



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

Date: August 28, 2020

To: Lance Wilber
lancewilbur@anchorageak.gov

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2019-04 – Confidentiality Waived¹

Dear Mr. Wilber:

This advisory opinion responds to the above *Request for Advisory Opinion* (Request). The Request concerns potential conflicts of interest arising under the Municipal Code of Ethics (Ethics Code) from your position as the Director of the Office of Management and Budget (OMB) and your wife's role as the Chair of the Heritage Land Bank Advisory Commission. This advisory opinion constitutes the Board's findings of fact, conclusions, and recommendations.²

I. Factual Background

A. The Heritage Land Bank (HLB)

The HLB is a division of the Municipal Real Estate Department. It manages an inventory of land for the benefit of the Municipality and its citizens. It has its own fund, the HLB Fund (Fund), used to acquire land for municipal use, manage and improve HLB land, and support HLB's operating budget.

The HLB Advisory Commission (Commission) is a municipal commission that advises the Assembly. The Commission is chaired by Mr. Wilber's wife, Wende Wilber, who is a partner in an architectural firm. The Commission oversees the inventory activities of the HLB, holds public hearings, and makes recommendations to the Assembly on proposed HLB actions. These actions include (1) a Five-Year Management Plan, which identifies actions the HLB may take to acquire,

¹ See AMC 1.15.050.D ("A request for advice is confidential unless confidentiality is waived by the person requesting an advisory opinion.")

² This opinion is based on the information provided by Mr. Wilber and Municipal Ethics Officer and Deputy Municipal Attorney, Dee Ennis, at the April 5, 2019 meeting of the Ethics Board. However, it was recently brought to the Board's attention that Mr. Wilber's wife resigned from her role as the Chair of the Heritage Land Bank Advisory Commission and relocated out-of-state. The Board is nevertheless issuing its opinion on Mr. Wilber's Request because of its potential utility for factual scenarios that may arise in the future.

dispose of, or develop property within the next five years, (2) an Annual Work Program, which guides HLB's activities within the upcoming calendar year, and (3) individual proposals to acquire, dispose of, or develop land.

B. Review of Proposals in PACE

PACE is an internal routing system used to finalize proposals for submittal to the Assembly for approval. Proposals routed through PACE go through multiple levels of review and certification by various department heads, including by the OMB Director, before being presented to the Assembly.³ The purpose of the OMB Director's review is to ensure that proposals meet the Municipality's financial and budget requirements. The review is focused on fiscal considerations, not the actual merits of the proposals.

Consistent with this process, the OMB Director reviews HLB's specific actions in PACE prior to their submittal to the Assembly as follows:

- Five-Year Management Plans and Annual Work Programs - These programmatic documents do not involve the appropriation of funds or authorize HLB to expend funds. Thus, OMB's review and certification of these documents in PACE is procedural only. Mr. Wilber advised that during his time as OMB Director, he has never changed a Five-Year Management Plan or Annual Work Program before providing his concurrence in PACE.
- Individual proposals to acquire lands – The OMB Director reviews these proposals in PACE to verify that HLB has sufficient funds for the acquisition.
- Individual proposals to dispose of lands - Most land disposal projects, such as a typical sale of foreclosed property, do not involve the appropriation of funds, authorize the expenditure of funds, or entail other funding considerations. Thus, the OMB Director's review of these projects is essentially procedural. Some land disposal projects propose to direct the proceeds into a specific fund to be used for a designated purpose. The OMB Director reviews these proposals to ensure the proceeds will be deposited into the correct fund for the specified purpose.
- Individual proposals to develop lands – Examples of these projects include proposals to put development contracts out for competitive bidding, and proposals to rezone property so that it may be developed in a specific way. Mr. Wilber's practice is to delegate the review of these projects in PACE to the Deputy OMB Director. His purpose for doing so is to avoid concerns that OMB's review could be influenced by his wife's position on the Commission or, in limited instances, by her position as a partner in an architecture firm.⁴

³ Other department heads who must review items in PACE include the Municipal Attorney, the Chief Financial Officer, the Municipal Manager and, where applicable, the Director of Economic and Community Development.

