



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

Date: January 14, 2016

To: Robert Harris, Municipal Chief Fiscal Officer

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2015-6

Dear Mr. Harris:

You are both the newly appointed Chief Fiscal Officer (CFO) for the Municipality, as well a member of the Board of Directors for Cook Inlet Region, Incorporated (CIRI). Following the filing of your Disclosure of Present Economic Interest with the Ethics Board, you met with the Board to provide further information. The Board of Ethics suggested that you file a Request for Advisory Opinion in order to more fully inform the public of your respective roles and proposed management of potential conflicts of interest. This is the Board of Ethics' response to that Request.

ANALYSIS

Mr. Harris holds a "financial interest" in CIRI by fact that he is a director.¹ As a MOA employee, he has a duty to disclose his financial or private interest in official action.² Mr. Harris may not participate in an official action in which he has a substantial financial or private interest. The Ethics Code sets forth the factors to be considered with respect to whether a financial interest is a substantial financial interest.³

¹ AMC 1.15.110I.2.b

² AMC 1.15.025B

³ AMC 1.15.025B.1

1. Whether the municipal employee is prohibited from participation in official action due to substantial financial or private interest shall be determined by the designated ethics officer with evaluation of these factors:

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.

Mr. Harris has substantial business experience and community involvement. With this background, however, the potential for conflict is certain to arise. This involves a case by case analysis first by Mr. Harris, next by the Municipal Ethics Officer, and as needed, the Board of Ethics.

CIRI.

CIRI is a large Alaska Native Regional corporation with diverse business interests. According to the CIRI website, CIRI is Southcentral Alaska's largest private landowner. Non-profit entities affiliated with CIRI include Southcentral Foundation, Cook Inlet Housing, and Cook Inlet Tribal Council – also substantial entities. In addition to the non-profit entities, CIRI owns numerous for-profit entities including, ANC Research & Development, LLC, Fire Island Wind LLC, Weldin Construction, LLC, and others identified on the CIRI website.

As a CIRI board member, Mr. Harris is one of fifteen directors who oversee the business functions of the for-profit corporation. He also serves on a number of committees, including the Investment Committee.

With respect to the CIRI non-profit corporations, Mr. Harris' role is limited. The CIRI Board may assign Board members to the boards of the CIRI non-profit corporations, but the CIRI Board does not get involved in the day to day operations of the non-profits. Mr. Harris does not serve on any of the non-profit boards.

Purchasing

One of the areas in which the Ethics Board has historically given much time and attention is that of conflicts of interests arising from business interests and contracts with the MOA. It can be readily anticipated that CIRI or CIRI owned entities will engage in business with the MOA. As the CFO, Mr. Harris oversees the Municipality's Purchasing Department, the Department charged with the awarding and processing of contracts.

The Ethics Board invited Mr. Ron Hadden, the Purchasing Officer, to outline the procurement process followed by the MOA and the role of the CFO in the award of contracts. According to Mr. Hadden, a requesting department provides Purchasing with a requisition along with specifications for the product or service to be performed. Depending on the competitive process required under Code, the contract is competitively bid or solicited. Purchasing receives the response and evaluates the response for responsiveness. Purchasing then refers the response back to the requesting department for evaluation. Following department evaluation, the requesting department returns the responses back to Purchasing with a Recommendation for Award. Depending on the size and type of contract, the Purchasing department either signs off on the response or brings the contract award before the Assembly for approval.

As the CFO, Mr. Harris does not approve contracts. He has no signature or approval authority for MOA contracts, with the exception of a limited number of types of contracts specified in the Municipal Code relating to bond counsel and investment advisors retained directly by the CFO for his department.⁴ With respect to all other MOA contracts, the CFO is provided notice of the contracts at the same time as the public through the Purchasing website or Assembly public process. He is provided with no information with respect to the contracts not otherwise available to the public.

The Purchasing Department reports to the CFO and may discuss contracts at a weekly staff meeting. Mr. Harris stated that if he became aware of any contract with CIRI or a CIRI for-profit corporation, he would immediately disclose such a potential conflict to his department directors and generally recuse himself – both in his role with the MOA and in his role as a CIRI Board Director.

The Board of Ethics further questioned the relationship between the Purchasing Department and the CFO. The Purchasing Department is an independent department, although the Purchasing Officer reports to the CFO. Historically, the CFO's office has not interfered with Purchasing. The Mayor appoints and the Assembly confirms the Purchasing Officer. Termination of the Purchasing Officer rests with the Mayor.

Fire Island Wind Project

Fire Island Wind LLC sells energy from wind generation and is interested in building a relationship with ML&P. Mr. Harris has informed the MOA, CIRI, and ML&P that he has recused himself from involvement in any matter involving the Fire Island Wind project.

ML&P Bid on Conoco Phillips Assets

The day before Mr. Harris' appearance before the Ethics Board, Mr. Harris and the Administration were informed by the Administration's bid consultant that CIRI held a less than 1% royalty gas interest in assets that were part of the potential Conoco Phillips Asset (CP) purchase. Prior to this information, Mr. Harris had participated in the bid preparation as the Administration's CFO. Upon learning of CIRI's royalty gas interest, Mr. Harris informed both the Municipal Attorney's office and the Municipal Ethic's officer. Thereafter, the question of the royalty interest was disclosed and discussed at the Ethics Board meeting. According to Mr. Harris, CIRI will be paid its royalty interest regardless of the successful bidder. He therefore did not see this as an unmanageable conflict; and the Board agrees..

ACDA

In his capacity of CFO, Mr. Harris has been appointed as a board member of the Anchorage Community Development Association (ACDA), a separate Municipal authority. The ACDA is

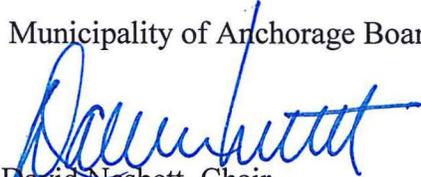
⁴ AMC 6.20.120 – Bond counsel, bond tax counsel and financial consultants.

charged with development projects throughout the Municipality, which may include housing projects. Cook Inlet Housing (CIH), a non-profit affiliated corporation of CIRI, may come before ACDA with respect to housing and development projects. Mr. Harris re-emphasized that the CIRI Board has no day to day involvement in the CIRI non-profits and that he would like to continue his involvement as an ACDA Board member on matters involving Cook Inlet Housing. The Board did not object to Mr. Harris' continued participation, but suggested that should ACDA consider providing direct support to CIH such as a grant or should ACDA look to partner with a Cook Inlet Housing or a CIRI non-profit, further disclosure and review – or recusal – would be required. .

CONCLUSION

The Board recommends continued vigilance, including full disclosure, by Mr. Harris with respect to potential conflicts of interest. Assistance by the Ethics Board and the Municipal Ethics Officer are available to Mr. Harris.

Municipality of Anchorage Board of Ethics:



David Nesbett, Chair
Terrence Kelly, Vice-Chair
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Rebecca Windt-Pearson