
2014 - 2015
ANNUAL REPORT

OF THE



MUNICIPAL
BOARD OF ETHICS

February 10, 2016

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Municipal Board of Ethics

February 10, 2016

Re: 2014-2015 Annual Report of the Municipal Board of Ethics

Members of the Anchorage Assembly:

The Board of Ethics (“the Board”) is pleased to submit its 2014-2015 Annual Report to the Assembly for review. The Code requires the Board to formally apprise the Assembly of its work and make recommendations to “support ethical conduct, improve ethics laws, and allow proper enforcement.” A summary of the Board’s work and recommendations follow.

The annual report includes a statistical abstract of the Board’s work with a historical perspective, a summary of the scope of the Board’s work, details regarding the Board’s major accomplishments in 2014-2015, and the status of on-going projects. Also included are recommendations the Board believes would both strengthen compliance with the Code and enable the Board to operate more efficiently in the future.

The Board meets regularly once-monthly and met 33 times in 2014-2015 including nine special meetings set to address specific issues in a timely manner. Beginning in September 2014, the Chair of the Board (or designee) also attended the regular meetings of the Assembly Ethics and Elections Committee to update the Committee Chair on the Board’s work and to exchange information and focused discussion regarding current matters before either the Board or the Committee. **All members met the attendance requirements of board/commission members and timely filed their annual disclosure of present economic interest.**

The Board looks forward to another year ahead working closely with the Assembly in service of the Anchorage Community.

Sincerely,

Municipality of Anchorage Board of Ethics

David Nesbett, Chair

Terrence Kelly, Vice Chair

Ted Carlson

Kathleen King

Rebecca Windt-Pearson

2014 Board of Ethics Members

Keith Silver, Chair
Term Expires: October 14, 2015

David Nesbett, Vice-Chair
Term Expires: October 14, 2017

Ted Carlson
Resigned: December 10, 2014

Dr. Terrence Kelly
Term Expires: October 14, 2016

Dr. Stephen Strom
Resigned: December 10, 2014

2015 Board of Ethics Members

David Nesbett, Chair
Term Expires: October 14, 2017

Dr. Terrence Kelly, Vice-Chair
Term Expires: October 14, 2016

Ted Carlson
Term Expires: October 14, 2018

Bill Falsey
Resigned: July 1, 2015

Kathleen King
Term Expires: October 14, 2016

Keith Silver
Term Expired: October 14, 2015

Rebecca Windt Pearson
Term Expires: October 14, 2018

Staff Support to the Municipal Board of Ethics

Dee Ennis, Legal Advisor, Deputy Municipal Attorney
Lisa Toussaint, Legal Advisor, Administrative Hearing Officer (9/15 - Present)
Glenda Regnart, Legal Advisor, Administrative Hearing Officer (7/14 - 7/15)
Linda Richardson, Legal Advisor, Administrative Hearing Officer (8/13 - 5/14)
Barbara A. Jones, Municipal Clerk
Lisa Schleusner, Deputy Municipal Clerk

Contact Information

c/o Municipal Clerk's Office
632 W. 6th Ave, Ste. 250
Anchorage, AK 99501
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<http://www.muni.org/departments/assembly/ethics/pages/default.aspx>

A. Gift Code Rewrite

For its first ordinance of 2014, the Anchorage Assembly approved AO 2014-1, an ordinance amending Anchorage Municipal Code Section 1.15.025H pertaining to gifts to municipal employees. The amendment represented collaboration between the Board, the Committee, and the Anchorage School Board regarding gifts for municipal employees with supplemental rules for Anchorage School District (ASD) teachers.

The intent of the new ordinance was two-fold: (1) to clarify the gift limits for municipal employees; and (2) to reconcile the broader prohibition concerning the *timing* and *nature* of a gift. In addition, the new ordinance included a list of *safe harbors*, as well as, *supplemental rules* for ASD employees. Because the rules were clarified under the new AMC 1.15.025H, gifts are either acceptable or not, with a limited option to request an exception. Disclosure requirements were also eliminated. Gifts falling within a safe harbor require no disclosure.

