



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

December 9, 2013

To: Barbara A. Jones, Municipal Clerk
632 W. 6th Ave. Ste. 250
Anchorage, AK 99501

Re: **Request for Advisory Opinion 2013-1**

Dear Ms. Jones:

The Municipal Clerk requested an advisory opinion from the Board of Ethics (“the Board”), *Request for Advisory Opinion 2013-1* dated December 4, 2013. Members of the Anchorage Municipal Assembly are contemplating moving the Municipal election from April to later in the year. There are various reasons why such a move is being contemplated; however, intentional or not, moving the Election Day would have the effect of extending, by several months, the terms of all sitting Assembly members.

The questions before the Board are whether the Municipal Ethics Code (“the Code”) allows Assembly members to (1) sponsor or (2) vote and deliberate on such an ordinance given their potential conflict of interest.

Relevant Sections of the Code

The Municipal Ethics Code states:

1.15.035B: *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.*

A *financial interest* “includes the receipt of a pecuniary benefit and the expectation of receiving a pecuniary benefit.” (AMC 1.15.110I)

A *private interest* is an “interest affecting, belonging, or accruing to an individual or private entity as distinct from the public interest at large.” (AMC 1.15.110R)

The Board has previously ruled that sponsoring an ordinance is an “official action.” (OA 2011-01 *Revised*). If the extension of the terms of office for these Assembly members constitutes a “substantial financial interest,” then the Code precludes them from

sponsoring such an ordinance. Likewise, participation in deliberation and voting on an ordinance moving back the Election Day, and thereby extending terms, would be similarly precluded.

AMC 1.15.035D outlines five criteria for determining whether there is a substantial financial interest:

- 1. Whether the financial or private interest held by the elected official or household member is a substantial part of the matter under consideration;*
- 2. Whether the financial or private interest varies directly and substantially with the outcome of the official action;*
- 3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action;*
- 4. Whether the financial or private interest is significant monetarily;*
- 5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the elected official or household member belongs.*

Discussion

- 1. Whether the financial or private interest held by the elected official or household member is a substantial part of the matter under consideration.*

Moving Election Day later by several months would extend the terms of all Assembly members. Whether this is intended or not, it is a substantial part of the matter under consideration.

- 2. Whether the financial or private interest varies directly and substantially with the outcome of the official action;*

Moving the Election Day later by several months would extend the terms of the Assembly members. The outcome directly impacts the financial and private interests in question.

- 3. Whether the financial or private interest is immediate and known or conjectural and dependent on factors beyond the official action;*

The financial interest in this case would be salary and benefits. Extending terms by several months constitutes additional salary and benefits that would otherwise not be available to the Assembly member. The private interest is continued membership on the

Assembly. The private interest is immediate and known and not dependent on factors beyond the official action.

4. Whether the financial or private interest is significant monetarily;

An Anchorage Assembly member makes approximately \$29,000 per year plus potential other benefits, such as a medical stipend and retirement benefits. This constitutes a significant monetary value. Due to the clear financial interest, the Board does not find it necessary to further explore or value the private interest(s) held by Assembly members in continued membership on the Assembly.

5. Whether the financial or private interest is of a type which is generally possessed by the public or a large class of persons to which the elected official or household member belongs.

Both the financial and personal interest in question are only possessed by Municipal elected officials. This is not a “large class of persons.”

Conclusions:

Under the current proposal as written, all Assembly members have a substantial financial interest that is served by moving the current election date from April to November 2014. By their own decision, such an ordinance would extend their terms and they will accrue salary and benefits which otherwise would not have been available to them. Their personal interest in continued membership on the Assembly would also be extended. Specifically, in light of the questions asked in Request for Advisory Opinion 2013-1, the Board finds:

1. The Code forbids elected officials from engaging in official actions in which they have a substantial financial interest. Every Assembly member has a substantial financial interest in moving the current election date back and extending terms. Therefore, no Assembly member may sponsor such an ordinance.
2. The Board finds that no Assembly member may participate in deliberation and voting of such an ordinance.
3. The Code of Ethics typically leaves final authority in the determination of conflicts of interest to the Assembly; however, the code requires full disclosure of the financial interest in question. The Code also requires that after disclosure, the Assembly member in question not participate in the Assembly’s discussion as to whether the said financial interest is “substantial.” However, in this case, all Assembly members have a similar conflict of interest. As the Code precludes official action on a matter in which an elected official has a substantial financial interest, no Assembly member may participate in the determination of another Assembly

member's conflict in this matter without himself or herself being in a conflict of interest.

There may be very good reasons to move the election date. Increased public participation in elections is certainly a public good. However, laudable ends do not justify any and all means to achieve those ends. The Ethics Code places limits on how elected officials may act, even when motivated by good intentions. For instance, in the past, when the election date was moved, the implementation was delayed a number of years so Assembly members would not be extending their own terms. If this method were followed again, the goals of increased voter turnout *and* ethical governance could both be served.

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