



# Municipality of Anchorage

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October 10, 2019

Re: Response to Advisory Opinion 2019-05

Dear Ms. Hendrickson,

This letter follows up a discussion between you and Lisa Toussaint, co-counsel for the Municipal Board of Ethics, (Ethics Board) on Friday, September 13, 2019 concerning your request for an advisory opinion. In your opinion request, you advised that you are the Parks and Recreation Chair of the Girdwood Board of Supervisors (GBOS) and have been asked to serve on the board of directors of the Anchorage Home Builders Association (AHBA). The AHBA board's agenda includes recommending changes to the Municipal Building Code (Code), which could come before the GBOS for a vote of support. You asked for an opinion from the Ethics Board as to whether you, as the Parks and Recreation Chair of GBOS, would be required to recuse yourself from voting on any such proposed Code changes if you joined the AHBA board.

AMC 1.15.060.D prohibits a public servant from taking official action when the public servant or a member of her immediate family has a substantial financial or private interest in the outcome of the action. The provision further states that “[p]rior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.” A financial interest exists if the public servant has an ownership interest in or is a director, officer, or employee of an organization that may be impacted by an official action. *See* AMC 1.15.180.H. Once disclosure of a financial or private interest has been made, the decision on whether the interest is substantial is left to the discretion of the body on which the public servant is a member.

In light of the above framework, the Ethics Board advises that you, as a member of the AHBA board, would have a financial interest in the outcome of matters coming before GBOS that would impact the AHBA, including potential Code changes.<sup>1</sup> Thus, you should disclose any such interest to GBOS at the earliest practical opportunity. It is then up to the GBOS to determine whether the interest is sufficiently substantial to bar you from taking official action on the matter, including participating in voting.

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<sup>1</sup> As the Parks and Recreation Committee Chair of GBOS, you are a “public servant” as defined in AMC 1.15.030D.

For further guidance, we are enclosing a recent response of the Ethics Board to an advisory opinion request concerning the disclosure of interests in certain matters coming before GBOS.

Respectfully,

Terrence Kelly, Chair

Ted Carlson, Vice-Chair

Jack McKenna

Marsha Olson

Enclosure



# Municipality of Anchorage

Date: June 6, 2019

To: Kyle Kelley

From: Board of Ethics

Re: Response to Request for Advisory Opinion 2018-5

A handwritten signature in blue ink, appearing to be 'K. Kelley', is written over the 'Re:' line of the letterhead.

On December 7, 2018, the Board of Ethics ("the Board") received Request for an Advisory Opinion 2018-5 ("the Request").<sup>1</sup> The terms of the Request were clarified by the Requestor, Kyle Kelley, at the Board's December meeting.<sup>2</sup> First, the Request asked for an advisory opinion on when a public servant, in this case a board member of the Girdwood Board of Supervisors ("GBOS"), must disclose a potential conflict of interest, as that term is defined in the Municipal Code of Ethics ("the Code"). Second, the Request sought an advisory opinion as to whether, under facts explained to the Board at the December 7 meeting, several GBOS board members had an interest that should have been disclosed. This advisory opinion will first relate the Board's advice on when public servants are required to disclose a conflict of interest. This opinion will then examine whether GBOS board members had a conflict of interest that required disclosure under the facts presented to the Board at the December 7 meeting and two subsequent meetings.

- I. A public servant must disclose a potential conflict of interest, which includes both private interests and financial interests, prior to taking any official action regardless of whether the conflict is minor or substantial.

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<sup>1</sup> AMC 1.15.150(A).

<sup>2</sup> Mr. Kelley waived his right to confidentiality per AMC 1.15.150(D).

analyze whether a conflict bars official action by a public official. First, the public official discloses any financial or private interest, no matter how insubstantial, that she might have in the matter at hand. Second, the body then determines whether the interest is sufficiently substantial to bar her from taking action using the factors described in AMC 1.15.060(E).<sup>4</sup> So, to answer the Request's first question: The public servant must disclose any potential personal or financial interest at the earliest practical opportunity so that a determination can be made by the body as to whether the conflict is sufficiently substantial to bar the public servant from taking official action.

II. Whether members of GBOS had a financial or a private interest in a matter that should have been disclosed given the facts presented.