As noted in the adjacent chart of Historical Data, the Board’s review of ASD’s gift disclosures has dropped from 228 gift disclosures at the statistical height in 2011 to 44 total requests for a gift exception in 2015. Of these 44 requests, 29 met the safe harbor exception and only 15 required a written response. The drop in numbers represents a 93% reduction in the Board’s review of gift disclosures which dramatically increases the time available for the Board to concentrate its efforts on more substantive matters, including its work with the Assembly. The Board intends to further shift the management of these rules and policy to municipal ethics officers. These officers can remind municipal employees of their obligation to carry out their duties impartially and avoid conflicts of interest wherever possible.



We appreciate you!



Some examples of excessive gifts received by teachers from their students-parents included cash in excess of \$100, spa gift cards, diamond jewelry, fur clothing, and airline tickets.

ACCOMPLISHMENTS

B.

Statistics of Board's Work	2014	2015
Gift Disclosures or Requests for Gift Exception:	133	44
MOA Employees	4	0
ASD Employees	125	41
Safe Harbor	86	29
MOA Elected Officials	0	2
ASD Elected Officials	4	1
Disclosures of Potential Conflict of Interest	7	7
Disclosures of Present Economic Interest	121	222
MOA Employees	2	4
Elected Officials	37	19
Appointed Members of a Public Board	82	199
Notices of Intent to Respond to Public Solicitation	17	9
Notices of Potential Violation	3	3
Requests for Advisory Opinions	5	7

Historical Data									
Work:	2007	2008	2009	2010	2011	2012	2013	2014	2015
Gifts Disclosure / Requests for Gift Exception	41	104	131	129	228	153	177	133	44
Disclosures of Potential Conflict of Interest					12	7	9	7	7
Disclosures of Present Economic Interest	69	46	54	126	45	55	44	121	222
Notices of Intent to Respond to Public Solicitation					12	6	3	17	9
Notices of Potential Violation	2	2	7	3	4	3	5	3	3
Requests for Advisory Opinion	4	9	1	14	5	2	2	5	7

C. Requests for an Advisory Opinion

Upon request or referral by the Municipal Clerk, Municipal Attorney, or Municipal Ombudsman, the Board is to consult with and advise current and former employees, appointed officials, or elected officials *on matters involving ethical conduct, to include applicability and interpretation of municipal ethics laws.* To promote preventative instruction and advice, the Board publishes its advisory opinions on the Municipal Website at <http://www.muni.org/Departments/Assembly/Ethics/Pages/AdvisoryOpinions.aspx>



I am an appointed official and I think...

The Board of Ethics was asked whether under the Ethics Code appointed members of municipal public bodies are allowed to write letters to the editor, publish blogs, post on Facebook, write compass pieces or commentaries, or otherwise communicate private opinions while identifying themselves as members of an appointed public body. (*Advisory Opinion 2015-3*)

The Board advised, as a general rule, public officials should not use official time, facilities, equipment, supplies, or funds to engage in personal political activity and should refrain from use of official titles or positions in the context of published opinion letters or commentaries that constitute "engaging in political activity."

I would like to disclose a potential conflict of interest regarding Agenda items 9.B.22., 9.C.2., 9.D.3., 9.D.6., 9.D.8., 9.D.18., 9.E.3., 9.F.16., 14.G. ...

Assembly Member Amy Demboski requested an opinion from the Board of Ethics to include guidelines and a possible waiver for certain potential conflict disclosures related to Anchorage Fire Department matters that come before the Anchorage Assembly because Ms. Demboski is married to a current AFD Fire Captain. (*Advisory Opinion 2015-2*)



The Board informed Ms. Demboski that the jurisdiction of the Board extends to the adequacy of disclosures by Assembly members. The responsibility to determine a conflict is retained by the Assembly, and public disclosure is required. Although the Board cannot approve a blanket waiver of conflict of interest, it was able to provide guidance with a short list, specific to Ms. Demboski's situation, of matters that would not require her to make certain disclosures.

