



MUNICIPALITY OF ANCHORAGE
Board of Ethics

April 6, 2023

Subject: *Ethics Complaint for Potential Violation 2022-11*

Allegations: Violation of AMC 1.15.110(C) – Use of Municipal Resources for Political or Partisan Activity and AMC 1.15.110(E) – Political Activity in the Workplace.

On August 9, 2022, the Board of Ethics (the “Board”) received *Ethics Complaint for Potential Violation 2022-11* (the “Complaint”). The complainant¹ alleged that an assembly member (the Respondent) violated the code of ethics by displaying a sign that read “Abortion Access is a Community Responsibility” in the window of their personal office at city hall. The sign was taped to the Respondent’s window, facing outward towards the sidewalk. The complainant alleged that displaying this sign used the building to advocate a political or partisan message, which violated the code of ethics.

The Board reviewed the complaint at its September 21, 2022, meeting and accepted it for further review. The Complainant and the Respondent testified at the January 11, 2023, special session of the Board. After considering the complaint during the February 23 and April 6, 2023, Board sessions, the Board voted to cease further review of the complaint.

I. Summary of Facts Presented to the Board

The following facts are based on testimony from the Complainant and the Respondent, which the Board received during its January 11, 2023, special session, as well as three photographs, an email, and a voice message that the Complainant attached to the complaint.

During the summer of 2022, the Respondent, an assembly member, attended a rally where he held up a small homemade sign that read, “Abortion Access is a Community Responsibility.” After the rally, the Respondent returned to his office at City Hall and taped the sign to his office window, facing outward. The Respondent’s office is on the first floor (at street level) and faces a sidewalk next to Humpy’s Seafood Restaurant.

The Respondent testified his sign represented his personal views, and he was not purporting to speak on behalf of the municipality or the assembly. He did not recognize any ethical concerns and “sort of forgot” about the sign since he had not used any municipal resources to create it, and he displayed it from within his own office. Nevertheless, he said that if he had been made aware of any complaints related to the sign or had been asked to take it down, he would have done so.

¹ The complainant’s name is redacted pursuant to AMC 1.15.160(E).

Over the next month, municipal staff at city hall received several complaints about the sign and eventually referred the matter to the municipal manager. The municipal manager testified that if any employee or member of the mayor's office had displayed a similar sign, she would have immediately ordered them to take it down. However, because the sign in this case was displayed in the office of an assembly member, she was concerned about "separation of power" issues and did not feel comfortable addressing the matter with the Respondent. Therefore, she submitted the matter to the board of ethics for resolution. Around that same time, the Respondent became aware of the complaint and voluntarily removed the sign.

II. The Board's Decision to Cease Review of the Complaint

The board may cease its review of a complaint when it reasonably believes there is presently available an adequate remedy for the grievance stated in the complaint.² On April 6, 2023, the Board voted to cease review of this complaint for several reasons. First, even if the board were to find a violation in this case, the only appropriate remedy under consideration would be to order the Respondent to remove his sign. Since the Respondent already voluntarily removed the sign, there is an adequate remedy for the grievance stated in the complaint. Additionally, the Respondent is no longer a public servant of the municipality.³ Therefore, the board does not need to resolve this complaint to provide additional training or guidance to the Respondent. Finally, the Board believed that applying the code of ethics to this fact pattern was a matter of first impression and the provision at issue was less than clear. The Board believed finding a violation under these circumstances would be unfair. On the other hand, not finding a violation could create a bad precedent enabling ethically problematic behavior in the future. Based on all these factors, the Board exercised its discretion to cease review of this individual complaint. However, the Board believes it would be useful to outline some ethical considerations for public servants to consider before placing political or partisan messages on municipal property.

III. Ethical Considerations in Using Municipal Resources for Partisan Activity

a. Use of Municipal Resources for Partisan Activity is Generally Prohibited

"Municipal resources include, but are not limited to, funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time."⁴ Municipal resources may only be used for municipal purposes and may not be used for political or partisan activity. AMC 1.15.110(C), which prohibits this use, reads as follows:

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:

² AMC 1.15.160(A)(2)(a).

