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January 26, 1993

663-93-0250

465-3600

Procurement authority to
hire investment advisors
and consultants

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I. ISSUE

You have asked whether AS 36.30.850(b)(16) exempts the Alaska Permanent Fund Corporation from the procurement requirements of AS 36.30, when the corporation retains certain advisory, consulting, auditing, legal, and investment information services.

For the reasons stated below, we believe that those types of service contracts are not exempt. Our analysis follows.

II. ANALYSIS

In your December 10, 1992 memorandum to Attorney General Cole, you inquired whether AS 36.30.850(b)(16) exempts the following types of contracts from the requirements of AS 36.30, the State Procurement Code:

1. Contracts with investment advisors to evaluate the capabilities of outside investment management firms and to advise the board concerning the board's selection of firms.
2. Contracts with investment consultants to measure the performance of outside investment management firms and to advise the board concerning the future retention of such firms.
3. Contracts with investment advisors to advise the board concerning the allocation of assets between major investment categories and management styles, and the future selection or retention of investment management firms.
4. Contracts with independent auditors to review the financial statements of the Permanent Fund and to render opinions required by AS 37.13.170.

5. Contracts with independent legal counsel to advise the board concerning the appropriate and most favorable legal structure of real estate acquisitions.
6. Contracts with financial network systems to provide real-time market information and financial news critical to the effective management of fixed income investments and the daily monitoring of outside investment management performance.

The board's power to contract with firms for professional services is broad. AS 37.13.120(f) states that the board may enter into and enforce "all contracts necessary, convenient or desirable for purposes of the corporation." The question presented here is whether the board must follow the requirements in AS 36.30, the state procurement code, when contracting with firms for the above services.

AS 36.30.850(b)(16) provides that the following type of contract is exempt from the requirements of AS 36.30, the state procurement code:

(16) a contract that is a delegation, in whole or in part, of investment powers or fiduciary duties of the Board of Trustees of the Alaska Permanent Fund Corporation under AS 37.13.

The language in AS 36.30.850(b)(16) is clear and unambiguous: only those contracts that delegate the board's investment powers or fiduciary duties, such as contracts for investment firms to buy or sell stocks or manage property, are exempt. In contrast, where the purpose of the contract is to provide advice and recommendations to the board and no board powers or duties are actually delegated to the firm, the board is required to follow the requirements in AS 36.30. All of the types of contracts listed in your memorandum are of the latter type; although the contracts relate to the board's general investment powers, none of them actually delegate board powers or duties to the investment advisors or consultants.

Thus, we conclude that the exemption in AS 36.30.850(b)(16) does not apply to the types of contracts described in your memorandum.

TK:tg