2015-7	<p>Mayor Berkowitz requested an advisory opinion from the Board of Ethics to more fully inform the public about the issues raised in NOPV 2015-3 regarding the acceptance of a gift of out-of-state travel and the applicability of the Open Meetings Act.</p> <p>Response: The Board concluded that the Mayor (and others) did not commit a violation of the Ethics Code by accepting the gift from the Rasmuson Foundation; and that the state and municipal open meetings statute and code did not apply to the gathering, so no notice to the public was required.</p>
2015-6	<p>Newly Appointed Chief Fiscal Officer, Robert Harris requested an advisory opinion from the Board of Ethics in order to more fully inform the public of his respective roles as both the Municipal CFO and a member of the Board of Directors for Cook Inlet Region, Inc. and management of potential conflicts of interest.</p> <p>Response: The Board outlined some areas that might pose some potential for conflict of interest and recommended <i>continued vigilance by Mr. Harris with respect to management of potential conflicts of interest and the public perception of these conflicts.</i></p>
2015-5	Withdrawn on July 1, 2015.
2015-4	Withdrawn on July 8, 2015.
2015-3	← See First Example on Page 8.
2015-2	← See Second Example on Page 8.
2015-1	<p>Mayor Sullivan requested an opinion from the Board of Ethics on whether he can publicly oppose and take official action on a proposed ordinance before the Anchorage Assembly, dependent upon the Board’s determination of whether Mayor Sullivan has a substantial financial or private interest in the matter that is the subject of the proposed ordinance.</p> <p>Response: <i>Although the ordinance failed on February 3, 2015, based on the facts presented regarding Mayor Sullivan’s partial interest in a business that sells alcoholic beverages, the Board concluded that the Ethics Code does not prohibit the Mayor from taking a public position on, or vetoing, such an ordinance.</i></p>
2014-5	<p>Anchorage Fire Department Request for Clarification of AMC 1.15.020.A.7. - Prohibited conduct regarding the use of municipal resources and employee participation in photographs for a charitable project.</p> <p>Response: <i>The Board advised that the Ethics Code prohibits the diversion of municipal personnel time, municipal services, vehicles, equipment, materials, or other property for a purpose unrelated to municipal business; however, the occasional use of municipal resources, employee participation in community service events, and employee charitable fundraising are not prohibited...if duly authorized by the Assembly or in writing by the Mayor.</i></p>

<p>2014-4</p> <p>Response:</p>	<p>Assembly Vice-Chair Traini requested an opinion from the Board of Ethics on whether a proposed resolution opposing Ballot Measure No. 2 to legalize marijuana use in Alaska is partisan.</p> <p><i>In answering that question, the Board concluded that the Code's prohibition of partisanship must be balanced by the basic right of the Assembly to address the burning questions of the day. The Board found that the Assembly has the right to state its position to the public on the controversial issues of the day; however, the expression of the Assembly should avoid commentary, be rooted in facts, and should not exhort citizens to vote in a particular way. AR 2014-267, a resolution opposing Ballot Measure No. 2 was approved by the Assembly on September 23, 2014.</i></p>
<p>2014-3</p> <p>Response:</p>	<p>The Anchorage Assembly referred AO 2014-14 - - an ordinance amending AMC Chapter 1.15 to prohibit the acceptance of lobbyist fundraising when the lobbyists are registered for municipal work and the candidates are municipal elected officials or municipal employees - - to the Board of Ethics for review and comment.</p> <p><i>The Board made three observations: (1) restrictions on lobbyists are located in AMC 2.35, Regulations of Lobbying, and not in the Ethics Code, (2) the prohibition of fundraising for a municipal employee or elected official by a sole source contractor - lobbyist - as a conflict of interest under the Ethics Code would be an overreaching policy, and (3) the reach of the restrictive language used in the proposed ordinance (i.e. any form of fundraising) is questionable, AIM 106-2014. AO 2014-14 was postponed indefinitely by the Assembly on July 22, 2014.</i></p>
<p>2014-2</p> <p>Response:</p>	<p>The Anchorage Assembly referred AO 2014-13 - - an ordinance amending AMC Chapter 1.15 to allow for disclosure and appropriate adjustment of travel reimbursement for municipal employees and elected officials engaging in candidate fundraising while on paid travel status for the Municipality - - to the Board of Ethics for review and comment.</p> <p><i>The Board found no objection to the proposed change except that personal work and vacation by candidates should not be treated differently than non-candidates, AIM 42-2014. AO 2014-13 was approved by the Assembly on April 8, 2014 with the exception as noted.</i></p>
<p>2014-1</p> <p>Response:</p>	<p>Assembly Member Demboski requested an opinion from the Board of Ethics on whether she can identify herself as an Assembly member in support of a candidate.</p> <p><i>The Board found that when engaging in political activity, an Assembly member should not act in a manner to suggest that she is representing the Municipality; however, the use of the official title of Assembly Member by an Assembly member in partisan campaign activity, alone, is not in violation.</i></p>

(These descriptions are provided as summaries only and are not authoritative.

