Rep Louise Stutes

Rep DeLena Johnson

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candidate forum. Therefore, it is likely that, at a minimum, the public would perceive the information published in the legislative newsletter as informing constituents about an opportunity to attend an upcoming candidate forum. It is conceivable that the public could also perceive the forum or the presentation of information in the newsletter as partisan political activity, depending on how the information is presented and what additional information is provided.

AS 24.60.030(a) provides, in part, that 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

(J) *a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate* or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

(Emphasis added). The Act does not define "partisan" or "non-partisan," or "partisan political activity," but we do not need to define those terms in order to answer the question posed. So long as the information published does not expressly advocate for the election or defeat of a candidate, and is not clearly only for the private benefit of a legislator or legislative employee, the exception in (a)(2)(J) would permit a legislator to include the information in a legislative newsletter to the legislator's constituents, even if doing so amounts to partisan political activity, or the forum itself is a partisan political activity.³

However, other limitations in the Act may apply. Under AS 24.60.030(a)(5), a legislator or legislative employee may not use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning. Therefore, even if allowable under (a)(2)(J), publication of the information in the newsletter would be prohibited if the forum is a political fund raising or campaigning event. Also, legislators and legislative employees are barred, under AS 24.60.031, from soliciting contributions or promises or pledges to contribute to a political campaign during a 90 day period immediately before an election, except in certain limited circumstances, on a day when a house of the legislature is in session.⁴ Finally, as we advised in AO 13-03 and AO 15-03, a legislator is permitted by AS 24.60.030(a)(2)(J), to use

legislative assets and resources to send legislative newsletters, but only to constituents.

Conclusion

For the reasons stated above and our understanding of the facts provided, the committee finds that the Legislative Ethics Act (the Act) permits a legislator to include, in the legislator's regularly scheduled legislative newsletter to the legislator's constituents, information about a candidate forum, so long as

1. the information published (A) does not expressly advocate for the election or defeat of a candidate; and (B) is not clearly only for the private benefit of a legislator or legislative employee;⁵ and

2. the candidate forum or the information published about the forum in the newsletter does not constitute (A) political fund raising or campaigning barred by AS 24.60.030(a)(5); or (B) a solicitation barred by AS 24.60.031.

Compliance with the Act is the individual responsibility of each person to whom it applies.⁶ In determining whether future conduct like that described in the facts provided violates the Act, the committee will consider the applicable facts in each instance. An appearance of ethical impropriety would be a factor the committee would consider.⁷

Adopted by the Select Committee on Legislative Ethics on August 14, 2019.

Members present and concurring in this opinion were:

Joyce Anderson, Chair
Representative Louise Stutes
Representative DeLena Johnson
Senator Elvi Gray-Jackson
Senator John Coghill
Dennis "Skip" Cook, public member
H. Conner Thomas, public member
Lee Holmes, public member
Deborah Fancher, public member

Members present who abstained from voting on this opinion were:

Senator Tom Begich

⁶ AS 24.60.010(7).

⁷ AO 18-05

³ See paragraph 4 of our conclusion in AO 17-03.

⁴ See AO 07-06.

⁵ AS 24.60.030(a)(2) and 24.60.030(a)(2)(J).

Reminder: Disclosures required for associations beginning after February 15, 2019

Board memberships (within 30 days of the beginning of the association)

Examples

- A legislator or legislative employee is elected to their Condo Association Board on August 12, 2019.
- A legislator or legislative employee begins a term on a non-profit local arts advisory board on July 30, 2019.
- A legislator or legislative employee is appointed to a national education board of directors on July 16, 2019.

Close economic associations: Both parties must file a disclosure within 30 days of the beginning of the association.

Examples

- A legislator purchases a piece of artwork worth \$250 or more from a legislative employee on April 15, 2019.

Disclosures must be filed within 30 days of the beginning of an association regardless of whether it's during session or during the interim.

The following types of associations must be filed within 60 days of the beginning of the association.

- Gift of Travel and Hospitality for Legislative Matters \$250 or more - AS 24.60.080(c)(4)
- Gift of Travel and Hospitality for Legislative Matters \$250 or more - Family Member - AS 24.60.080(i)
- Gift Related to Sanctioned Charity Event - AS 24.60.080(c)(10)
- Gift Related to Sanctioned Charity Event - Family Member - AS 24.60.080(c)(10)

When filing travel and/or hospitality disclosures, provide adequate information for the public by:

- Avoiding the use of acronyms, such as NCSL.
- Giving complete information about the donor.
- Describing the topics discussed, forums attended, and/or other pertinent agenda items.

