



Municipality of Anchorage  
**Board of Ethics**  
C/o Municipal Clerk's Office  
632 W. 6<sup>th</sup> Ave. Ste. 250 Anchorage, AK 99501

July 14, 2015

**Re: Response to Request for Advisory Opinion 2014-4**

**Executive Summary**

The issue before the Board of Ethics (the "Board") is whether the Anchorage Municipal Code of Ethics (the "Code") allows the Anchorage Assembly to consider and potentially adopt a resolution opposing an upcoming ballot measure, in this case Ballot Measure #2 which would further legalize marijuana in Alaska. The Board finds that (1) the Assembly has the right to state its position to the public on the controversial issues of the day. The imperatives of democratic governance require such freedom of expression. However, (2) municipal resources may not be used for partisan purposes. In this case, the Board finds that the expression of the Assembly should avoid polemics<sup>1</sup>, be rooted in facts, and should not exhort citizens to vote in a particular way.

**Relevant Sections of the Code:**

The Code states that elected officials shall not "[k]nowingly permit political activity in violation of other provisions on political activity in 1.15.025..."

AMC § 1.15.025(I) states:

1. Departments, boards, commissions, agencies, authorities, public corporations, or other administrative divisions of municipal government shall not:
  - e. Actively campaign or prepare, publish, broadcast, or distribute by any means material of a partisan nature on any ballot measure, including referendums, initiatives, bond issues or other special elections;

AMC § 1.15.035(M) establishes prohibitions applicable to elected officials, which would include members of the Assembly, and states in pertinent part:

*Political activity.* An elected official shall not: ... (5) [k]nowingly permit political activity in violation of other provisions on political activity in 1.15.025 and 1.15.030.

AMC § 1.15.030(L) provides that an appointed public body shall not: ... (3) [p]ermit or engage in political activity in violation of 1.15.025I.

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<sup>1</sup> Definition: "the art or practice of using language to defend or harshly criticize something or someone," Merriam Webster Dictionary.

## Discussion

The Code of Ethics does not define the term "partisan." Absent a codified definition of the term, the common, everyday usage is our guide. Black's Law Dictionary defines "partisan" as: "adherent to a particular party or cause as opposed to the public interest at large." Oxford Dictionary defines "partisan" as "a *strong* [our emphasis] supporter of a party, cause, or person."

The Board concludes 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. As the duly elected members of a democratic governing body, the Assembly members certainly have First Amendment rights to inform the public as to its views on controversies of the day. Arguably, such expression is also part of an Assembly members' customary and usual duties. However, elected officials are forbidden to knowingly permit municipal employees in a department (e.g. the Municipal Clerk's Office) to "*[a]ctively campaign or prepare, publish, broadcast, or distribute by any means material of a partisan nature on any ballot measure.*" Because it would require the preparation and distribution on the part of municipal employees (e.g. the Municipal Clerk's Office), the expression of the Assembly's opinion in a resolution should avoid being polemical. It should be rooted in facts and void of inflammatory language or unsupported conclusory statements. As an Assembly resolution becomes *polemical* or an *exhortation* to the public to vote in a certain way, it moves beyond a statement of views (which the Board believes the Assembly is free to do, even on controversial matters) and becomes unacceptably partisan in nature.

For instance, when the proposed resolution states:

*WHEREAS, Ballot Measure #2 is an extreme measure that would legalize not only marijuana, but also, potent and dangerous chemical concentrates and drug-infused edibles that appeal to children; (Resolution lines 15-17)*

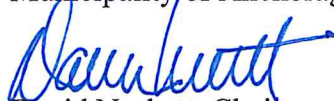
it uses inflammatory language that is not clearly rooted in fact. When it states:

*NOW THEREFORE, the Anchorage Assembly opposes the passage of the initiative to legalize recreational marijuana in Alaska and urges voters to defeat Ballot Measure #2. (Resolution lines 31-32)*

the resolution moves beyond a statement of position and becomes an exhortation to citizens to act in a certain way. Both of these sections of the proposed resolution are unacceptably polemical.

On a final note, the Board finds that the relevant provisions of the Code create an unwieldy analytical process capable of encapsulating scores of unwitting staff and employees based on unclear and undefined terms. The Board recommends the Code be amended to provide greater clarity to those subject to its terms.

Municipality of Anchorage Board of Ethics:



David Nesbett, Chair

Terrence Kelly, Vice-Chair

Keith Silver