



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: Jillanne Inglis
InglisJM@muni.org

From: Municipal Board of Ethics

Re: Response to Advisory Opinion 2016-3

Dear Ms. Inglis:

Thank you for your request for an Advisory Opinion from the Board of Ethics (Board) and for your cooperation with subsequent follow up questions from the Board. This opinion is based upon the facts disclosed in your request and our subsequent discussions with you. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

You have been employed in the Municipal Employee Relations Department as a Labor Specialist since September 14, 2015. You are also a member of the Administration's Executive Leadership Team. Previously, you worked for more than 20 years at the Community Development Department and Planning Department in various municipal land use positions. Given your knowledge and extensive experience in land use issues, you wish to volunteer your time to serve on one of the land use boards, which are often looking for members.

All of the land use boards fall under AMC Chapter 4.40 – Regulatory and Adjudicatory Boards and Commissions. This includes the Board of Building Regulation Examiners and Appeals (AMC 4.40.030), Planning and Zoning Commission (AMC 4.40.100), Platting Board (AMC 4.40.110), Urban Design Commission (AMC 4.40.130), and Zoning Board of Examiners and Appeals (AMC 4.40.130). All of these boards involve adjudicatory functions, including hearings and decisions.

In hearing and deciding such matters as site plan and conditional use approval, land use boards provide independent review of municipal staff recommendations, and serve the public by impartially hearing applications from the public. The Municipality is charged with the responsibility of providing due process to the applicant. By code, a municipal land use board may have jurisdiction to review certain administrative decisions. As an executive within the Administration, you are considered to be an extension of the Administration, and therefore not an impartial adjudicator for purposes of general due process considerations. It would be a conflict of interest for your employer (the Municipality) to appoint an executive employee to serve on a land use adjudicatory board during the employee's tenure.

More generally speaking, serving as an executive within the Administration and simultaneously serving on a municipal adjudicatory board or commission would place you in the position of serving two masters: serving the Administration under the duty of loyalty owed to all employers; and serving the public in the impartial determination of land use issues. This falls squarely under the “rule of thumb” ethics adage that you cannot serve two masters.

Although not before the board, the same analysis might not apply to boards that are strictly advisory in nature and do not include an adjudicatory function. Within the Municipality, there appear to be two viewpoints espoused with regard to participation of employees on boards and commissions. The first notes that while some of the board code provisions specifically prohibit the participation of an employee (Ethics Code – AMC 1.15.050B.2.d), other board code provisions require an employee position (Bidding Review Board – AMC 4.50.020A.2 – requiring a member from the ML&P Commission). Therefore, the first position states that unless a code provision expressly prohibits an employee, an employee may serve on a board or commission. In addition, the general Title 4 board and commission qualification section, AMC 4.05.035, does not mention status as an employee as prohibiting participation.¹

The second position is that the Ethics Code, AMC Chapter 1.15, is drafted so that “municipal employee” and an “appointed public body of the municipality” are mutually exclusive categories. The definition of an “appointed public body of the municipality” in AMC 1.15.110.B. includes members of the public, but not employees:

- B. *Appointed public body of the municipality* means any municipal commission, board, committee, authority, or public corporation created by ordinance with members of the public appointed subject to confirmation by the assembly or the school board, whether sitting in public session or executive session including advisory, appellate, management, quasi-judicial, and regulatory municipal entities.

The definition of “municipal employee” in AMC 1.15.110.L. excludes members of the public serving as members of an appointed public body of the Municipality:

- L. *Municipal employee* means:

¹ 4.05.035 - Qualifications of members.

In addition to any other qualifications required by this Code, a board or commission member shall:

- A. If legally eligible, be a qualified voter of the municipality;
- B. Maintain domicile in the municipality while in office;
- C. If serving on an adjudicatory or regulatory board, be at least 18 years of age; and
- D. If under 18 years of age and serving on an advisory board or commission, meet the state requirements relating to employment of minors during the member's service on the board or commission.

1. Any person employed by the municipality or a corporate authority owned by the Municipality of Anchorage, whether full or part time, temporary or permanent, but excluding elected official and excluding members of the public serving as members of an appointed public body of the municipality; and

Also, AMC 1.15.030 specifies that the Ethics Code provisions governing boards and commissions do not apply to employees:

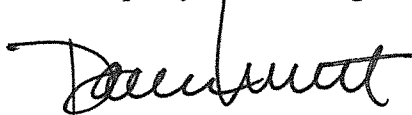
1.15.030 - Additional provisions for members of the public appointed to a public body.

- A. *Members of an appointed public body.* This section applies to members of the public serving as members of an appointed public body of the municipality as defined in 1.15.110, but excluding elected officials covered under 1.15.035 and municipal employees covered under 1.15.025.

Having determined it would be a conflict of interest for purposes of due process and duty of loyalty for an executive employee to serve on an adjudicatory board or commission of the Municipality, we need not address here the appointment of municipal employees to advisory boards or commissions.²

The Board finds that during your employment with the Municipality, you should avoid serving on a municipal board or commission with adjudicatory functions.

Municipality of Anchorage Board of Ethics



David Nesbett, Chair
Terrence Kelly, Vice Chair
Ted Carlson
Kathleen King
Rebecca Windt-Pearson

² Related to this inquiry, the Board of Ethics discussed scenarios such as past employee participation in current matters before the Board; prior employee knowledge and access to related confidential information; and the like. The Board believes these conflicts may occur when any prior employee is appointed to board or commission, and such conflicts are routinely managed by the municipal board or commission case-by-case after disclosure.