

Submitted by: ASSEMBLY MEMBER TRAINI
Assembly Member Gray-Jackson
Assembly Member Paul Honeman
Prepared by: Assembly Counsel
For reading: January 14, 2014

*Postponed Indefinitely
7/22/14*

**ANCHORAGE, ALASKA
AO NO. 2014-14**

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 1.15 TO PROHIBIT THE ACCEPTANCE OF LOBBYIST FUNDRAISING WHEN THE LOBBYISTS ARE REGISTERED FOR MUNICIPAL WORK AND THE CANDIDATES ARE MUNICIPAL ELECTED OFFICIALS OR MUNICIPAL EMPLOYEES.

WHEREAS, lobbyists are required to register with the Municipal Clerk under chapter 2.35 to advocate and advance issues under the control of municipal government officials; and

WHEREAS, it creates a conflict of interest when a municipally-registered lobbyist engaged to advance issues under the control of municipal government officials, is also fundraising for an employee or elected official of the municipality;

WHEREAS restriction on the lobbyist is in place under 2.35.120—"A lobbyist or family member may not . . . (8) Fundraise or serve as a campaign manager or director, or serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee for municipal elections; this paragraph does not apply to a volunteer lobbyist as defined in regulations of the Alaska Public Office Commission"; and

WHEREAS, the Municipality may also, in turn, hire lobbyists registered under state law to advocate and advance issues for the Municipality at the state and federal level;

WHEREAS, it creates a similar conflict of interest if a lobbyist hired and registered to represent the Municipality before other government bodies is contemporaneously engaging in fundraising for an employee or elected official of the Municipality during the contract period with the Municipality;

WHEREAS, Chapter 1.15 (Ethics Code) is the appropriate chapter to set out the conflict for the municipal employee and elected official on acceptance of fundraising from lobbyists, whether engaged on behalf of the municipality, or engaged to lobby members of municipal government; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 1.15.025 is hereby amended to read as follows (*subsections not affected are not set out*):

1.15.025 Additional provisions for municipal employees.

*** ***

I. Political activity. The following limitations shall apply to political activity:

*** ***

1 6. A municipal employee running for municipal, state, or federal elected
2 office shall not accept in any form fund-raising from a lobbyist registered
3 with the municipality under chapter 2.35 or retained by the municipality
4 pursuant to registration under AS 24.45.041.
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6 (AO No. 2006-140(S-1), § 1, 1-1-07; AO No. 2007-93(S), § 1, 7-17-07; AO No. 2007-
7 110, § 1, 8-28-07)

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9 **Section 2.** Anchorage Municipal Code section 1.15.035 is hereby amended to read as
10 follows (*language indicating no amendment is included for context only and other subsections*
11 *not affected are not set out*):

12
13 **1.15.035 Additional provisions for elected officials**

14 *** *** ***

15 N. *Restrictions on engaging or receiving certain services [TO INFLUENCE LEGISLATIVE*
16 *OR ADMINISTRATIVE ACTION OR FINANCIAL CONTRIBUTION].*

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18 1. An elected body may not engage a lobbyist or other entity for
19 compensation to influence financial support, legislative action, or
20 administrative action from another elected body of the municipality.

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22 2. When a lobbyist is registered to come before the municipality under
23 chapter 2.35 or is retained by the municipality pursuant to registration
24 under AS 24.45.041, the lobbyist shall decline to host fundraising
25 activities in support of an elected official's candidacy for municipal, state,
26 or federal elected office, and it shall constitute a breach of the public trust
27 for an elected official to accept the fund-raising.

28 *** *** ***

29 AO No. 2006-140(S-1), § 1, 1-1-07; AO No. 2008-78(S), § 1, 8-12-08)

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31 **Section 3.** This ordinance shall become effective immediately upon passage and approval
32 by the Assembly.
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PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2014.

Chair

ATTEST:

Municipal Clerk

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. 6th 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