



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

Date: November 20, 2020

To: Deitra Ennis, Deputy Municipal Attorney

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2020-01 – Confidentiality Waived<sup>1</sup>

Dear Ms. Ennis:

This advisory opinion responds to the above *Request for Advisory Opinion* (Request). The request concerns whether procedures put in place by the Transportation Inspection Division to insulate the Transportation Inspector, Carrie Belden, from taking action on her mother's taxicab permits are sufficient to prevent prohibited conflicts of interest under the Municipal Code of Ethics (Ethics Code). This advisory opinion constitutes the findings and conclusions of the Board of Ethics (Board), based on the information provided by Transportation Inspector, Carrie Belden, and Director of Municipal Projects, Alden Thern, at the June 11, September 10, and October 8, 2020 Board meetings and an email dated January 13, 2020 from Mr. Thern to Deitra Ennis, Deputy Municipal Attorney. If material facts were not disclosed or were misrepresented, the opinion is without force or effect.

**I. Background**

Chapters 11.10 through 11.40 of the Anchorage Municipal Code govern the operation of taxicabs, other chauffeured vehicles, and dispatch services within the Municipality. Chapter 11.20 requires an annual permit to operate a taxicab.<sup>2</sup> Some permits require a permittee to operate the permitted vehicle for a portion of the time, while others do not.<sup>3</sup> All permittees are required to

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<sup>1</sup> See AMC 1.15.150D. ("A request for advice is confidential unless confidentiality is waived by the person requesting an advisory opinion.").

<sup>2</sup> AMC 11.20.016, .020 and .030. Taxicab permits consist of two primary types: transferable permits, also referred to as legacy permits, originally issued prior to February 22, 1994; and non-transferable permits. A holder of a non-transferable permit is required to operate the permitted vehicle as a chauffeur at least 50% of the time annually and may lease the permit for the remainder of the time. AMC 11.20.037D. There's no such requirement for a holder of a transferable permit. AMC 11.20.

<sup>3</sup> Taxicab permits consist of two primary types: (1) transferable permits, also referred to as legacy permits, which were originally issued prior to February 22, 1994, and (2) non-transferable permits. AMC 11.20.016. A holder of a non-transferable permit is required to operate the permitted vehicle as a chauffeur at least 50% of the time annually and may lease the permit for the remainder of the time. A

certify that they accept responsibility for the chauffeurs retained to drive permitted vehicles and the quality of service they provide.<sup>4</sup>

The Transportation Inspector is the chief administrative officer for the Transportation Inspection Division and is responsible for enforcing chapters 11.10 through 11.40.<sup>5</sup> The duties of the Transportation Inspector include processing applications for taxicab permits and chauffeur licenses, maintaining records of regulated vehicles and chauffeurs, and conducting vehicle and driver inspections.<sup>6</sup> The Transportation Inspector is also charged with investigating complaints of wrongdoing, issuing citations to licensees and permittees, and taking actions against permits and licenses.<sup>7</sup> The Transportation Inspector may seek to suspend or revoke a permit for violations of chapter 11, where the permittee has failed to use the permit in a manner consistent with public safety, or where continued operation of the permit would result in a substantial risk to public health or welfare.<sup>8</sup> The Transportation Inspector also has the discretion to relax or suspend penalties against a permittee for the acts or omission of a chauffeur or lessee under certain circumstances.<sup>9</sup>

The Transportation Inspection Division (Division) currently consists of two employees: the Transportation Inspector, and a Senior Code Enforcement Officer. The Senior Code Enforcement Officer reports to the Transportation Inspector. The Transportation Inspector reports to the Municipal Manager.

Carrie Belden has worked for the Division since 2019, when she was hired to work in the front counter position. She was subsequently promoted to her current position as the Transportation Inspector.

Ms. Belden's mother is the owner of two taxicab permits.<sup>10</sup> Her husband, who is Ms. Belden's step-father, is the chauffeur on one of the permits.<sup>11</sup> Although Ms. Belden was previously listed as a beneficiary of her mother's permits in the event her mother died, her mother removed her from the permits as a beneficiary in August of 2020 and replaced her with one or more of Ms.

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holder of a transferable permit is not required to operate the permitted vehicle as a chauffeur for any time period at all. AMC

<sup>4</sup> AMC 11.20.020B.5.

<sup>5</sup> AMC 11.10.010 and .090. The Transportation Inspector is also an ex officio, non-voting member of the Anchorage Transportation Commission (Commission) and serves as its recording secretary. AMC 11.10.020, and .070A.1. The Commission is responsible for regulating taxicabs under Chapter 11.10 through 11.40. AMC 11.10.030. Its responsibilities include establishing rates for taxicab services, holding annual taxicab market-conciliation hearings, and determining the number of new taxicab permits to be issued annually. AMC 11.10.050 and 11.20.030.

<sup>6</sup> AMC 11.10.070.

<sup>7</sup> *Id.*

<sup>8</sup> AMC 11.10.110C.

<sup>9</sup> AMC 11.10.130E.

<sup>10</sup> The permits are transferable permits obtained by Ms. Belden's mother many years ago.

<sup>11</sup> The other permit is leased to a person unrelated to Ms. Belden or her mother.

