



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

Date: July 23, 2021

To: Deitra Ennis, Deputy Municipal Attorney

Re: Response to Request for Advisory Opinion 2020-2 – Confidentiality Waived¹

Dear Ms. Ennis:

This advisory opinion responds to the above *Request for Advisory Opinion* (Request). In the Request, you inquired whether a member of the 49th State Angel Fund (SAF) Advisory Committee, Steve Trimble, may have a potential conflict of interest from his role in a future proposal to the SAF. The opinion constitutes the findings and conclusions of the Board of Ethics, based on the facts set forth in the May 22, 2020 email from SAF Director Joe Morrison to you, as clarified at the June 11, 2020 meeting of the Board. If material facts were not disclosed or were misrepresented, the opinion is without force and effect.

Background

The SAF is an investment fund that invests in Alaska businesses and capital providers. It is operated by the Municipality of Anchorage (Municipality) and advised by a municipal commission, the SAF Advisory Committee, that makes recommendations on specific investment proposals.

The SAF anticipated receiving a proposal for the development of a “Green Bank,” a public-private partnership consistent with the Municipality’s climate action plan. If approved and adequately funded, the Green Bank would enable Anchorage property owners to apply for and receive loans for energy efficiency upgrades.

Steve Trimble is a member of the SAF Advisory Committee. He is also the owner of Arctic Solar Ventures, the largest solar integrator in Alaska. If the SAF approves the proposal for a Green Bank, Mr. Trimble could stand to profit from property owners seeking to improve the energy efficiency of their homes by using his solar company.

The May 22, 2020 email from Former SAF Director Morrison to you stated that Mr. Trimble would “likely either advise or help as part of the MOA team to conduct research, engage stakeholders, and create a proposed investment structure” for a Green Bank. At the

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

June 11, 2020 Board meeting, however, Mr. Trimble clarified that his only role would be providing data about the solar industry in Alaska to the project team charged with developing the proposal.² He would not be involved in writing, formulating or otherwise shaping the proposal, nor would he participate in the SAF Advisory Committee’s evaluation of the proposal or subsequent recommendation to the SAF.

Discussion

The Municipal Code contains a general rule regarding conflicts of interest. The general rule, set forth in AMC 1.15.060D, bars a public servant from taking official action when the public servant or a member of the public servant’s immediate family has a substantial financial or private interest in the outcome of the action. That provision reads in full:

General rule—Conflict of interest and official action: A public servant shall not participate 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. Prior to participation in official action, the public servant shall disclose financial or private interests for determination of whether they are substantial.

An “official action” is defined in AMC 1.15.060C as:

. . . participation in a process, including deliberation, in which a decision or recommendation is reached.

But under AMC 1.15.060C.2, an official action does not include:

[a]ction on a matter that does not substantially evaluate or impact the merits of the recommendation or decision.

A financial interest is defined in AMC 1.15.180H as:

. . . the receipt of a pecuniary benefit and the expectation of receiving a pecuniary benefit.

2. A person has a financial interest in an organization if the person:
 - a. Has an ownership interest in the organization; or
 - b. Is a director, officer, or employee of the organization.

² Mr. Trimble described the data as information about the size, value, and customer base of the solar industry in Alaska, to assist the project team in creating a thorough proposal such that the SAF Advisory Committee can make an informed decision on the proposal.

The issue in this case is whether Mr. Trimble’s provision of data to the project team charged with developing the proposal for a Green Bank would create a conflict of interest under AMC 1.15.060D. As the owner of Arctic Solar Ventures, Mr. Trimble would receive a pecuniary benefit from providing the data if and only if each of the following occurs: (1) the project teams develops the proposal for a Green Bank and submits it to the SAF Advisory Committee, (2) the SAF Advisory Committee recommends to the SAF that the proposal be adopted, (3) the SAF adopts the proposal, (4) the private sector invests in the Green Bank such that the Green Bank is able to extend financing to property owners, and (5) property owners receiving financing contract with Arctic Solar for solar power services. Thus, Mr. Trimble would have a financial interest, albeit a very hypothetical and attenuated one, arising from his provision of data to the project team.

The next question is whether the limited action of providing data constitutes an “official action” as defined in 1.15.060C.2. By merely providing data, Mr. Trimble would not “substantially evaluate” the merits of the proposal, because he would have no role in writing the proposal or assessing it. Indeed, Mr. Trimble made clear that he would recuse himself from participating in the SAF Advisory Committee’s analysis of and recommendation on the proposal. Additionally, Mr. Trimble arguably would not “substantially impact the merits of a recommendation or decision on the proposal”, except to the extent that the data may be necessary for the proposal to be properly developed and assessed. Out of an abundance of caution, the Board believes providing data should be broadly construed as an official action in this instance to avoid any appearance of impropriety.

Because Mr. Trimble has a potential financial interest in providing data to the project team, he should disclose the interest, however hypothetical or attenuated it may seem, to the SAF Advisory Committee in accordance with AMC 1.15.060D. The interest should be disclosed prior to Mr. Trimble providing the data so the committee can determine whether the interest is “substantial” using the six factors set forth in AMC 1.15.060E.³ These factors, which are to be applied using a balancing test, are as follows:

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.

³ Whether a financial or private interest is substantial is left to the initial determination of the body in which the public servant is a member (in this case, the SAF Advisory Committee). AMC 1.15.060F.2. Nevertheless, Mr. Trimble’s financial interest does not appear to be substantial because of how far removed any potential downstream benefit to him would be from the action of providing data to the team developing a Green Bank proposal. As explained above, multiple contingencies based on decisions outside of Mr. Trimble’s control would have to occur for Mr. Trimble to realize any financial benefit.

6. Other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.

If the committee finds that the interest is substantial after balancing the six factors, Mr. Trimble would be barred by AMC 1.15.060D from providing data to the project team. If the committee finds that the interest is not substantial, then Mr. Trimble may provide the data without violating 1.15.060D.⁴

Conclusion

Based on the facts presented, the Board of Ethics concludes that before providing data to the project team, Mr. Trimble should disclose to the SAF Advisory Committee his potential financial interest in providing solar power services to property owners who may receive financing from a Green Bank. It is then up to the SAF Advisory Committee as a body to determine whether the interest is substantial under the factors in AMC 1.15.060E. If the interests are not deemed to be substantial, Mr. Trimble may provide data to the project team without violating the conflict of interest provision in 1.15.060D.

Respectfully,

Terrence M. Kelly

Municipality of Anchorage Board of Ethics

Terrence Kelly, Chair
Jack McKenna
Aesha Pallesen
Abram Goodstein
Rebecca Windt Pearson

⁴ Mr. Trimble should also be mindful of AMC 1.15.100B.2, which states:

A public servant . . . 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, nor the award, execution, or administration of the grant, contract, or lease.

Assuming a Green Bank is developed, and a homeowner with financing from the Green Bank seeks to contract with Mr. Trimble for solar power services, it is questionable whether the contract would constitute a municipal contract under AMC 1.15.100B.2. But even if it did, Mr. Trimble would have no involvement whatsoever in awarding or administering the contract – i.e., he would not be taking any official action that could directly affect the award, execution, or administration of the contract. Thus, he would not run afoul 1.15.100B.2.