

**Municipality of Anchorage  
Board of Ethics**

April 21, 2008

RE: Advisory Opinion 2008-4

**Confidential**

This opinion responds to your Request for Advisory Opinion dated February 27, 2008. The Board of Ethics will publish a form of this opinion as Advisory Opinion 2008-4,<sup>1</sup> but this version is and will remain confidential, unless you choose to waive its confidentiality.<sup>2</sup>

In issuing this opinion, the Board relied solely on the facts and information that you presented to us. We have not undertaken any investigations related to your Request, nor have we attempted to verify the accuracy of the representations contained within it. If material facts have not been disclosed, or have been misrepresented, this opinion is without force or effect.<sup>3</sup>

The advice contained in this opinion is limited to the particular situation described in your Request.<sup>4</sup>

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<sup>1</sup> See AMC 1.15.080 *Advisory opinions*:

C. To promote preventive instruction and advice, the board shall publish on the municipal website through the municipal clerk, advisory opinions in a generic form to allow maximum clarity on context, issue, analysis, and decision. The board shall make sufficient deletions to prevent disclosure of the persons whose identities are confidential under 1.15.080A. Postings shall be made within 14 work days of issuance by the board.

<sup>2</sup> See AMC 1.15.080A.2 (“A request for advice under 1.15.080A is confidential, unless confidentiality is waived by the person requesting an advisory opinion.”).

<sup>3</sup> See AMC 1.15.080A.1:

In any later proceeding involving the inquirer, the inquirer is entitled to rely on the advice of the board, and may not be sanctioned for acting in compliance with the board’s advice, so long as the facts remain substantially unchanged from those represented to the board in the inquiry.

(emphasis added).

<sup>4</sup> See AMC 1.15.080A:

A current or former employee, current or former appointed member of any municipal authority, current or former elected official, or current candidate for municipal office or employment

### **Summary of Opinion**

You presently serve as an elected official and have asked whether your delivery of personal and third-party checks to candidates for elected municipal office violated the Ethics Code's prohibition on the soliciting and acceptance of gifts by an elected official. We conclude that your Request contains no basis to conclude that it did.

### **Factual Background**

As indicated in your Request, the facts of your situation are as follows:

1. You gave personal contributions to three incumbent candidates for assembly.
2. You delivered checks from third parties to .....and a non-incumbent candidate for elective municipal office. You do not say whether you solicited any of the checks that you delivered.
3. You were designated to serve as a deputy treasurer for one candidate, but not for the other.
4. Prior to collecting any third-party checks, you informed the campaigns that you needed to be named deputy treasurer. You state that, under applicable regulations, designation of a deputy treasurer could be accomplished only by the candidates, or by their campaigns. You state that you could not become either candidate's deputy treasurer by self-designation.
5. Neither your personal checks, nor any of the third-party checks that you delivered exceeded applicable legal limits.
6. You believe that your actions complied with the Ethics Code and all laws and regulations applicable to municipal lobbying, elections, and campaign disclosure.

### **Question Presented**

You have asked the Board to issue an advisory opinion "relative [to] [AMC] 1.15.035 O.4. which deals with campaign contributions to an elected official by an elected official." The Board's analysis is therefore limited to AMC 1.15.035O and does not address whether the actions described in your Request violated any other provision of the Code.

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may request written advice regarding the applicability and interpretation of this chapter in a particular situation involving the inquirer.

(emphasis added).

**Discussion**

The Municipality's Code of Ethics precludes an elected official from "solicit[ing] or accept[ing]" any gift that a person could reasonably infer was "intended to influence the elected official's independence of judgment in the exercise of official duties":

O. *Gifts*. An elected official may not solicit or accept a gift if it can be reasonably inferred that the gift is intended to influence the elected official's independence of judgment in the exercise of official duties.<sup>5</sup>

For purposes of the prohibition, the Code defines a "gift" to be, among other things, "money" or any "item of value" that is provided to an elected official or any "person . . . designated by the elected official" for "less than [its] full value":

An item is a "*gift*" under this subsection if it is:

- 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.<sup>6</sup>

Campaign-contribution checks are "item[s] of value" that are provided to candidates for free. When solicited or accepted by an elected official for use in the official's own campaign, or for delivery to another candidate for elected office, they qualify as "gifts" under this definition.

In apparent recognition of the fact that the Code's general prohibition on solicitation and acceptance of gifts could be used to challenge an incumbent official's otherwise lawful solicitation or acceptance of a campaign contribution, AMC 1.15.035O.4 creates a special exemption for campaign contributions:

A campaign contribution to a candidate for elective municipal, state, or national office is allowed if the contribution complies with laws and regulations governing elections and campaign disclosure.<sup>7</sup>

This provision serves an important, but limited, purpose. By specifically declaring that lawful campaign contributions "[are] allowed," the provision removes lawful contributions from the ambit of the Code's prohibition on elected officials' solicitation and acceptance of gifts. So long as a contribution "complies with laws and regulations governing elections and campaign

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<sup>5</sup> AMC 1.15.035 *Additional provisions for elected officials*.

