



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

Date: January 13, 2023

To: Darrel Hess, Municipal Ombudsman

RE: ***Request for Advisory Opinion 2022-06***

Dear Mr. Hess:

You asked the Board of Ethics (the Board) to consider whether Nikki Tshibaka, Director of Human Resources, violated the Municipal Ethics Code (the Code) by wearing a shirt with the slogan "I'm With Judy"—apparently in support of embattled Deputy Library Director Judy Eledge—at the June 15, 2022 meeting of the Anchorage Library Advisory Board. Generally, municipal public servants may request only advisory opinions regarding their own actions. However, as Municipal Ombudsman the Code allows you to request advisory opinions on the actions of other municipal servants.

Because the Municipality has already taken steps to address your concerns about this particular case,¹ the Board is using this opinion to spell out the nature of partisan activity and when it is prohibited by the Code.

The purpose of the Code of Ethics is to promote public trust:

"Holding public office or employment is a public trust. The proper functioning of democratic government requires ethical behavior by public officials and employees. Ethical behavior involves the commitment to take individual responsibility in creating a government that earns the trust and respect of its citizens." (1.15.020 A)

¹ Anchorage Office of Ombudsman Memorandum, August 22, 2022, outlines steps taken by the city to insulate Mr. Tshibaka from personnel complaints by library employees.

<https://s3.documentcloud.org/documents/22187130/ombudsman-memo-to-anchorage-public-library-employees.pdf>

See also <https://www.adn.com/alaska-news/anchorage/2022/08/23/city-removes-anchorage-hr-director-from-library-staff-complaint-investigations-after-concerns-over-im-with-judy-t-shirt/>

To this end, the Code articulates an interpretive principle focusing on key elements of public trust in governance.

“The assembly intends this Code to be interpreted to promote fair, honest, and impartial dealings with members of the public, to ensure proper use of municipal resources, and to avoid or manage conflicts of interest and potential conflicts of interest.” (1.15.020 B)

As such, specific provisions of the Code should be interpreted in a manner that cultivates public trust through promotion of fair, honest, and impartial conduct. With this purpose in mind, it is not surprising that the Code has broad prohibitions on political and partisan activity in the workplace or when engaging in work duties. Such activity undermines public trust in the fair and impartial conduct of municipal servants.

The Code defines “political activity” as:

“An act for the purpose of influencing the outcome of an election. Election includes ballot, bond, or candidate elections.” (1.15.110.A.1)

The Code defines “partisan activity” as:

“An act for the purpose of supporting a party, cause, or action.” (1.15.110.A.2)

It is important to note that “partisan activity” is a *much* broader category than political activity and encompasses support of a variety of causes, policies, actions, and public controversies. This could include support of (or attacks on) controversial actions by the Mayor, Assembly, or other public servants of the municipality; and could include communicative acts such as wearing campaign buttons or wearing clothing adorned with partisan slogans.

While there is some leeway for elected officials to engage in political and partisan activity, the Code is fairly strict when it comes to employees.

“Employees and board members shall not engage in partisan activity addressing municipal matters while at the workplace or in the performance of work duties.” (1.15.110.F)

In light of the Code’s purpose—fairness, impartiality and public trust in government—this prohibition is quite reasonable. When municipal employees as municipal employees, engage in partisan activity on municipal matters, they can no longer be trusted to be impartial in the exercise of their official duties that might relate to that matter. It is important for employees to be aware that they may be in “performance in work duties” outside of their immediate workplace. For example, an employee who participates in a municipal meeting, identifies themselves by their municipal role/title, and speaks from the perspective of that role is engaging in “work duties” and therefore generally prohibited from engaging in partisan activity.

The Code also limits partisan activity in the workplace because it constitutes a misuse of municipal resources—resources that should be used for municipal matters and not the promotion of personal, political, and partisan agendas. Municipal resources “include, but are not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and **employee time.**” [emphasis added] 1.15.040.A

The Code outlines only a few “safe harbors” in which municipal resources may be used for political or partisan activity (1.15.110.C).

Use of municipal resources for political or partisan activity prohibited: A public servant shall not use or authorize the use of municipal resources for political or partisan activity with the following exceptions and subject to independent APOC requirements:

1. The mayor, school superintendent, member of the assembly, and member of the school board, or their executive designee, may:
 - a. Appear before the assembly, the school board, appointed bodies of the municipality, community councils, civic organizations, and media representatives in support or in opposition to any ballot measure coming before the voters in a municipal election; and
 - b. Incur associated but limited expenses, such as employee time, use of municipal vehicle, and clerical costs.
2. Elected officials may voice their opinions as part of their usual and customary duties with similar limited use of municipal resources.

Aside from the rare cases in which an employee is an administrative designee in the matters laid out in 1(a), **employees may not use municipal resources, including their work time, to engage in political or partisan activity.** One’s worktime includes time used in the performance of one’s work duties, which, as noted above, can occur outside the immediate workplace. Again, if a municipal employee participates in a municipal meeting in a way that suggests they are acting in their official capacity, they can be properly said to be engaging in “work duties” and using employee time. Under such circumstances they are generally prohibited from engaging in partisan activity.

One final possible “safe harbor” for partisan activity can be found in the nature of one’s official duties. As noted above, elected officials are given some leeway in expressing political and partisan views consistent with their customary duties as representatives of the public. The Board has also ruled that a certain measure of partisan activity is permitted for the Municipal Ombudsman given that the nature of the position is to investigate and speak out on inequities in Municipal policies and administration. These exceptions aside, employees generally do not have official duties that require partisan activity.

Conclusion

Because this is an advisory opinion and because the Municipality appears to have taken steps to address your concerns, the Board has not conducted a specific investigation into Mr. Tshibaka's actions at the June 15, 2022, meeting of the Anchorage Library Advisory Board. Broadly speaking, it is important for employees to keep in mind some subtle ways in which they might violate the Code.

1. The category of "partisan activity" is significantly broader than that of political activity and can include support of, or attacks on, controversial municipal actions, policies, and even individuals.
2. Partisan activity can include communicative acts such as wearing campaign buttons or clothing adorned with partisan slogans.
3. An employee can engage in work duties and use municipal resources (e.g. employee time) even outside the immediate workplace. Participating in a municipal meeting in the guise of one's municipal position can be properly construed as engaging in one's work duties—thus generally prohibiting partisan activity.

If you have any further questions, please feel free to reach out to the Board.

Respectfully,

Rebecca Windt Pearson

Rebecca Windt Pearson, Chair
Aesha Pallesen
Terrence Kelly