



MUNICIPALITY OF ANCHORAGE
Board of Ethics

October 13, 2023

Advisory Opinion 2022-14 and 2022-16

Relevant Ethics Topics: Conflicts of Interest – AMC 1.15.060; and Qualifications for Election Commission Members – AMC 28.120-030(B)

A member of the election commission (the requestor) requested a confidential¹ advisory opinion on whether hosting a fund raiser for a candidate on the ballot created a potential conflict of interest that should have been disclosed to the rest of the election commission, even if the fund raiser occurred before the requestor was appointed to the commission. The municipal clerk requested an advisory opinion on the same issue as well as asking what the remedy would be if disclosure was required. This report is the Board’s response to both requests. Certain facts have been redacted to prevent disclosure of the persons who have requested anonymity.²

I. FACTS OF THE REQUEST

A. Evidence considered by the Board

The requestor and the municipal clerk both attached written statements to their requests for an advisory opinion. On May 18, 2023, the requestor and one other witness (a former Deputy Municipal Attorney who was working for MOA Elections as an Election Observer Liaison) provided information to the board during an executive session of the Board. On August 10, 2023, the former municipal clerk provided information to the board during an executive session. The following facts are based on the information that was provided to the board.³

B. Background of the Anchorage Election Commission

The five members of the election commission are appointed by the mayor and confirmed by the assembly to serve for three years.⁴ AMC 28.120.030(B) sets some additional qualifications for members of the commission: “During their term, a member shall not: (1) Hold other elected or appointed public or political party office; (2) endorse

¹ See AMC 1.15.150(D) (“A request for advice is confidential unless confidentiality is waived by the person requesting an advisory opinion.”)

² AMC 1.15.150(F)

³ AMC 1.15.150.B reads as follows: “In any later proceeding involving the inquirer, the inquirer is entitled to rely on the advice of the board, and may not be sanctioned for acting in compliance with the board’s advice so long as the facts remain substantially unchanged from those represented to the board in the inquiry.”

⁴ AMC 28.120.010-020

or engage in any political or campaign activity on behalf of any candidate, proposition, or measure in a municipal election; or (3) Be an employee of the municipality or school district or any subdivision thereof, except as a member of the election commission.” The duties of the commission are listed in AMC 28.120.060 and include both advisory duties, such as advising the assembly and municipal clerk in the conduct of elections, and adjudicatory duties, such as serving as the canvass board and adjudicating questioned ballots.

C. *The requestor’s potential conflict of interest*

In December of 2021, the mayor asked the requestor if he would consider serving as a member of the election commission. At some point before that, the requestor hosted a fund-raiser at his home for one of the candidates on the ballot for the 2022 municipal election (hereinafter referred to as “Candidate A”). The requestor frequently hosts fundraisers for various candidates or causes at his home and does not have any recollection of this particular fundraiser. He believes it is possible he was out of town and did not actually attend it.

Before accepting appointment, the requestor informed the mayor’s chief of staff about the prior fundraiser and asked for clarification about whether it would prevent his service on the election commission or would require a particular disclosure. The chief of staff replied that the municipal attorney would call the requestor, but he was “okay” to serve. The requestor interpreted that answer as meaning that the prior fundraiser did not preclude his service on the commission, nor did it require him to make a disclosure. The municipal attorney later called the requestor and correctly informed him that AMC 28.120.030(B) prohibited election commission members from engaging in political or campaign activity on behalf of any candidate in a municipal election “during their term,” and that the prior fundraiser for Candidate A would not prevent the requestor from serving on the commission because it occurred before his term started. That discussion was brief because most of the conversation focused on potential conflicts related to the requestor’s pending service on another municipal board, which the requestor withdrew from before being appointed to the election commission. The two never discussed whether the prior fundraiser would still need to be disclosed to the rest of the election commission as a potential conflict of interest. Based on this conversation, the requestor believed that the issue of him holding the fundraiser for the candidate in the past had been resolved. On January 11, 2022, he was confirmed by the assembly and started his term on the election commission.

D. *The requestor’s actions on the Election Commission*

The election commission met as the public session of canvass on April 18, 2022, about two weeks after the regular municipal election.⁵ By April 18th, preliminary voting results showed that Candidate A was trailing by about thirteen percentage points, or about 1,500 votes.

⁵ This meeting was recorded and is available at <https://www.youtube.com/watch?v=1nGC8nGg79A>.

Ms. D.E., a former Deputy Municipal Attorney, was employed by the municipality as an Election Observer Liaison and attended the public canvass session to assist the commission. Just before the session started, the municipal clerk asked Ms. D.E. if she would say a few words to the commission about the process the commission should use to disclose potential conflicts of interest. Ms. D.E. first asked the members of the election commission to fill out their disclosure of economic interest forms. Because she knew that the primary work of the election commission at that meeting would involve adjudicating questioned ballots, she then told election commission members that they should disclose to the rest of the commission if they had a conversation with a voter or observer or had any involvement in a particular matter, such as knowing the voter or observer involved in a questioned ballot. Ms. D.E. told members of the election commission that their disclosures would then allow the commission to decide whether their personal involvement was substantial and created a conflict of interest. In hindsight, both Ms. D.E. and the former municipal clerk believed that the short presentation to the commission was not sufficient training. They both believed that members of boards and commissions, including the election commission, would benefit from more formal in-depth ethics training. Ms. D.E. stated that the briefs she provided to the election commission in the future were more comprehensive.

