

ALASKA STATE LEGISLATURE



October 30, 2019

The Honorable Kevin G. Clarkson
Alaska Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501

Dear Attorney General Clarkson,

The legislature and the public received notice on October 1 of proposed regulations that would enable a substantial departure from Alaska's existing framework of executive branch ethics policies. The regulation promulgation would authorize state-employed attorneys to defend the governor, lieutenant governor, and attorney general against allegations of personal violations of the Alaska Executive Branch Ethics Act and further, would shield information received by the Department of Law about those complaints from public disclosure without qualification. In the instance of legal defense of the governor or lieutenant governor, the attorney general would determine whether—in the attorney general's *sole discretion*—use of the state resources toward the personal representation would serve the public interest; for defense of the attorney general, the governor would be given the *sole discretion* for that determination.

We oppose adoption of these regulations and urge you to immediately reverse course in this regard.

Our nonpartisan Legislative Legal Division has produced a comprehensive memo detailing many likely defects with the planned regulation changes. We include that memo as an attachment to this letter. As our attorneys indicate, these regulations appear to violate multiple principles of constitutional law and contravene decisions of the Alaska Supreme Court; would conflict with governing statutory provisions of the Executive Branch Ethics Act in both substance and application; and could result in Department of Law attorneys' violations of their professional ethical obligations.

The proposed regulations seem to deviate from the scope of the law so significantly as to overstep the legislative branch's lawmaking authority—in violation of well-established constitutional principles of separation of powers.

Our legal counsel's thorough legal analysis appears sound. Moreover, as the memo now explains the legal concerns over the propriety of the proposed regulations, we encourage your thoughtful

consideration of its content to avoid embroiling the State in foreseeable, protracted, and costly litigation on the matter.

Notably, 9 AAC 52.040 already appears to allow *all* executive branch employees to seek reimbursement of reasonable expenses of *private representation* incurred for a *successful* defense of an Ethics Act violation, or even pre-payment with a promise to repay if not exonerated. Should those regulations be insufficient for the needs perceived, we invite an attempted amendment of the law through the legitimate avenues available to the executive branch—such as requesting the introduction of actual legislation that would be subject to a methodical process providing for legislative review and increased public scrutiny.

We ask you to end this rule-making pursuit. This letter constitutes each signee's formal opposition to your proposed regulations before the November 4 comment deadline; a copy of the letter will be sent by electronic mail to law.regulations.comments@alaska.gov as provided in the online public notice.

Sincerely,



Senator Bill Wielechowski



Representative Andy Josephson



Representative Gabrielle LeDoux

Attachment: As stated