Please see the actual opinions for detailed information.)



Links to advisory opinions can be found on the Municipal Website at

<http://www.muni.org/Departments/Assembly/Ethics/Pages/AdvisoryOpinions.aspx>

D. Notice of Potential Violation

Historical Data – Notices of Potential Violation								
2007	2008	2009	2010	2011	2012	2013	2014	2015
2	2	7	3	4	3	5	3	3

The Board received three new notices of potential violation (NOPV) in 2014 and three new NOPVs in 2015. The Board returned two of the 2014 notices and all three of the 2015 notices finding that in all cases the allegations, even if proven, did not constitute a violation of the Municipal Code of Ethics.

NOPV 2014-2 came to the Board via filing by a resident of the Municipality of Anchorage concerned about the use of municipal equipment in a political endorsement. The filing included fliers for the “No on 1, Repeal AO37” campaign. The fliers contained pictures of municipal police and fire equipment including pictures of two current AFD employees wearing municipal uniforms, identified by name and title, and quoted endorsing the campaign. The respondents testified before the Board. The Board’s investigation also included interviews with the respondents’ counsel and union representative present, and written correspondence from the respondents’ attorney-of-record addressing legal issues surrounding the alleged Ethics Code violations.

The Board’s findings were reported to the Mayor along with recommendation for corrective action:

The Board finds that the respondents, outside scheduled work hours, engaged in political activity and acted in a manner to suggest that they were acting in their official capacity, or with official municipal endorsement, or otherwise representing the Municipality. Their depicted images, while wearing AFD uniforms, bearing their names and titles on the campaign fliers would lead a reasonable person to believe they were acting in their official capacity or representing the Municipality.

The Board further finds that the respondents used municipal property and facilities in a manner unavailable to the public, by using and depicting their images and AFD property in political endorsements which identified them as municipal employees.

NOPV 2015-3 was returned to the complainant with the Board’s finding that the allegations, even if proven, did not constitute a violation. However, because there was a great deal of public interest in the event, Board Counsel requested that the respondent convert the complaint into a request for an advisory opinion so that the public can benefit from the Board’s explanation of its decision to return the complaint. (See *Advisory Opinion 2015-7* on page 7.)

E. Procedure for Investigating Notices of Potential Violation

In October of 2015, the Board completed this major project which began in May of 2013. The project consists of the following:

- **Revised Form** for the public to use to file a notice of potential violation (NOPV) (1) to define the jurisdiction of the Board, (2) to solicit sufficient details to support the alleged violation, and (3) to require an affirmation by the complainant as a reminder of the seriousness of a false accusation.
- **Outline of the Board's Process** for the Board to use as a checklist to guide its review; investigation (or return); proceedings; resolution; deliberation and decision; and final written report including recommendations for further action, of a NOPV.
- **Outline of the Resolution Process** for the respondent in a NOPV accepted by the Board for investigation to use for guidance by setting out the order of events, informing the respondent of his or her rights during the process, and summarizing possible outcomes and expectations for Board action at the conclusion of the process.
- **Revised Website Reporting** for publishing written reports of the Board regarding violations of the Ethics Code as required by AMC 1.15.070I.2.c. If a violation is found at the conclusion of an investigation, the written report must be published. The format for reporting the Board's NOPVs was revised to make it easier for the public to identify and access reports.
- **Municipal Clerk's Office Procedure for Processing Notices of Potential Violation to the Board of Ethics** used by the Board's staff. The procedure was designed to mirror the formatting of other procedures developed and currently being developed by the Municipal Clerk's Office.

Thank you!...

The Board of Ethics thanks
Deputy Municipal Clerk
Lisa Schleusner
 for the incredible support she provides to the Board and in particular, her work on these procedures and updating the Board of Ethics Website.



