

**Municipality of Anchorage
Board of Ethics**

October 19, 2007

RE: Advisory Opinion 2007-4

Please be advised this is the Board of Ethics Advisory Opinion 2007-4. Under AMC 1.15.080(A), this Opinion is confidential unless confidentiality is waived by you. In issuing this opinion, we have relied solely on the facts and information presented to us by you, in letters dated August 5, 7 and September 3. We have not undertaken an independent investigation of such information. This opinion is limited to the facts presented in those letters. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Summary of Opinion

We are writing in response to your request for an advisory opinion regarding a potential conflict of interest related to your office overseeing matters that involve business partners of yours. Specifically, you asked whether the business relationship you have with certain individuals creates a conflict of interest that precludes you from working on matters for the Municipality that involve these individuals. We find that no conflict of interest exists.

Further, you requested our opinion on the “approach” you took by ceasing your involvement in these issues and assigning other staff members to handle the issues related to your business partners. We comment further on your approach below.

Factual Background

There are two circumstances that the Board of Ethics has been apprised of, one involving an attorney who represents a municipal entity and one involving an individual who is a minority owner in another business. In both instances you are business partners with each of these individuals in an unrelated business in another state. Both entities have approached the Municipality on matters that are unrelated to the business in which you have an interest with these individuals. However, due to that relationship you have decided that it is best that you not participate in any further Municipal discussions on the matters that involve these individuals. You have assigned staff members to cover these issues.

Specific Questions for Ethics Board

You have requested an Advisory Opinion from the Board on whether a conflict of interest in fact exists and whether your approach of assigning other staff members to handle these matters is appropriate.

Discussion

The section of the Ethic Code that covers potential for conflict of interests presented by a financial or private interest states:

The potential for conflict of interest presented by a financial or private interest held byshall be disclosed prior to action to the Ethics Board for determination and management of the potential for conflict of interest under the factors of 1.15.025B.1.

We find that you have complied with this provision by disclosing to the Board your relationship in the above mentioned individuals prior to acting on any matter that they presented to the Municipality.

The Board has considered the factors of 1.15.025B.1 in determining whether a conflict of interest exists for you in the above described business relationships. Specifically, the factors are as follows:

- a. Whether the financial or private interest held by the employee or a family member is a substantial part of the official action under consideration;
- b. Whether the financial or private interest varies directly and substantially with the outcome of the official action;
- c. Whether the financial or private interest is significant monetarily;
- d. Whether the public disclosure requirements applicable to municipal employees under this chapter have been fully met;
- e. Whether public disclosure of the municipal employee's financial or private interest and management of the potential for conflict of interest are sufficient to maintain the integrity of the decision making process.

AMC 1.15.025B.1.

Under factor (a) the question is whether the financial or private interest held by you in the business relationship with these individuals is a substantial part of the official action under consideration. Based on the information you have provided to the Board, we have determined that the financial interest you have in another state with these individuals is

not a substantial part of any official action under consideration by the Municipality of Anchorage.

Under factor (b) the question presented is whether the financial or private interest varies directly and substantially with the outcome of the official action. Based on the information you have provided to the Board, we have determined that the financial interest you have in an out-of-state business will not vary directly or substantially with the outcome of any official action regarding the two entities.

Under factor (c) the question presented is whether the financial or private interest is significant monetarily. Based on the information you have provided to the Board, we have no way of determining the monetary significance of your out-of-state business, but since there is no link between it and any official Municipal action we do not find it necessary to determine the monetary significance.

Under factor (d) the question is whether the public disclosure requirements applicable to you under this chapter have been fully met. The Board finds that since there is no conflict of interest there is no applicable disclosure requirement.

Under factor (e) the question is whether public disclosure of your financial or private interest and management of the potential for conflict of interest are sufficient to maintain the integrity of the decision making process. While the Board has determined that no actual conflict of interest exists, we think it is still wise that you decided to remove yourself from the any decision related to the matters your business partners are involved in with the Municipality.

You asked whether we agreed with your approach on assigning the handling of these particular matters to others within your office. We do have one comment regarding the specific measures taken to manage the potential for conflict. As mentioned above in one case you have assigned one employee to cover an issue, and you have assigned another to handle the other. **In our view, the City Manager seems like the more appropriate office to refer matters where a possible conflict may exist, because the City Manager is confirmed by the Assembly and hired on the basis of professional qualifications, whereas the Chief of Staff is more beholden to the Mayor and therefore may not handle possible conflict situations as well as the City Manager. Of course we are not apprised of the other considerations that have gone into determining who would be the best qualified to handle a particular issue, so in a particular case it may make most sense for the Chief of Staff to oversee a particular issue.**

Determination

We find that you have complied with AMC 1.15.025B by disclosing to the Board your business relationship with certain individuals prior to acting on any matter that they presented to the Municipality.

Further the Board has reviewed the factors of AMC 1.15.025B.1 and determined that in the two instances you presented to us regarding your business relationship with these two individuals in an out-of-state enterprise, there is no conflict of interest with the matters these individuals are now approaching the Municipality.

Board of Ethics