



MUNICIPALITY OF ANCHORAGE
Board of Ethics

Date: February 2, 2024

To: [Former Municipal Employee] ¹

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2023-07

Dear Former Municipal Employee:

You asked the Board of Ethics (the “Board”) for an advisory opinion on whether your status as a former municipal employee prohibits you from being hired as a consultant with the Anchorage Community Development Authority (ACDA) on a project funded by the municipality. This advisory opinion constitutes the findings and conclusions of the Board, based on the information you provided in your written request and in person during the February 2, 2024, meeting of the Board.² If material facts were not disclosed or were misrepresented, the opinion is without force or effect.³ The Board concludes your status as a former municipal employee does not prohibit the ACDA from contracting with you or your company.

FACTS OF THE REQUEST

You explained that you have over 25 years of experience in the public sector and previously worked in the Municipal Planning Department for twelve years. Most recently, you were the manager of the Long-Range Planning Division. You retired from this position on July 31, 2023, and are no longer a municipal employee.

The Long-Range Planning Division has a central role in implementing the recommendations of the municipality’s comprehensive plan, such as new district and neighborhood plans and revised land use regulations. As manager of this division, you routinely interacted with the Midtown Community Council and other neighborhood community councils, as well as the Anchorage Community Development Authority (ACDA).

¹ This is a generic form of the Board’s response. The identity of the former employee is redacted pursuant to AMC 1.15.150.D and F.

² In Request for Advisory Opinion 2023-06, the Municipal Manager requested an advisory opinion regarding the same issue. The Board declined to review that request because it was duplicative of your request, and because the Municipal Manager is not listed in AMC 1.15.150.B as one of the persons authorized to request such an opinion.

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.”

The ACDA is described in Chapter 25.35 of the code. The ACDA is a public corporate authority of the municipality and instrument of the municipality but exists independently of and separately from the municipality.⁴ One of the ACDA's responsibilities is to investigate and study real estate conditions.⁵

In 2021, a new federal law, the American Rescue Plan Act (ARPA), created a mechanism for cities across the United States to receive direct funding from the federal government for various projects. The Municipality of Anchorage received over \$103,000,000 in two tranches, which the Assembly allocated for various projects.⁶

You informed the board that at some point while you were still a municipal employee, you and the Director of ACDA discussed seeking ARPA funds for the ACDA to complete the Midtown Neighborhood Plan. As the manager of the municipality's Long-Range Planning Division, you were involved in discussions about which projects to advance for ARPA funding.

The Assembly ultimately allocated \$300,000 in ARPA funds for the completion of the Midtown Neighborhood Plan. However, the funds were allocated directly to the Municipality's Planning Department, not the ACDA.⁷ You said you were surprised by this change, since the ACDA was the organization seeking the funding and had previously been identified as the organization best suited for this type of project.⁸

You told the Board that you discussed this change with your supervisor, who was the Planning Director for the Municipality. You believed that the Long-Range Planning Division would not have the staff available to complete the Midtown Neighborhood Plan in the timeline necessary to qualify for ARPA funds. You said that the Long-Range Planning Division had several other multi-million-dollar projects that it was working on at the time. Therefore, you suggested that the ARPA funds for the Midtown Plan be directed to the ACDA, which was done. You told the Board that it was ultimately the Planning Director's decision to seek transferring the money from the Planning Department to the ACDA, and you were not involved with that process. You said that at the time, it was not foreseeable to you that you would retire as a municipal employee, or that the ACDA would later seek proposals from private companies to complete the plan.

You retired from your position in the municipality on July 31, 2023. You said that your decision to retire was based on you learning that you would be required to make minimum withdrawals from your retirement account. You did not make the decision to retire and put in your notice until May of 2023. After you retired, you started a consultant company focused on Long-Range municipal planning.

⁴ AMC 25.35.015.A

⁵ AMC 25.35.015.B

⁶ AR 2022-178(S), As amended (August 25, 2022).

⁷ *Id.* at 15.

⁸ *See* AR 2021-360 (October 27, 2021) (redirecting funds from the Midtown Community Council to ACDA. The funds had previously been allocated to the Midtown Community Council to conduct a study to determine the feasibility of a Midtown Improvement District. In redirecting those funds to ACDA, the Assembly stated that ACDA was "identified as ideally situated to lead such an effort with appropriate funding.")

On August 30, 2023, ACDA posted a Request for Proposal (RFP) seeking consultant services in support of the public outreach process for the Midtown Community Plan, and to study whether a business improvement district is feasible for the Midtown District area.⁹ You stated that ACDA’s decision to ask for proposals was due to the very short timeline necessary to spend allocated ARPA funds, and the assessment by ACDA staff that it would be unable to meet those deadlines without some assistance.

You told the Board that when you saw the RFP, you sought legal advice from an acquaintance and former colleague, who you knew to have experience with the code of ethics, on whether your company could respond to the RFP. After the former colleague informed you that doing so would not violate the code of ethics, your company submitted a proposal. One other company also submitted a proposal. On October 5, 2023, your company was selected for the contract. You informed the Board that ACDA is holding off on hiring you as a consultant pursuant to the contract while this advisory opinion is pending.

DISCUSSION

AMC 1.15.130 establishes restrictions on employment after leaving service and reads as follows:

- A. *General one-year rule:* An employee who leaves municipal service may not, for one year after leaving municipal service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by the employee, if the municipal employee participated personally and substantially in the matter through the exercise of official action. In this subsection, "matter" includes a case, proceeding, application, contract, or determination but does not include consideration of ordinances, resolutions, charter amendments, draft legislative measures, or the adoption of administrative regulations if consideration by the employee was only in the context of general application.
- B. *Waiver:* The assembly or school board may waive application of this restriction upon determination that a proposed action by a former employee is not adverse to the public interest. The waiver shall be by formal action and a copy shall be provided to the board of ethics.
- C. *Municipality option to contract:* The restriction on employment after leaving municipal service does not prohibit the municipality from contracting with a former employee to provide service on a matter on behalf of the municipality.

Based on the definition of “matter” above, the Board believes the matter covered by AMC 1.15.130.A in your case is ACDA’s award of a contract to your company. For example, if you had been involved in awarding a contract to a company, and you then retired and accepted a position with that company, that would be a vastly different scenario – and squarely within the conduct that is prohibited by the general one-year rule. But in your case, the key decisions of ACDA regarding this matter were to seek consultant services, and to eventually award the contract to your company. Both of these decisions occurred after your retirement, and you were not involved with either decision. The Board does not believe your prior municipal service related to the Midtown Plan

⁹ *RFP to Provide Professional Services for the Midtown District Plan and Midtown Business Improvement District (BID) Study*; ACDA Website, available at acda.net/news (last accessed February 2, 2024).

prohibits ACDA from selecting your company to provide consulting services in support of that plan. Because you were not involved in the process awarding the contract to ACDA, the Board believes your situation is firmly within AMC 1.15.130.C, whereby the restriction on employment after leaving municipal service does not prohibit ACDA from contracting with you (a former employee) to provide service on a matter on behalf of the municipality.

CONCLUSION

The Board concludes your status as a former municipal employee does not prohibit the ACDA from contracting with you or your company to provide consultant services in support of the public outreach process for a Midtown Community Plan, or in support of a study to determine whether a business improvement district is feasible for the Midtown District.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "K. Moghadam".

Kelly Moghadam, Chair
Terrence Kelly
Daniel Bellerive

Copy to:

- (1) Requestor
- (2) Genericized and redacted version to Municipal Clerk for electronic publication