

Municipality of Anchorage



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BOARD OF ETHICS

ADVISORY OPINION 2007-3

On September 10, 2007 the Ethics Board received by email a Request for Advisory Opinion from Barbara E. Gruenstein, the Municipal Clerk of Anchorage, and requesting that the Board expedite its decision-making so that she might receive the guidance requested by Friday, September 14, 2007. Consequently, the Board met in a special meeting at 3:00 pm, after giving appropriate public notice, to consider the Request for Advisory Opinion.

Factual Background

The “Mayor’s Charity Ball” is an annual charity event organized by a charitable non-profit organization which is not an enterprise or other division of municipal government. That is, each year the 501(c)3 non-profit corporation (Tax ID 55-0880420) organizes and hosts the event to assist charitable organizations, and each mayor, in turn, serves a ceremonial role at the event, on behalf of our community. (<http://www.mayors.charity.ball.org/>)

This year, the event will be held on October 13, 2007 and seating is \$150.00 per person. The \$150.00 includes dinner, with the difference between the cost of the banquet and the table seating sales going to support charity (along with the proceeds from silent and live auctions and fundraising during the event). In addition to dinner, the event also includes entertainment, dancing, socializing, the opportunity to be introduced as a civic leader, and the opportunity for the table sponsor to meet with invited guests at the table in a social setting over several hours.

Many organizations in Anchorage sponsor tables at the event and Assembly members have been invited to attend as a guest of the sponsor. (See Sponsor List at Mayor’s Ball website)

Specific Questions for Ethics Board

The Municipal Clerk requested an Advisory Opinion from the Board on the following questions:

1. “Assembly Members may be invited by Municipal Light and Power (ML&P) to accept seats at tables sponsored by ML&P. Please advise and include recommended disclosure in the advisory.”

2. “Assembly members may be invited by one or more private business entities or individuals to accept seats at tables sponsored by private sector participants in the event. Please advise and include recommended disclosure in the advisory.”

DISCUSSION

The section of the Ethics Code dealing with the solicitation or acceptance of gifts by elected officials is AMC 1.15.035.O which is itself divided into 5 sections, the first 3 being pertinent to this discussion. First, not all “gifts” are subject to the Code’s restrictions:

An elected official may not solicit or accept a gift if it can reasonably be inferred that the gift is intended to influence the elected official’s independence of judgment in the exercise of official duties.

1.15.035.O

Therefore, if the gift solicited or accepted can not be reasonably inferred as intended to influence the official’s independence of judgment in the exercise of official duties, the solicitation or acceptance of that particular gift is not covered by the Code.

A “gift” is defined in the following subsection as:

- a. Money, an item of value, service, loan, travel or hospitality accommodation, entertainment, or employment; and
- b. Provided to an elected official, or to another person or entity designated by the elected official, for less than full value.

1.15.035.O.1

Subsections 2 and 3 of AMC 1.15.035(O) describe certain exceptions to the restriction contained in AMC 1.15.035(O). AMC 1.15.035.O.2 includes a presumption that food or beverage for immediate consumption is not given in violation of the gift accepting prohibition (unless rebutted by other factors) and AMC 1.15.035.O.3 includes a listing of allowable gifts, and respective disclosure requirements.

Because the Municipal Clerk’s Request for Advisory Opinion is the first instance for the Board to consider the issue of what a ticket to an event like the Mayor’s Ball is in

the context of the Code, several preliminary decisions must first be made before the Board can render its Opinion on the questions posed by the Municipal Clerk.

First, under AMC 1.15.035.O, a ticket to a social event such as the Mayor's Ball is clearly a gift subject to that section's restrictions. It is an item of value, here worth \$150.00. If an elected official wanted to attend the event without being invited as a guest of a third party, the official would have to pay the \$150.00 out of his or her own pocket. Being invited as a guest saves the official that expense. The ticket is being provided to the official at less than its face value.

Second, although it is true that dinner is provided at the event, dinner is not the purpose of the event. The event is a night involving dinner, entertainment, socializing and being involved in (and being seen as being involved in) a community effort to help other members of the community. It is the Board's determination that the gifting of a ticket to such an event is more than simply providing food and beverage as contemplated in AMC 1.15.035.O.2 and thus that subsection is inapplicable to the questions submitted to the Board by the Municipal Clerk in her Request for Advisory Opinion. The ticket should be viewed as providing admittance to the event rather than being viewed as providing a single one of the several benefits included in the event.

Third, no exception listed in AMC 1.15.035.O.3 is applicable to the questions submitted by the Municipal Clerk in her Request for Advisory Opinion.

