

**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY INFORMATION MEMORANDUM**

No. AIM 106-2014

Meeting Date: July 22, 2014

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**From:** CHAIR OF THE ASSEMBLY

**Subject:** Board of Ethics Advisory Opinion 2014-3 regarding AO 2014-14

The attached document is provided for Assembly review and consideration.

Prepared by: Dee Ennis, Board Counsel  
Approved by: Barbara A. Jones, Municipal Clerk  
Respectfully submitted: Patrick Flynn, Assembly Chair



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

July 9, 2014

Anchorage Assembly,  
Dick Traini, Assembly Vice-Chair and Sponsor of AO 2014-14

Re: **Request for Advisory Opinion 2014-3, Comment on Proposed Amendment to the Ethics Code in AO 2014-14**

Dear Anchorage Assembly and Assembly Vice-Chair Traini:

Following introduction of AO 2014-14 at the Regular Assembly Meeting of January 14, 2014, the Assembly referred the proposed ordinance to the Board of Ethics (the "Board") for comment. AO 2014-14 attempts to limit acceptance of municipal lobbyist fundraising by candidates who are municipal employees or elected officials.

The Board's comments and observations are set forth as follows:

1. Contractor vs. Employee

A lobbyist contract is a municipal contract – the lobbyist is a contractor, not an employee. The Ethics Code does not directly address contractors, but covers employees, elected officials, and appointed board and commission members.

Section 2. of the proposed ordinance adds restrictions on lobbyists. (See Page 2, lines 22-27: 1.15.035N.2., *as proposed*.) **The Board's first recommendation is that direct restrictions on lobbyists be located in the lobbying code (AMC 2.35, *Regulations of Lobbying*) and not the Ethics Code.**

2. Quid Pro Quo

With respect to the acceptance of fundraising from MOA lobbyists, Assemblymember Traini's stated concern is the potential for quid pro quo – i.e. if the lobbyist has helped an elected official or employee through fundraising efforts, the elected official or employee would be more likely to award the lobbying contract to the lobbyist in the future.

While recognizing this concern, the Board cannot distinguish a lobbyist as a contractor from any other contractor with the MOA, some of whom may hold much larger contracts with the Municipality. At a fundraising event, it can be anticipated that business leaders, including those holding MOA contracts, may be among the community members from which candidates will seek contributions. For example, a contractor with a 15 million MOA construction contract might well attend a fundraising event for a candidate who is an elected official or employee. The same concern with quid pro quo would arise.

In addressing the quid pro quo concern, there was some discussion whether a distinction might be made between sole source and competitively bid contracts. The lobbying contracts are usually “sole source” contracts – contracts that are not competitively bid because the entity to perform the contract is uniquely situated to perform the work. A competitively bid contract would eliminate much of the concern with quid pro quo. Firstly, the Board appreciates that it is not the policy maker. But, secondly, **the Board could not envision an effective and non-overreaching policy that defines fundraising for a municipal employee or elected official by a sole source contractor to be a prohibited conflict of interest under the Ethics Code.**

Finally, at least one Board member noted that if a candidate was not a municipal employee or elected official, that candidate could accept lobbyist fundraising. And upon election, that candidate could favor the lobbyist in the award of the lobbying contract.

3. Use of Municipal Resources to Assist a Private Campaign

The Board also discussed the concern that if a MOA lobbyist developed lobbying contacts at public expense, these contacts should not be diverted to a private purpose – i.e. the campaign efforts of an individual candidate. As to at least one of the three current lobbyists for the MOA, the lobbying firm is located in Washington D.C. and specializes in the areas for which lobbying assistance is sought. The firm brings to the table (rather than newly develops) a vast array of historical contacts and experience in the subject area.

4. “In any form”

Section 1., Subsection 6 of the proposed ordinance provides that “a municipal employee running for municipal, state, or federal elected office shall not accept *in any form* fundraising...” (See Page 2, lines 1-4: 1.15.025I.6., *as proposed.*) **The**

**Board questioned the reach of this language** – i.e. does this include paying for the food at a fundraising event? Would a MOA lobbyist be restricted from any participation in any fundraising for a candidate?

The Board appreciates the opportunity to participate in the review of the proposed amendment, and would welcome the opportunity to do so in the future for this or any other proposed legislation.

Municipality of Anchorage Board of Ethics:



Keith Silver, Chair

David Nesbett, Vice-Chair

Ted Carlson

Terrence Kelly

Steve Strom