The following types of associations must be filed within 30 days of the beginning of the association.

- Membership on a Board of Directors - AS 24.60.030(f)
- Participation in State Benefit and Loan Programs - AS 24.60.050(c)(d)
- Representation before a State Agency - AS 24.60.100
- Interest in State Contracts, Leases, or Grants - AS 24.60.040
NOTE: A legislator or employee, or a family member, or a public member of the Ethics Committee who participates in a state contract, lease or grant with an annual value of \$5000 or more, must disclose. Reporting applies to interests begun, acquired or renegotiated. Please see the law for details.
- Close Economic Association with other than a lobbyist spouse or lobbyist domestic partner - AS 24.60.070
- Close Economic Association with Lobbyist Spouse or Domestic Partner - AS 24.60.070(d) (NOTE: Changes to the list of lobbyist contracts must be reported within 48 hours.)
- Gift of Legal Services Related to Legislative Matters - AS 24.60.080(c)(8)
- Gift Not Connected to Legislative Status \$250 or more - Confidential Disclosure - AS 24.60.080(c)(6)

File your disclosures online. It's easy!

1. Go to <http://intranet.akleg.gov/> and click on "File an Ethics Disclosure."
2. Enter your credentials (your computer log-in).
3. Click on the type of disclosure you want to file.
4. Complete the form using drop down menus when available.
 - Remember to provide complete information about the donor and a description of the topics discussed, forums attended, or other pertinent information.
4. Check your completed disclosure for accuracy.
5. Submit. So easy!

Fundraising restrictions during regular and special session

Sec. 24.60.031. Restrictions on fund raising.

- (a) A legislative employee may not
- (1) **on a day when either house of the legislature is in regular or special session**, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for state or municipal office; however, a legislative employee may, except in the capital city or in the municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city, solicit or accept a contribution, promise, or pledge for a campaign for state or municipal office that occurs during the 90 days immediately preceding the election for that office; or
 - (2) accept money from an event held **on a day when either house of the legislature is in regular or special session** if a substantial purpose of the event is to raise money on behalf of the legislative employee for political purposes; however, this paragraph does not prohibit a legislative employee from accepting money from an event held in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city during the 90 days immediately preceding an election for state or municipal public office in which the legislative employee is a candidate.
- (b) A legislator may not
- (1) **on a day when either house of the legislature is in regular or special session**, solicit or accept a contribution or a promise or pledge to make a contribution
 - (A) for the legislator's own campaign for state or municipal public office, unless the solicitation, acceptance, promise, or pledge occurs in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city during the 90 days immediately preceding the election in which the legislator is a candidate;
 - (B) for another candidate in an election for municipal, state, or federal office;
 - (C) to influence a state ballot proposition or question; or
 - (D) for a political party;
 - (2) accept money from an event held **on a day when either house of the legislature is in regular or special session** if a substantial purpose of the event is to raise money on behalf of the legislator's campaign for state or municipal public office; however, this paragraph does not prohibit a legislator from accepting money from an event held in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city during the 90 days immediately preceding a state or municipal election in which the legislator is a candidate; or
 - (3) in a campaign for state or municipal office, expend money that was raised **on a day when either house of the legislature was in a legislative session** by or on behalf of a legislator under a declaration of candidacy or a general letter of intent to become a candidate for public office; however, this paragraph does not apply to money raised in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city during the 90 days immediately preceding an election in which the legislator is a candidate.
- (c) In this section, "contribution" has the meaning given in AS 15.13.400. (§ 4 ch 127 SLA 1992; am § 27 ch 48 SLA 1996; am § 19 ch 74 SLA 1998; am §§ 2, 3 ch 106 SLA 2008)

The Select Committee on Legislative Ethics welcomes alternate public member

On August 7, 2019, Chief Justice Joel Bolger of the Alaska Supreme Court selected Patrick D. FitzGerald to serve as alternate public member of the Ethics Committee. Alternate public members are subject to ratification by the Legislature.

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

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