Belden's siblings.<sup>12</sup>

Procedures have been instituted within the Division to insulate Ms. Belden from involvement in her mother's permits. The Senior Code Enforcement Officer has been delegated responsibility for handling all permit renewal paperwork, conducting investigations, and all other responsibilities regarding the two permits. The Senior Code Enforcement Officer has also been tasked with handling all issues concerning Ms. Belden's stepfather's role as a chauffeur on one of the permits, including any investigations of potential complaints about his driving. Further, the Senior Code Enforcement Officer has been directed to seek guidance on any issues regarding the specific permits by consulting Alden Thern, the Director of Municipal Projects, rather than Ms. Belden, to further minimize the potential for Ms. Belden to exert influence over her mother's permits.<sup>13</sup>

## **II. Findings and Analysis**

The Ethics Code prohibits a public servant or his or her family members from having a personal or financial interest in a municipal contract unless the contract is free from the public servant's influence. The rule, set forth in AMC 1.15.100B.2., states:

A public servant, or member of the public servant's immediate family or household, may not acquire, receive, apply for, be a party to, or have a personal or financial interest in a municipal grant, contract, or lease unless:

- a. The public servant does not take official action that could directly affect the request for services the award, execution, or administration of the grant, contract, or lease.

The rule also contains a "catch all" provision in subsection b which allows the Board to review the circumstances surrounding a municipal contract if the conditions in subsection a are not met. The catch-all provision states:

- b. If this requirement is not met, the public servant may request additional review by the board of ethics.

Relevant definitions for the application of the rule are found in AMC 1.15.180 and include "immediate family," which includes a parent or sibling of the person; and "financial interest," the "receipt ... or expectation of receiving a pecuniary benefit."<sup>14</sup> Further, an "official action" is defined in AMC 1.15.060C. as:

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<sup>12</sup> Ms. Belden's aunt also owned a transferable permit on which Ms. Belden was listed as a beneficiary, but the permit was recently sold.

<sup>13</sup> Mr. Thern has served as an advisor and trouble-shooter for the Division since the retirement of former Transportation Inspector Eric Musser several years ago. Thus, he is experienced with and knowledgeable of the Division's work and responsibilities. He reports to the Chief Financial Officer.

<sup>14</sup> See AMC 1.15.180H. and I.

... 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.

Applying the above rule and definitions in this case, it is clear that Ms. Belden's mother and siblings constitute members of Ms. Belden's immediate family as defined in the Ethics Code. Ms. Belden's mother has a financial interest in her two taxicab permits (which constitute municipal contracts), as she profits from them. As listed beneficiaries on the permits, Ms. Belden's siblings may also have a financial interest in the permits because they may have an expectation of receiving a pecuniary benefit upon their mother's death.

The next question is whether Ms. Belden will take official action that could directly affect the administration of her mother's permits, including their potential enforcement, or whether the procedures put in place within the Division will be sufficient to shield her from influencing them. The meaning of the term "official action" was intended by the drafters of the Ethics Code to be narrowly construed. Given the small size of the Division, Ms. Belden's position as the Division chief, and the myriad of potential scenarios that may arise regarding the permits, the Board is unable to conclude that no situation will arise in which Ms. Belden could affect the implementation, oversight or enforcement of the permits by virtue of the influence her position carries within the Division. For example, the Board can imagine a scenario in which the Senior Code Enforcement Officer may be hesitant to issue a citation or bring enforcement action against Ms. Belden's mother as a permittee because Ms. Belden is his boss, despite the direction to report to Mr. Thern rather than Ms. Belden. Thus, the Board is unable to conclude that that the circumstances in 1.15.100B.2.a. will be met in every instance such that Ms. Belden will not take official action that could directly affect the administration of the two permits.

Nevertheless, the Board finds that the Division has taken all measures it reasonably can to shield Ms. Belden from involvement in her mother's permits and insulate her from influencing them. Indeed, the Board cannot identify any other measures the Division could take to further dissociate Ms. Belden from potential influence, other than removing her from her position as the Transportation Inspector, which the Board does not find reasonable. The Ethics Code recognizes that public servants "are drawn from society" and cannot necessarily "be without personal and financial interests in the decisions and policies of government."<sup>15</sup> The objective in establishing standards of conduct "is to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts that are substantial and material."<sup>16</sup> The procedures put in place within the Division to shield Ms. Belden from influence over her mother's

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<sup>15</sup> AMC 1.15.060A.

<sup>16</sup> *Id.*

permits are sufficient to meet this objective. Under 1.15.100B.2.b., the Boards finds no prohibited conflict of interest.

### **III. Conclusion**

Based on the facts presented, the Board finds that there is no violation of AMC 1.15.100B.2. arising from Ms. Belden's position as the Transportation Inspector and her mother's taxicab permits, given the measures in place to protect Ms. Belden from potentially influencing the permits. The Board recommends that the Division continue its current practice of delegating all matters concerning the permits, including potential enforcement action, to the Senior Code Enforcement Officer, with oversight by Mr. Thern, the Municipal Manager, or another suitable designee. The Board further advises that Ms. Belden contact the Municipal Ethics Officer and/or the Ethics Board if the underlying facts change. This would be the case, for example, if Ms. Belden were to obtain a more direct interest in her mother's taxicab permits.

Respectfully,



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