



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

Date: August 11, 2016

To: Lance Wilber
WilberLR@muni.org

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2016-4 – Confidentiality Waived¹

Dear Mr. Wilber:

This advisory opinion responds to your *Request for Advisory Opinion 2016-4* dated March 14, 2016. The opinion is based upon the facts disclosed in your request and during the discussion of this matter at the March 14, 2016 Board of Ethics meeting. 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 your review of a proposed rezoning project in the Municipality's PACE system violated the Ethics Code where your wife represents the project proponent. The Board finds that your review in this case did not violate the Ethics Code, although we recommend that future projects in which your wife is involved be reviewed by the Deputy Director or another Office of Management and Budget (OMB) designee to avoid potential conflicts of interest and the appearance of impropriety.

Facts of the Request

PACE is an internal routing system used to finalize documents for submittal to the Assembly. Matters for action by the Assembly must be reviewed by various department heads in PACE before they are submitted to the Assembly.² As the Director of OMB, you are charged with reviewing items in PACE to ensure that a project and all supporting documents comport with the Municipality's financial and budget requirements.

Earlier this year, you reviewed and provided your approval in PACE of documents prepared by the Planning Department for a proposed rezoning project. Your review in this instance was limited to ensuring that there was sufficient supporting documentation for the project and the documents were properly formatted, because the project had no direct financial consequences for the Municipality. You informed the Board that if you had not provided your approval in PACE, the

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.")

² Other department heads who must review items in PACE include the Municipal Attorney, the Chief Financial Officer, the municipal manager and, where applicable, the Director of Economic and Community Development.

proposed project would have gone back to the originator to supply any missing information or to provide information in the appropriate format. You have no role in the actual rezoning decision made by the Assembly.

Subsequently, your wife, who is a salaried employee with a private architectural firm, informed you that she would be attending the March 22, 2016 Assembly meeting on behalf of a client proposing to rezone property. The rezoning project was the one for which you had already provided OMB's approval in PACE. Prior to the Assembly meeting, you asked whether your actions in this matter complied with the Ethics Code, and if not, what steps you should take to come into compliance. You informed the Board that to avoid potential ethics concerns about similar matters in the future, OMB review and certification in PACE of any future projects in which your wife is involved will be handled by the Deputy OMB Director or another designated representative.

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.”³ Towards that end, AMC 1.15.025.B. addresses employees' participation in matters in which an immediate family has a financial or private interest. That provision states in part:

B. *Substantial financial or private interest.* A municipal employee shall not participate in an official action in which the employee or a member of the employee's immediate family has a substantial or financial or private interest. A municipal employee shall disclose in narrative form to the designated ethics officer, the employee's financial or private interest in official action and the financial or private interest of any member of the employee's immediate family as defined in 1.15.110, if the employee's duties could influence the official action.

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;

³ AMC 1.15.010.A.

- 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. (Emphasis supplied)

The issue before the Board is whether your role in the proposed rezoning project constituted participation in an official action in which your wife has a substantial financial or private under AMC 1.15.025B. To answer this question, the Board looked at whether there was an “official action” in this case, and if so, what it was. The Board determined there was an official action: your review of the proposed project in PACE in your capacity as the OMB Director. But the official action was largely administrative or ministerial in nature because your approval in PACE had little or no bearing on the outcome of the Assembly’s decision on whether to approve the rezoning – only whether the project was properly presented so the Assembly could make an informed decision. In fact, you advised that if you did not approve the project in PACE, it would go back to the originator to provide sufficient information in the correct format for Assembly review and approval.

Although your wife may have had a substantial financial interest on the Assembly’s decision on whether to rezone the property⁴, she did not have a substantial financial interest in your official action of reviewing the items in PACE for the sufficiency of information in the correct format because it had little or no impact on the Assembly’s ultimate decision. Moreover, under AMC 1.15.025.B.1.b, your wife’s financial interest did not vary directly or substantially with the outcome of your limited, administrative review of the project in PACE. Thus, the Board concludes that there was no violation of AMC 1.15.025B in this case. This conclusion is consistent with the spirit of the Ethics Code, which acknowledges that there is no conflict of interest where a municipal employee’s or executive’s action would have only an insignificant or conjectural effect on a matter. See AMC 1.15.010.D.

Conclusion

Based on the specific facts of this case, the Board concludes that your approval of the items in PACE did not violate the Ethics Code. To avoid any potential conflicts of interest or appearance of impropriety in the future, however, any PACE items pertaining to future projects for which your wife is a representative should be reviewed and certified by the Deputy OMB Director or other designee.

If you have any questions about this advisory opinion, please contact us.

Municipality of Anchorage Board of Ethics



David Nesbett, Chair

Terrence Kelly, Vice Chair

Ted Carlson

Kathleen King

Rebecca Windt-Pearson

⁴ Because the Board determined that the “official action” here was your role in reviewing the project in PACE, the Board did not reach the issue of whether your wife may have had a substantial financial interest in the rezoning decision.