After Ms. D.E.'s brief, the commission then voted on procedures that would be used to adjudicate questioned ballots, as well as resolving any challenges to ballots. The requestor participated in this process along with the other members of the commission. However, observers for Candidate A did not challenge any ballots. None of the matters the requestor participated in had any foreseeable impact either for or against Candidate A. Resolving the questioned ballots was a lengthy process and the meeting lasted until after midnight. At the end of the meeting, members of the commission were asked if they had "any further disclosures." The requestor believed that the issue of him hosting the fund raiser had been resolved before he was appointed to the commission, and that the request for "further disclosures" related to potential conflicts with voters or observers in any of the questioned ballots. Therefore, he did not make any further disclosure.

The commission later completed its report of the election, which was submitted through the Municipal Clerk's office to the Assembly. The Assembly certified the election results on April 26, 2022, which confirmed that Candidate A lost the race by about 1,500 votes.

A few months later, Candidate A also ran as a candidate in the June 21, 2022, special election. The election commission scheduled the public session of canvass for this special election for July 8, 2022. On June 1st, the requestor told the municipal clerk that he would not be able to attend the public session of canvass due to his mother's memorial service. He told the municipal clerk that he also should potentially be excused from the public session of canvass because he had business relationships with two candidates on the ballot and had previously hosted a fundraiser for candidate A. The municipal clerk immediately recognized that Candidate A also ran as a candidate in the April election. She informed the requestor that she believed he should have disclosed the fund raiser before participating in the public session of canvass back in April. This led to

both the requestor and the municipal clerk requesting advisory opinions from the board of ethics. The requestor later disclosed the fundraiser to the rest of the commission. After he did so, the commission voted to excuse the requestor from participation due to his mother's memorial service.

II. DISCUSSION

As a public servant, the requestor had the ability to request an advisory opinion regarding the applicability and interpretation of the ethics code related to actions, rights, or conflict personal to him as the inquirer.⁶ The municipal clerk is also able to request an advisory opinion about the applicability or interpretation of the code of ethics.⁷ Therefore, the board has jurisdiction to issue this advisory opinion.

AMC 1.15.060.D prohibits a public servant from participating in an official action in which the public servant or a member of the public servant's immediate family has a substantial financial or private interest. A "private interest means an interest affecting, belonging, or accruing to an individual or private entity as distinct from the public interest at large."⁸

Here, the requestor had a private interest in Candidate A winning the election. Hosting a fundraiser for the candidate gave the requestor a private interest in the candidate's campaign, which was shared only by those persons closely aligned with the campaign who were supporting the candidate financially or through volunteer work. This is an interest not shared by the public or a large class of persons. As such, the private interest should have been disclosed before the requestor participated in any official action involving Candidate A.

Disclosing the matter to the mayor or staff members in the mayor's office does not fulfill the disclosure requirement. While the requestor might have believed that the issue of the prior fundraiser was resolved before he was appointed, the code gives the body (the election commission) and not the mayor's staff the authority to determine whether a conflict is substantial. Therefore, the potential conflict must be disclosed to the rest of the election commission.

Since the potential conflict was not disclosed prior to the election involving Candidate A, the board must address what the remedy should be. In the context of this case, the requestor did not participate in any actions that could potentially benefit Candidate A. Although the requestor did participate in the public session of canvass on April 18, 2022, and did vote on procedures to be used to resolve challenged ballots, none of the challenged ballots involved Candidate A or had any impact on Candidate A's race. By the time the election commission met on April 18, 2022, preliminary results indicated the candidate was trailing by a large enough margin that resolving a few questioned ballots would not be expected to have any impact on the results of the election. As it

⁶ AMC 1.15.150.A

⁷ AMC 1.15.150.B

⁸ AMC 1.15.180

related to Candidate A, the commission's report, which was forwarded to the assembly, involved the clerical or ministerial action of counting votes in a race the candidate lost by about thirteen percentage points. Therefore, none of the facts presented to the board had any impact on the final election results or gave the board any reason to question the integrity of the election commission's process or the integrity of the election.

The board wishes to stress that this result might be different in other contexts. In a close election, the decision to either reject or count challenged ballots could have a substantial impact on the election. The public expects members of the election commission to make that decision in an impartial and non-partisan manner. Hosting a fundraiser in one's home for a candidate whose votes are being counted is the type of private interest that is incompatible with the election commission's non-partisan duties. Therefore, the code requires private interests such as these to be disclosed in a public meeting to the rest of the commission.

The board recommends more comprehensive training be given to members of the election commission when they are appointed. Ms. D.E. informed the board that she has already implemented better and more in-depth training related to the code of ethics, particularly disclosing potential conflicts of interest. Therefore, further action is likely not required.

III. CONCLUSION

The board concludes that the requestor should have disclosed his private interest in Candidate A's campaign prior to participation in the public session of canvass on April 18, 2022. That said, none of the requestor's actions call the work of the election commission or the integrity of the election into question.

However, public servants should be mindful of the need to disclose potential conflicts of interest to the rest of the body. The Board is pleased to know that better training for members of the election commission in that regard has already been implemented and recommends that this training continue.

APPROVED by the Board of Ethics this 13th day of October 2023.



Rebecca Windt Pearson, Chair
Kelly Moghadam, Vice Chair
Terrence Kelly
Patrick Teagarden

Copy to:

- (1) Requestor
- (2) Municipal Clerk for electronic publication