⁴ For example, Mr. Wilber stated that he would not review a proposal in PACE if his wife's architectural firm were involved in a bid on a proposed rezoning or development project involving HLB land. Indeed, Mr. Wilber's

II. Discussion

The Ethics Code contains a general rule regarding conflicts of interest. The rule, set forth in AMC 1.15.060D, prohibits a public servant or a member of the public servant's immediate family from engaging in "official action in which the public servant or an immediate family has a substantial financial or private interest." An "official action" is defined in AMC 1.15.060C as follows:

- C. Definition of Official Action: For purposes of this code, official action means participation in a process, including deliberation, in which a decision or recommendation is reached. Official action does not include:
 - 1. Clerical or ministerial action on a matter. For purposes of this chapter, ministerial describes an act or duty that conforms to an instruction of prescribed procedure with limited or no use of judgment by the person performing the act or duty.
 - 2. Action on a matter that does not substantially evaluate or impact the merits of the recommendation or decision.

The issue before the Board is whether Mr. Wilber's role in reviewing HLB actions in PACE constitutes a conflict of interest in violation of AMC 1.15.060D. To answer this question, the Board first considered whether Mr. Wilber's review of these actions constitutes an "official action" as defined in AMC 1.15.060C.2.

The Board concludes that Mr. Wilber's review of the proposals, either at the programmatic or the project-specific level, does not constitute official action under AMC 1.15.060C for the reasons that follow:

Five-Year Management Plans and Annual Work Programs – Because these programmatic proposals do not involve appropriations or authorize the expenditure of funds, Mr. Wilber's review of these plans is for the purpose of determining whether the proposals conform to prescribed procedures. Thus, his review of these actions is ministerial, as defined in AMC 1.15.060C.1. Nor does his review evaluate or impact the merits of these programmatic plans. Thus, it does not constitute official action.

Individual proposals to acquire lands – Mr. Wilber reviews these proposals to determine whether there are sufficient funds to support them, not whether the projects are meritorious.

review of a proposal to rezone property by a client of his wife's firm was the subject of Advisory Opinion 2016-4, in which the Board recommended that Mr. Wilber delegate his review of a proposed rezoning project involving his wife's firm to the Deputy OMB Director.

It is also worth noting Ms. Wilber would also be required by the Ethics Code to recuse herself from participating in the Commission's recommendation on any rezoning or development project involving her architectural firm to avoid a potential conflict of interest or the appearance thereof. See Anchorage Municipal Code ("AMC" or "Code") 1.15.060D.

Because his review neither evaluates nor impacts the projects' merits, it does not rise to the level of official action under 1.15.060D.

Individual proposals to dispose of lands – Because most land disposal projects do not involve the appropriation or authorize the expenditure of funds, Mr. Wilber's review of these proposals is procedural only. His review is ministerial as defined in 1.15.060C.1 and does not concern the projects' merits. Therefore, it does not constitute official action.

The Board reaches a similar conclusion regarding land disposal projects directing the proceeds into a specific fund to be used for a designated purpose. Mr. Wilber's review is to ensure the proposals comport with municipal procedures by utilizing the right fund. This ministerial action does not assess the projects' merits and does not comprise official action under 1.15.060C.

Individual development projects - Mr. Wilber does not take official action because he delegates the review of these projects to the Deputy OMB Director.

III. Conclusion

Based on the facts presented, the Board concludes that Mr. Wilber's review and certification of HLB's actions in PACE does not run afoul of the conflict of interest prohibition in AMC 1.15.060D because he does not take official action. The Board supports Mr. Wilber's practice of delegating the review of specific development projects to the Deputy OMB Director rather than handling those matters himself, to avoid creating the impression that he was influenced by his wife's role as the Advisory Commission Chair or an architectural firm partner. The Board encourages Mr. Wilber to continue this practice and recommends continued vigilance regarding similar projects in the future, to prevent any potential conflicts of interest or the appearance of any such conflicts.

If you have any questions about this advisory opinion, please contact us.

Respectfully,



Terrence Kelly, Board of Ethics Chair
Board of Ethics Members: Jack McKenna, Marsha Olson and Aesha Pallesen