The Girdwood Board of Supervisors, an elected body, recently considered a proposal by Girdwood Nordic Ski Club ("GNSC") for the construction of additional multi-use trails in Girdwood ("the proposal") that would primarily be used for Nordic skiing. GNSC is a nonprofit 501(c)(3) corporation whose purpose is to promote the development

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<sup>4</sup> AMC 1.15.060(E). *Substantial Financial or Private Interest*. Whether the financial or private interest disclosed is substantial shall be determined on a case-by-case basis, with evaluation and balancing of these factors:

1. Whether the financial or private interest is a substantial part of the matter under consideration.
2. Whether the financial or private interest directly and substantially varies 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 member belongs.
6. Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.

appearance of impropriety created by several supervisors being members in the organization that had proposed the plan on which GBOS was to vote.

At the February 7 meeting, the Board heard from the Director of the Municipality's Heritage Land Bank ("HLB") as well as the President of the GNSC. The HLB Director explained that the land on which the trails in the proposal would be constructed was owned by the Municipality and held by the HLB. The GBOS had passed a "Resolution of Support" for the trail project proposed by GNSC. The GBOS decision was not binding and was merely a statement of support. The ultimate authority to approve the project rested with the Anchorage Assembly. If the project is ultimately approved, GNSC will be granted a "public trail easement" that will not be exclusive to GNSC members.

GNSC's President explained to the Board the organization's structure. Members pay suggested amounts to join. Basic membership has a suggested price of \$15 while families may join for \$40. Members receive a newsletter, sticker, and pin. Members do not vote to elect board members or have a say in how GNSC is run. Board members are instead appointed by the already-seated members of the GNSC board. All decisions are made by consensus of the GNSC board.

*Whether the members of GBOS had financial or private interests that should have been disclosed based upon the facts related above.*

As explained above, a public servant is required to disclose any financial interest or private interest that she might have. In light of the definitions for financial interest and private interest that were discussed above and the facts presented to the Board, the GBOS board members who were members of GNSC had a private interest in the matter that should have been disclosed. Furthermore, under the limited facts presented to the Board, there is the potential that the GBOS board member who is employed by Alyeska



Second, the GBOS board members did not have a financial interest that was implicated by their membership in GNSC, but at least one GBOS board member may have a financial interest in the matter due to employment with the Alyeska Resort. To begin with, the GBOS board members do not have a financial interest in GNSC. A financial interest in an organization exists if the public servant has an ownership interest in the organization or is a director, officer, or employee of an organization. None of the GBOS board members fill any of the relevant leadership roles in GNSC nor do they have an ownership interest in the 501(c)(3) entity. Under AMC 1.15.180(H), a financial interest also includes the receipt of a pecuniary benefit and the expectation of receiving a pecuniary benefit. There is no reason for GBOS Board Members to expect to receive a pecuniary benefit related to their membership in GNSC related to the official action regarding the proposal. They therefore do not have a financial interest in the nonprofit corporation.

However, at least one GBOS board member is an employee of the Alyeska Resort and may therefore have a financial interest related to the official action that was taken. A financial interest may exist when a person is an employee of an organization that may be impacted by an official action. As explained above, the Resort provided a letter of support for the project and could conceivably stand to garner increased revenue if more trails are built in a location near the Alyeska Hotel. As an employee of the Resort, the GBOS board member at issue would have a financial interest in the official action if that action benefitted the Resort. The Board does not have sufficient facts of the proposal's details to determine whether or how the Resort may be impacted, but this possibility of financial benefit to the Resort could conceivably create a financial interest on the part of

it can alert them to the existence of an interest that might require disclosure. But the existence of the appearance is not enough standing alone to create a conflict of interest.

### III. Conclusion

Based on the analysis above, the Board of Ethics is of the opinion that the GBOS board members who were members of GNSC had a private interest that required disclosure under the provisions of the Municipal Code of Ethics. GBOS board members did not have a financial interest that was created by their membership in GNSC. However, a GBOS board member who is employed by the Alyeska Resort may have a financial interest that was related to the official action that may have required disclosure. It is up to GBOS as a body to determine whether the interests were substantial, but in light of the factors described in AMC 1.15.060(E)<sup>9</sup> the interests at issue in this matter do not appear to be substantial.

It is a close call as to whether interests that should have been disclosed existed in this matter and this illustrates the Code's expansive definition of private and financial interests. The Board therefore urges public servants to err on the side of caution and disclose any interests that could bear on the official action being taken.

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<sup>9</sup> See Footnote 4 above.