<sup>6</sup> AMC 1.15.035O.1.

<sup>7</sup> AMC 1.15.035O.4.

disclosure,”<sup>8</sup> it need not be determined whether the contribution could be reasonably inferred to have been “intended to influence the elected official’s independence of judgment in the exercise of official duties.”<sup>9</sup> Compliance with applicable election and campaign-disclosure law suffices.

Unlawful contributions, by contrast, are neither condoned, nor expressly prohibited, by AMC 1.15.035O.4. Importantly, AMC 1.15.035O.4, unlike other provisions of the Code,<sup>10</sup> prohibits no form of conduct: its reference to compliance with applicable laws and regulations serves only to define the scope of its exemption’s operation and does not itself make solicitation or acceptance of an unlawful campaign contribution a violation of the Ethics Code.<sup>11</sup>

To determine whether an elected official’s unlawful solicitation or acceptance of a campaign contribution for delivery to another person violated AMC 1.15.035O.1, the Board consequently would have to assess whether a person could reasonably infer that the contribution was “intended to influence the [soliciting or accepting] official’s independence of judgment in the exercise of [his or her] official duties.”<sup>12</sup>

### Determination

Applying this rubric to the situation described in your Request, the Board finds and concludes as follows.

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<sup>8</sup> *Id.*

<sup>9</sup> AMC 1.15.035O.1.

<sup>10</sup> Elsewhere, the Code affirmatively prohibits elected officials from, for example, “[s]olicit[ing], offer[ing] or receiv[ing] money or [any] other thing of value in return for a vote” or “[u]s[ing] a position over a municipal employee or appointed member of an appointed municipal body to solicit a campaign contribution.” AMC 1.15.020A.1, and .035M. You have not asked the Board for advice relating to these provisions, and the Board offers no opinion about their application to your situation.

<sup>11</sup> *Cf.* AMC 1.15.100 *Sanctions, referrals, and corrective action*:

B. Nothing in this chapter is intended to address or restrict penalties which may be imposed for violation of criminal law or other laws outside the scope of the board’s jurisdiction. If the board finds evidence of criminal activity, the board shall transmit a statement limited to that activity to the municipal attorney for review and referral to appropriate law enforcement. If the board finds evidence of matters within the jurisdiction of the Alaska Public Offices Commission, the board shall transmit a statement for appropriate action by the Alaska Public Offices Commission.

(emphasis added).

<sup>12</sup> AMC 1.15.035O.1.

If the contributions that you made and delivered complied with applicable election and campaign-disclosure law, they were condoned by AMC 1.15.0350.4, and did not violate AMC 1.15.0350.1.<sup>13</sup> If the contributions that you delivered were unlawful, AMC 1.15.0350.4 was not triggered, and the Board must determine whether it could be reasonably inferred that the contributions that you accepted for delivery were “intended [by you or any of the third-party contributors] to influence [your] independence of judgment in the exercise of [your] official duties.”<sup>14</sup>

Addressing the latter scenario, the Board finds that the set of facts presented to us by your Request contains no basis upon which a person could reasonably infer that the contributions that you received and delivered were intended to influence your independence of judgment in the exercise of your official duties.

The Board can envision a scenario in which an elected official had a private interest in seeing another candidate’s fundraising efforts succeed, or perceived some value in his or her ability to bundle checks for delivery to a candidate; in that scenario, it is possible to imagine that a third-party might permit an elected official to deliver the third-party’s contribution to a candidate in a purposeful attempt to secure from the elected official a quid pro quo, and thereby intend through the contribution to “influence” the delivering official’s “independence of judgment.” Similarly, if an official solicited contributions for delivery to other candidates in exchange for promises of official action, it would be reasonable to infer that the contributions were intended by the official to compromise his or her independence.

But we conclude that an elected official’s receipt and subsequent delivery of a contribution to another candidate for elective office in a good faith, but mistaken belief that he or she is acting lawfully as a candidate’s deputy treasurer, without more, does not permit a reasonable inference that either the official or a third-party contributor intended a contribution to “influence the elected official’s independence of judgment in the exercise of official duties.”

The Board consequently concludes that your actions, as particularly described in your Request for Advisory Opinion dated February 28, 2008, did not violate the Code of Ethics’ prohibition on the solicitation and acceptance of gifts by elected officials or AMC 1.15.0350.4. Subject to the conditions set out above,<sup>15</sup> you may rely on this opinion in any future proceeding related to your actions.

Sincerely,

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<sup>13</sup> Whether the contributions and actions described in your Request violated applicable election or campaign-disclosure laws cannot be determined by the Board. *See* AMC 1.15.100, quoted in n.11, above.

<sup>14</sup> AMC 1.15.0350.1.

<sup>15</sup> *See* AMC 1.15.080A.1, quoted in n.3, above.

G. W. Kimura, Ph.D. (Cantab.)  
Chair  
Board of Ethics