³ The Respondent's name is redacted from this opinion because the Respondent did not waive confidentiality and the Board's practice at the time was to redact a Respondent's name in those circumstances. However, for future cases the Board's policy, which is available on the Board's website, is to include the Respondent's name if the Board finds the Respondent violated the Code of Ethics.

⁴ AMC 1.15.040.

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.*

“Political activity” is an act for the purpose of influencing the outcome of an election. Election includes ballot, bond, or candidate elections. “Partisan activity” means an act for the purpose of supporting a party, cause, or action.”⁵

Using the terms and definitions above, municipal employees and board members are prohibited from using or authorizing the use of municipal resources for political or partisan activity, with no exceptions. Thus, if an employee or board member used municipal property to display a political or partisan sign, this would always be a clear violation of the code of ethics.

b. The Exception for Elected Officials

The situation is less clear for elected officials because the exception in AMC 1.15.110(C)(2) allows elected officials to voice their opinions as part of their usual and customary duties with limited use of municipal resources. The standard creates a certain amount of gray area because determining whether something is “usual and customary” or involves more than “limited” use of municipal resources is not always clear. It may be advisable to revise this provision to provide greater clarity.

In the meantime, the Board wishes to provide some clarity about how it interprets the exception for elected officials. Interpreting any code provision is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.⁶ Here, exception 1.15.110(C)(2) was likely intended to have a similar breadth as exception (C)(1), which allows the mayor, school superintendent, and other elected officials to incur limited expenses while appearing at various meetings. Similarly, elected officials customarily voice their opinions on partisan issues at public meetings and gatherings, and they may incur some limited use of municipal resources while doing so.

Historically, it has not been customary for elected officials to display political or partisan signs on the exterior windows of City Hall. The building serves as the place where citizens interact with the municipal government for a wide variety of official functions. Citizens expect many of these functions to be carried out impartially and without politics or partisanship. While a large sign spelling out the word “welcome” has been placed in the building’s windows, elected officials

⁵ AMC 1.15.110(A).

⁶ See *Savings Ass’n of Texas v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (explaining “whole act” rule of statutory interpretation).

have not used those windows to communicate their personal political or partisan views. This might be for good reason. While analyzing First Amendment violations is outside the jurisdiction of the Board of Ethics, there might be legitimate concerns about creating a public forum or limited public forum on the windows of municipal buildings. This might be one reason why those windows have not historically been used to communicate personal partisan or political messages.

The Board also believes that the exterior windows of City Hall are more than “limited” municipal resources. The windows face busy streets and sidewalks in the heart of downtown Anchorage. Additionally, the value of this location to post partisan or political messages is enhanced because it implies endorsement of the sign’s message by the municipality, or at least someone associated with the municipality.

The situation is different if a sign were to be placed inside an elected official’s office, which was not visible from the outside of the building. While employees and Board members have a strict prohibition against partisan activity in the workplace,⁷ elected officials do not, and historically have wide latitude in how they decorate the inside of their personal offices. The office of an elected official might contain photographs, plaques, signs, mementos, etc., all of which communicate various partisan or political stances. But elected officials have not historically used their offices in municipal buildings to display partisan messages that are visible from the outside of the building, essentially using the building as their billboard.

IV. Summary

Municipal employees and board members may not use municipal resources for political or partisan purposes. While AMC 1.15.110(C) allows elected officials to voice their opinions as part of their usual and customary duties, with limited use of municipal resources, the Board does not believe posting political or partisan signs on the exterior of municipal buildings or property is how elected officials have customarily voiced their opinions. The board also believes that the exterior windows and facades of municipal buildings are more than a limited resource. Thus, posting political or partisan signs on municipal buildings creates ethical problems in using municipal resources for partisan activity.

APPROVED by the Municipality of Anchorage Board of Ethics this 6th day of April, 2023.



Rebecca Windt Pearson, Chair
Aesha Pallesen, Vice Chair
Terrence Kelly

Copy to:

- (1) Complainant
- (2) Respondent
- (3) Municipal Clerk for electronic publication

⁷ AMC 1.15.110(F)