



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

Date: September 15, 2016

To: Dee Ennis
EnnisDL@muni.org

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2016-10 – Confidentiality Waived

Dear Ms. Ennis:

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 and with other parties related to this request. If material facts have not been disclosed or have been misrepresented, this opinion is without force or effect.

In your capacity as Ethics Officer for the Municipality, you have been asked to consider the question described in this opinion, and you have, in turn referred the question to the Board for consideration. This Advisory Opinion is addressed to you as the party with standing to relay such a request to the Board.

Mara Kimmel, the wife of Mayor Ethan Berkowitz, requested an opinion from you on whether she may continue to serve on the board of the Alaska Institute for Justice (AIJ), and whether she may assume a new position on the board of the Anchorage Community Land Trust (ACLT). Ms. Kimmel is a founding member of AIJ and has served on the board for 11 years. Ms. Kimmel has been approached to join the ACLT board but has not yet accepted the position. Ms. Kimmel is not compensated for her role on either board.

The ethical question in this instance arises from the possibility for AIJ and ACLT to apply for and potentially receive Municipality of Anchorage (MOA) grant funding. As Ms. Kimmel is a member of the Mayor's household, the Mayor could face a conflict of interest due to Ms. Kimmel's presence on charitable boards receiving MOA funding. ACLT does not currently receive MOA funding, but has received such funding in the past and may receive funding again in the future. ACLT funding would likely be through federal Housing and Urban Development grants selected and administered by the Municipal Department of Health and Human Services (DHHS) under the federal code of regulations. The Mayor is involved in the initial action plan for this program, but recipients are selected by DHHS and the Municipal Manager executes the grant documents with HUD and the recipient organizations. AIJ is a current grant recipient of a State of Alaska Human Services Matching Grant which is awarded by competitive application through a formal process run by the MOA Purchasing Department. These grants are administered by DHHS, and the Municipal Manager executes the grant documents with the applicable parties.

The Mayor does control his own community grant program, pursuant to which grant recipients are selected, and grant funds administered, by the Mayor's office. Neither AIJ nor ACLT receive or

have received funds from the Mayor's grant fund. In light of the existing commitments of the Mayor's grant program it is unlikely that AIJ or ACLT would successfully seek funding from the Mayor's office. That said, either organization could choose to apply for Mayor's community grant funding in the future.

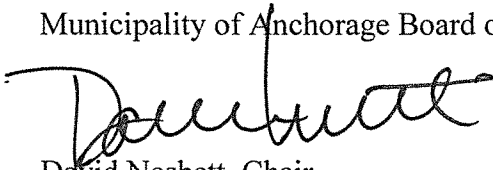
The Ethics Code (AMC 1.15.035.I) is clear that the Mayor would be permitted to serve in such capacity. As such it can be inferred that service on both boards is permitted:

Unless the assembly has determined by ordinance that service by an elected official shall be as a non-voting member, an elected official, **including the mayor**, may serve without compensation as a voting member of a public body or **charitable nonprofit organization receiving funding from the municipal** or school district budget.

As noted above, Ms. Kimmel receives no compensation for her board work. Further, the grant funding which has been or is currently received by both AIJ and ACLT is administered by DHHS, and control over these funds is sufficiently attenuated from the Mayor's office as to avoid any actual or perceived conflict of interest or appearance of impropriety. As such, the Board concludes that Ms. Kimmel's service on the AIJ and ACLT boards is entirely appropriate under the MOA Ethics Code.

That said, the Board would be concerned if, in the future and during Ms. Kimmel's tenure on the applicable board, AIJ or ACLT were to seek funding directly from the Mayor's community grant program. We read the Code of Ethics to direct an official facing the inevitable conflict the Mayor would confront in such an instance to excuse himself from participation in the process (AMC.1.15.035I.1&2), but the Board does not presently see a way in which the Mayor could effectively remove himself entirely from the process of grant-making for his own grant fund. Because neither AIJ nor ACLT currently intend to apply for funds from the Mayor's grant program, the Board does not consider it necessary to conclusively address this issue at this time. The Board thus requests that, if AIJ or ACLT elects, during Ms. Kimmel's applicable board tenure, to apply for funding from the Mayor's community grant program, this question come before the Board again for further consideration.

Municipality of Anchorage Board of Ethics



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