Congratulations to the @AnchorageMuseum store for making the #Top10 museum gift stores! <http://www.cntraveler.com/galleries/2015-12-08/the-worlds-best-museum-gifts-shops-its-not-all-posters-and-totes/>


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Notices of Potential Violation

The following *table* contains notices of potential violation that have published reports resulting from investigations conducted by the Board of Ethics in response to a potential violation of the Municipal Code of Ethics.

SUBJECT: Political Activity

<p>NOPV 2014-2 - AMC 1.15.025I.4.c. and AMC 1.15.025I.4.e. (Political Activity)</p>	<p>Violation - Report, 1/28/2015</p> <p>Request for Reconsideration, 2/9/2015</p> <p>Response to Request for Reconsideration, 2/12/2015</p>
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NOPV 2013-3 - AMC 1.15.025I. (Political Activity) Dismissed - Report

NOPV 2013-2 - AMC 1.15.025I.1.b. (Political Activity) Dismissed - Report

NOPV 2009-2 and NOPV 2009-5 - AMC 1.15.025I.1.e. (Political Activity) Violation - Report

SUBJECT: Disclosure to the Elected Body

NOPV 2013-4 - AMC 1.15.035C. (Disclosure to the Elected Body) and AMC 1.15.035D. (Determining if a Financial or Private Interest is Substantial) Violation - Report

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Notice of Potential Violation History:

- NOPV 2015-3 - *Pending before the Board*
- NOPV 2015-2 - Dismissed
- NOPV 2015-1 - Dismissed
- NOPV 2014-3 - Dismissed
- NOPV 2014-2 - Violation - See Table**
- NOPV 2014-1 - Dismissed
- NOPV 2013-5 - Dismissed
- NOPV 2013-4 - Violation - See Table**
- NOPV 2013-3 - Dismissed - See Table**
- NOPV 2013-2 - Dismissed - See Table**
- NOPV 2013-1 - Dismissed
- NOPV 2012-3 - Dismissed
- NOPV 2012-2 - Withdrawn
- NOPV 2012-1 - Dismissed
- NOPV 2011-4 - Dismissed
- NOPV 2011-3 - Dismissed
- NOPV 2011-2 - Dismissed
- NOPV 2011-1 - Dismissed
- NOPV 2010-3 - Dismissed
- NOPV 2010-2 - Dismissed
- NOPV 2010-1 - Dismissed
- NOPV 2009-7 - Dismissed
- NOPV 2009-6 - Dismissed
- NOPV 2009-5 - Violation - See Table**
- NOPV 2009-4 - Dismissed
- NOPV 2009-3 - Dismissed
- NOPV 2009-2 - Violation - See Table**
- NOPV 2009-1 - Dismissed

Ethics | Municipal Clerk: Barbara A. Jones
632 West 6th Avenue Ste 250 907-343-4311



Links to notices of potential violation can be found on the Municipal Website at <http://www.muni.org/Departments/Assembly/Ethics/Pages/NOPVByViolation.aspx>

A. Disclosures of Present Economic Interest

Disclosures of Present Economic Interest

In 2014, the Board began examining the process by which disclosures of present economic interest are submitted. In addressing disclosure of present economic interest, the Ethics Code divides the topic into three different categories: (1) municipal employees – AMC 1.15.025D., (2) appointed public members of a board, commission, or other municipal body – AMC 1.15.030H., and (3) elected officials – AMC 1.15.035K. For municipal employees, disclosure is required only if the employee has an economic interest in a municipal contract. For municipal board and commission members, disclosure is required within 30 days of appointment and by February 15 of each year of their term. For elected officials, disclosure is required only, if necessary, as a supplement to the official’s APOC and *prior to comment, deliberation or decision on a matter coming before the elected body.* (AMC 1.15.035C.)

Through the Board’s investigation, it became clear that a significant gap exists between the requirement for disclosure and the actual number of disclosures that are filed each year. The Board tasked itself with the following objectives to improve compliance: (1) revising the disclosure forms to more specifically solicit needed information and provide clear Code references for disclosure responsibilities, (2) utilizing staff support personnel to contact and collect required disclosures, and (3) upon review, providing additional advice to clarify the relevant Ethics Code.