Determination

Since no exception to the restriction on an elected official soliciting or accepting a gift exists, and the Board has found that a ticket to the Mayor's Ball, if accepted by an elected official would be a gift, the question turns to whether an elected official is, under the circumstances, restricted from accepting the ticket.

The test quoted above can be stated in the form of a question:

Could a reasonable person infer that (gift giver)'s gift of a \$150.00 ticket to the Mayor's Ball to an elected official where the elected official would sit at the (Gift Giver's) table is an attempt to influence the exercise of the official's independence of judgment?

The language of AMC 1.15.035.O does not require certainty. Gifts are prohibited if **"it can be reasonably inferred"** that the gift is being given to influence the elected official's independence of judgment. The Board finds that the term "reasonably inferred" has the meaning drawn from Webster's Third New International Dictionary for the word "infer", that is, "to derive by reasoning or implication : conclude from facts or premises." The Board interprets the language of AMC 1.15.035.O to mean that the reasonable

inferences arising from the gift giving will be tested from the viewpoint of a reasonable member of the general public of the Municipality of Anchorage.

The Board determines the factors that a reasonable person would take into account in drawing an inference under the scenario as posited by the Municipal Clerk are:

1. The value of the gift
2. The fact that the elected official would be sitting at the gift giver's table, thereby giving the gift giver and his other guests substantial access to the elected official
3. The elected official being provided a free opportunity for substantial exposure in a quite positive public event.

The Board determined that a gift of a \$150.00 ticket to a social event is a gift under AMC 1.15.035.O. The fact that the event was to a charity auction as opposed to, say, tickets to a sporting event is of little moment. Both instances involve gifts which involve admission to an event that the elected official would not otherwise have attended unless he or she would have paid for admission. The value of the ticket to the event was considered by the majority of the Board to be sufficient to represent more than nominal expense. The \$150.00 amount is 3 times the limits allowed for gifts given to Municipal employees [See, AMC 1.15.025.H.2 (gifts to municipal employees worth \$50.00 or less presumed not to be intended to influence municipal employee's independent judgment in exercise of official duties)]; and Anchorage School District Employees [See, AMC 1.15.035.O.3.g (school district employee may accept gift of "nominal value" from student, parent, parent group or community organization, but must disclose gifts with value in excess of \$50.00)] Under the specific facts encompassed in the questions submitted by the Municipal Clerk, the Board determines that a \$150.00 ticket to an event given to an elected official is a gift, regardless of the non-profit nature of the event.

The second factor was judged important by the majority of the Board because events like the Mayor's Ball last several hours and provide opportunities for contact between the gift giver and an elected official under convivial conditions not experienced by members of the general public. The gift giver is the elected official's "host," potential wine pourer, entertainer and sponsor. He or she has the opportunity to get to know, or expand his or her relationship with the elected official in a manner far beyond office or group meetings, conversations in a hall outside of the Assembly Room, on the telephone or by the internet that almost all other members of the general public experience. The disparity in the quality of the contact and the relationship building opportunity is obvious to any observer.

Finally, a Municipality of Anchorage elected official at, particularly, the Mayor's Ball will by protocol be publicly introduced at the beginning of the festivities; providing the

official a valuable benefit of being seen by a large number of members of the general public, many very civic minded; under flattering conditions. This opportunity if not golden, is at least valuable to any official who might again run for office from both an image and potential fund raising perspective. During the introduction the attention of those in attendance will be drawn to the elected official and it is probable that some in attendance will note who the table sponsor is.

Because of the weight of the combined factors described above, a majority of the Board finds that a reasonable person could infer that a ticket given to an Assembly member under the circumstances described in the Municipal Clerk's Request would be given as an attempt to influence the Assembly Member's independence of judgment

It is the majority of the Board's opinion that Assembly Members may not accept gifted tickets to the Mayor's Ball. The Board also finds that the fact that, in Question 1, the Gift Giver is posited as ML&P makes no difference. Although ML&P is a Municipality Enterprise, its budget is still voted on and approved by Assembly members, and the development of a better than normal relationship could enhance ML&P's interests. Because AMC 1.15.035.O.3's various exceptions to the section's outright prohibition against accepting gifts does not include an exception allowing for acceptance of tickets to the Mayor's Ball under the circumstances described in the Request for Advisory Opinion, no gift disclosure can be made to allow for the acceptance of a Mayor's Ball ticket by an Assembly Member.

Respectfully submitted,

Municipality of Anchorage Board of Ethics