



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

Date: March 14, 2016

To: Jillanne M. Inglis
7041 Miranda Drive
Anchorage, AK 99507

From: Municipal Board of Ethics

Re: Response to Advisory Opinion 2016-2

Dear Ms. Inglis:

This advisory opinion (2016-2) responds to your *Request for Advisory Opinion* (Request) dated February 5, 2016. You have advised the Board of Ethics (Board) that you wish to waive the confidentiality of your Request.¹ This opinion is based upon the facts disclosed in your Request; if material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Summary of Opinion

The issue before the Board is whether the Municipal Code of Ethics (Ethics Code) allows you, as a current municipal employee in the Employee Relations (ER) Department and a former employee in the Community Development (CD), to work as a private consultant on matters under Title 21 of the Anchorage Municipal Code (AMC). The Board finds the consulting arrangement would not constitute a violation of the Ethics Code so long as you abide by limitations on the nature, scope and timing of the consulting and do not use or disclose confidential information.

Facts of the Request

We understand that you currently work in the Labor Relations Section of the ER Department. You have worked in this capacity since September 14, 2015. Previously, you worked for 20 years in a variety of positions in the CD Department, including land use permitting, code enforcement and engineering, with the last 14 years involving matters under Anchorage Municipal Code (AMC) Title 21. In these positions, you reviewed development plans for compliance, provided interpretations of the code, established legal nonconforming rights,

¹ See AMC 1.15.080.A.2 ("A request for advice under 1.15.080.A is confidential, unless confidentiality is waived by the person requesting an advisory opinion.")

reviewed administrative permits, attended meetings of the Planning and Zoning Commission and Zoning Board of Examiners, and presented occasional appeals before those boards.

You were recently asked whether you would consider serving as a paid consultant, during non-work hours, on land use matters under Title 21. You explained that in your outside consulting business, you anticipate providing general advice to private clients on the regulatory requirements applicable to engineering and development projects under Title 21, based on the expertise you developed during your years in the CD Department. You stated that you would not be appearing before the Planning and Zoning Commission and Zoning Board of Examiners to advocate for your clients' respective interests. You have asked the Board whether the consulting arrangement would constitute a violation of the Ethics Code.

Discussion

A purpose of the Ethics Code is to “give public officials and employees guidance in identifying and resolving potential conflicts” to “preserve the integrity of the governmental process and avoid conflicts of interest.”² Towards that end, AMC 1.15.025.C. addresses outside employment by current municipal employees and states in part:

C. *Contemporaneous service and employment.* A municipal employee shall not render services to, or accept employment with, persons or organizations other than the municipality, **if the contemporaneous service or employment is incompatible or in conflict with the proper discharge of the employee's municipal duties**, including duties with the Anchorage School District. **Contemporaneous service or employment shall not adversely affect the employee's availability, productivity, or independence of judgment in performing municipal duties.**

1. **A municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee's personal endeavors, including contemporaneous service or employment, except to the extent the general public has the same access to use.**
2. **A municipal employee shall not engage in activities related to contemporaneous service or employment during scheduled work hours.** Minor or inconsequential personal telephone and computer privileges, when allowed under applicable policy and practice, shall not be abused or diverted to support contemporaneous service or other employment.
3. **Full time temporary and regular municipal employees engaging or intending to engage in contemporaneous service or employment outside scheduled work hours shall notify the administrative supervisor in writing.**

² AMC 1.15.010.A.

Applying AMC 1.15.025.C. to this case, so long as you abide by the restrictions on the use of municipal time, facilities and other resources, the proposed consulting arrangement does not appear incompatible or in conflict with your performance of the duties of your current position. This is because the nature of the consulting work – land use matters under Title 21 – is different from your current work in the ER Department.

However, the consulting work is similar in nature to your prior work for the CD Department. Indeed, the expertise you developed while working on municipal land use issues is essential to the consulting arrangement. To determine whether a potential conflict may exist due to your prior municipal duties, AMC 1.15.025.G. is instructive. That provision states:

Restrictions on employment after leaving municipal service. A municipal employee who leaves municipal service may not, for one year after leaving municipal service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by the municipal employee, **if the municipal employee participated personally and substantially in the matter** through the exercise of official action.³

Because you are a current, not a former, municipal employee, AMC 1.15.025.G does not strictly apply in this case. Nevertheless, the Board believes it would be inconsistent with the spirit of the Ethics Code for limitations on current employees concerning outside employment to be any less restrictive than those for former employees. Thus, we are guided by the principles of AMC 1.15.025.G. in advising that you not provide consulting services on any matters in which you participated personally and substantially while in the CD Department.

You will also need to abide by the prohibitions in the Ethics Code regarding the use and disclosure of confidential information. AMC 1.15.020.A.4 states that no person covered by the Ethics Code shall “[u]se for the person’s own benefit, or for the benefit of another, confidential information, acquired by reason of the person’s public position and which is not available to the public.” AMC 1.15.020.A.5 further precludes a municipal employee from disclosing “confidential information gained through the person’s public position unless authorized by law or order of the court.”

Conclusion

The Board recognizes the potential benefits of the consulting arrangement you described for both your consulting clients and the Municipality alike. We conclude the request would not violate the Ethics Code so long as you abide by the restrictions described above. Specifically, you may not provide private consulting services for one year on any land use matters in which you personally and substantially participated while working for the Municipality; you may not use or disclose any confidential information obtained during your work for the Municipality; and you may not use municipal time, facilities or other resources to conduct the consulting work. You

³ A “matter” under 1.15.025.G. is defined as a “case, proceeding, application, contract, or determination but does not include consideration of ordinances, resolutions, charter amendments, draft legislative measures, or the adoption of administrative regulations if consideration by the municipal employee was only in the context of general application.”

must also inform your supervisor in writing of the proposed consulting work so that it may be appropriately managed in light of your current municipal duties. If you have any questions, please feel free to contact us.

Municipality of Anchorage Board of Ethics



David Nesbett, Chair

Terrence Kelly, Vice Chair

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Rebecca Windt-Pearson