The Board has made significant progress with these objections. (1) Revision of the disclosure forms was germinated from the Ethics Code references to solicit the required information in sufficient detail for meaningful review by the Board. (2) Meetings with the administration and staffers for Boards and Commissions have been held to confirm procedures to ensure disclosure. The number of disclosures improved significantly in 2014 and 2015 with the initial effort to contact members. (3) The Board continues to review all disclosures filed with the Municipal Clerk’s Office and sends a letter of advice regarding disclosure to officials who disclose financial interest that may present potential conflict.

Historical Data									
Work:	2007	2008	2009	2010	2011	2012	2013	2014	2015
Disclosures of Present Economic Interest	69	46	54	126	45	55	44	121	222

B. Ethics Code Rewrites

In the course of its work with the Municipal Code of Ethics, the Board has identified a list of sections of the Ethics Code that should be rewritten to address issues of lack of clarity and congruency. Included on the list of proposed amendments are several issues with political activity, disclosures of present economic interest, potential conflict of interest, and notices of potential violation.

In early 2015, Assembly Chair Traini asked the Board to rewrite the Ethics Code in its entirety with the goals of unifying, simplifying, and shortening the Ethics Code. With the advice of Board Counsel, the Board has begun the rewrite process by using the State of Alaska's Code of Ethics as a model, identifying the gaps between the necessary provisions of the Municipal Code of Ethics and the State's Code of Ethics, and drafting from the State's Code instead of editing, revising, or deconstructing the current Municipal Code.

In 2016, the Board will continue this project and hopefully draft a rewrite of the Municipal Code of Ethics that can be collaboratively reviewed, edited, and finalized with the assistance of the Assembly Ethics and Elections Committee and any other designated committee.



The following memorandum from the Board of Ethics was presented to the Assembly Ethics and Elections Committee at their regular meeting on January 20, 2016:

To: Assembly Ethics and Elections Committee
From: Municipal Board of Ethics
Date: October 28, 2015

Re: Disclosures of Potential Conflict of Interest

In a recent Assembly meeting (July 14, 2015), there seemed to be some confusion about the extent to which disclosures of financial and personal interests must be made.

A financial interest is a financial benefit or expectation of benefit. The Code of Ethics requires that an Assembly member disclose any (not just substantial) financial or personal interest that the member has in a matter before the body.

Any financial or personal interest in a matter before the Assembly should be publicly disclosed. If the Assembly is dealing with a matter in which there is a reasonable potential “downstream” financial or personal benefit to a member, it should be disclosed in sufficient detail to allow the body to determine if the interest is “substantial.”

The Code prohibits an Assembly member from taking official action on a matter in which the member has a “substantial” financial or personal interest.

According to the Code, whether a financial or personal interest is “substantial” is determined by the Assembly. However, the Code requires that the determination be made in light of several conditions (see included*). The Assembly Chair may make an initial ruling as to whether a member’s interest is substantial. If the Chair has made the disclosure, the Vice-Chair should make an initial ruling. If this ruling is challenged, then the entire body, except the member in question, should vote on whether the interest is substantial.

Whether you should have disclosed an interest, or did so in sufficient detail, is a matter that is reviewable by the Board of Ethics. In other words, a *Notice of Potential Violation* can be filed against a member of the Assembly on this issue.

Key Ethics Take-Aways

- Disclosure and robust evaluation of financial and personal interests are important to identify and eliminate conflicts of interest in government.
- Whether your interest is substantial is not reviewable by the Board of Ethics. The Assembly has sole jurisdiction in this area.
- Whether you properly disclose all financial and personal interests in a matter is reviewable by the Board of Ethics.
- The Chair and Assembly should use the Code of Ethics criteria to determine whether a financial or personal interest is substantial.

***Code of Ethics Criteria, AMC 1.15.035D.**

D. *Determining if a financial or private interest is substantial.* Determination of whether a financial or private interest is substantial shall be made by the elected body on a case-by-case basis. The elected body shall be the final authority on whether the financial or private interest as disclosed is substantial under this chapter. The board does not have jurisdiction to reweigh the factors considered by an elected body for a differing interpretation by the board of substantial interest. Factors appropriate for consideration include one or more of the following:

1. Whether the financial or private interest held by the elected official or household member is a substantial part of the matter under consideration;
2. Whether the financial or private interest varies directly and substantially with the outcome of the official action;
3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action;
4. Whether the financial or private interest is significant monetarily;
5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the elected official or household member belongs.

Accessed 10/21/2015.

