

Municipality of Anchorage



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BOARD OF ETHICS

December 15, 2011

To: Dick Traini, Anchorage Assembly

Re: Request for Advisory Opinion 2011-01 REVISED

Dear Mr. Traini:

This letter supersedes and replaces our original advisory opinion. In issuing this opinion the Board has relied on the information attached to your request for advisory opinion (RAO 2011-1) and the applicable Anchorage Municipal Code (hereafter "the Code"). If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

The Situation:

You wish to sponsor an ordinance creating a contracting preference for disabled (>50%) veterans. You requested advice from the Board regarding potential conflicts of interest in official action, including sponsorship, of such an ordinance given that you yourself are a disabled (60%) veteran.

Relevant Sections of Municipal Ethics Code

10.15.035 B. of the Code states:

Elected officials may not participate in any official action in which the elected official or a member of the elected official's household has a substantial financial interest.

10.15.035 C. of the Code requires that prior to comment, deliberation or vote on the matter, you must disclose your potential conflict to the Assembly, which has ultimate authority in determining if your conflict is "substantial".

Discussion

While the Code does not prohibit the Board of Ethics from providing its own opinion on the matter, the Board believes that an Assembly meeting is generally the better forum to make such determinations regarding potential conflicts of interest on the part of Assembly Members. In Assembly meetings, Assembly Members are available to answer

detailed questions in a high profile, public forum. As the Code places final authority over these matters with the Assembly, the Board has refrained from commenting on these cases and has deferred to the Assembly. Before commenting, deliberating or voting on matters where they may have a conflict of interest, Assembly Members are required to disclose their potential conflict to the Assembly in order to determine if that conflict is substantial.

However, the *sponsorship* of an ordinance raises difficulties that the Board has not considered until now. As sponsorship of an ordinance occurs before the ordinance comes before the Assembly, there is something of a “gap” in the Code. To disclose a conflict meaningfully, the ordinance must be before the Assembly, but by then an Assembly Member may have already sponsored it. If sponsorship is an “official action”, and if the conflict is “substantial”, then the Assembly Member may have already violated the Code before he or she is able to disclose their conflict to the Assembly.

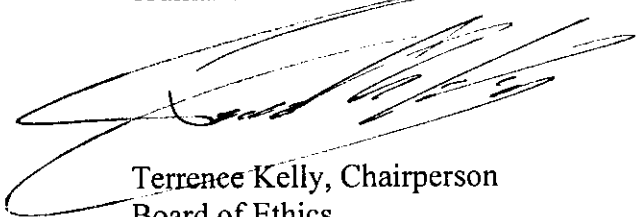
The Board's view is the sponsorship of an ordinance is an official action, so this Kafkaesque gap in the Code is a very real possibility. As such, the Board cannot defer to the Assembly on potential conflict cases regarding sponsorship of ordinances. Therefore, potential conflicts of interest should be disclosed to the Board of Ethics for review before sponsorship of the ordinance.

In this case, the Board concludes that, given that neither you nor a member of your household owns a business and thus would not be bidding for municipal contracts, there is no reason to expect that you would currently secure a substantial benefit from sponsoring this ordinance.

Recommendation

Prior to comment, deliberation or voting on this matter before the Assembly, you should provide a full and accurate disclosure of your potential conflict to the Assembly. The Assembly should make a determination, based on the factors articulated in 10.15.035 C., as to whether your conflict is substantial and precludes you from participating in the matter.

Having disclosed your potential conflict to the Board of Ethics regarding sponsorship, the Board concludes that your conflict is not substantial and your sponsorship of the ordinance does not violate Code.



Terrence Kelly, Chairperson
Board of Ethics
Municipality of Anchorage