



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

Date: August 28, 2020

To: Deitra Ennis, Deputy Municipal Attorney<sup>i</sup>

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2020-3

Dear Ms. Ennis

This advisory opinion responds to the above *Request for Advisory Opinion* 2020-3. This advisory opinion constitutes the Board's conclusions and recommendations. This opinion is based on information submitted in the request and to the Board by Mr. Falsey at the July 16 and August 20, 2020, meetings of the Board. If material facts were not disclosed or were misrepresented, the opinion is without force and effect.

As a declared candidate for mayor who is also a current municipal employee, you asked the following specific questions that prompted this Board opinion:

1. May a declared candidate for mayor continue serving in municipal employment?
2. Are there any "time-of-day" restrictions on when a declared candidate for mayor who is currently a municipal executive may engage in campaign activity, provided no municipal resources are used, at least 8 hours per day are spent in municipal service, and campaign activity does not interrupt or detract from the quality and timeliness of municipal service?
3. May the candidate's website link to videos posted on municipal Facebook pages?
4. May the candidate's website include images that the municipality has released to the media via a public records request or otherwise published?
5. May the candidate's website include a previously published image that depicts the candidate providing municipal service? Does the answer change if the Municipal Seal appears in the image?

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<sup>1</sup> Ms. Ennis, as Deputy Municipal Attorney, filed the Request for Opinion on behalf of William Falsey.

6. May a candidate's website include an image of the exterior of a municipal building provided the picture could have been taken by any member of the public?

First, a declared candidate for mayor may continue to serve in municipal employment. There is no direct prohibition for this in the Code; this is not contemporaneous employment or service. See AMC 1.15.090.

Second, regarding "time-of-day" restrictions, political activity during municipal business hours is generally prohibited; it creates the public perception that municipal resources are being used for political purposes. Usually, a municipal employee who wants to engage in political activity during the work day must take personal leave for any time spent doing so. A municipal executive, however, does not have this option because an executive is a salaried position, and is either in work status or on leave status for the entire day. The Board therefore concludes that a municipal executive may engage in campaign activity outside of municipal business hours, including during a customary lunch hour (e.g. 12:00-1:00), which is generally understood to be the executive's personal time.

The four remaining questions can be summarized as: In what way, if any, may a declared candidate for mayor, who is also a current municipal employee, include an image or video associated with the municipality on the candidate's website?

The answer implicates at least two different sections of the Code: AMC 1.15.040 "Use of Municipal Resources," and AMC 1.15.110 "Political Activity."

Anchorage Municipal Code 1.15.110.C. states that a municipal employee "shall not use or authorize the use of municipal resources for political or partisan activity." In this case, it seems clear that the "use" is for political activity, i.e., running for the office of mayor. The Code does not have any exceptions to this prohibition. The question, then, is whether a particular image is a "municipal resource" as described by the Code.

The Code defines a municipal resource as including, but not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time. AMC 1.15.040.A. These municipal resources are to be used for "municipal public purposes," which are primarily the "performance of municipal duties." There is an exception in the Code for "de minimus personal use of municipal resources," but, importantly for this opinion, even this de minimus use may not be for political activities.<sup>1</sup> AMC 1.15.040.B.

The Code section on municipal resources also includes the following: "Except to the extent that the general public has the same access to or as otherwise authorized, a municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an

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<sup>1</sup> The candidate unequivocally may not, for instance, receive mail, make copies, or use the phone in relation to campaign activity at the candidate's municipal office.

employee’s personal endeavors, including contemporaneous service or employment.” AMC 1.15.040.C.

Taken together, these provisions of AMC 1.15.040 imply that the main reason behind the limits on the use of municipal resources is that municipal employees, by virtue of their positions, have access to certain resources that are not available to the general public. Employees should neither use those resources for things unrelated to their professional duties, nor should they be permitted to take advantage of the fact that their position allows them this exclusive access.

The Board, then, is of the opinion that the candidate may generally include images on the candidate’s website that were published or otherwise made publicly available by the municipality because this is not a “use of municipal resources” as covered by the Code.<sup>2</sup>

There is, however, one important caveat to this advice. Permissible use of an image – even one that is otherwise publicly available – also depends on whether municipal resources were used for a political purpose in the *creation* of the image. This is a question of intent at the time the image was created: Was the candidate legitimately engaged in providing municipal service, or was the image essentially created for political purposes? Intent might be obvious in some instances, but will more likely be inferred under circumstances where the timing and nature of the [image] would cause a reasonable person to question the motivation behind the creation of the image.<sup>3</sup> For example, an image of the candidate taken after declaring the candidacy would be more suspect as possibly politically motivated. The candidate should therefore take care to avoid even the appearance that he or she is improperly using municipal resources to create media for his or her campaign.

Respectfully,



Terrence Kelly, Board of Ethics Chair

Board of Ethics Members: Jack McKenna, Marsha Olson and Aesha Pallesen

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<sup>2</sup> While the municipality may retain some ownership interest in the image such that it is still municipal “property,” the fact that the municipality has released the image into the public domain weakens the argument that the image is a resource that must be used only for municipal purposes or that a municipal employee has special access to.

Also, while the municipal seal may appear in images that meet the criteria articulated above, use of an “electronic duplication” of the Seal is specifically restricted by AMC 1.40.030, which prohibits “non-commercial communications . . . made for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the municipality” without written permission.

Finally, the Board cautions that it gives this advice only as to potentially permissible use of images under the Code. Whether a particular use would be in violation of copyright restrictions or other applicable laws is beyond the scope of this opinion.

<sup>3</sup> This is similar to the standard applicable to gifts (*see* AMC 1.15.050.B), which provides useful guidance in this context.