



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

Date: November 20, 2020
To: Dee Ennis, Ethics Officer, Department of Law
From: Municipal Board of Ethics
Re: Response to Requests for Advisory Opinion 2020-6

Dear Ms. Ennis:

This advisory opinion (2020-6) is in response to your *Request for Advisory Opinion* dated October 27, 2020. It is based on the facts presented in that request and in the Board's interview with Acting Mayor Austin Quinn-Davidson at its meeting on October 29, 2020. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

SUMMARY OF THE OPINION

The Board finds that Acting Mayor Austin Quinn-Davidson's contract with Exxon Valdez Oil Spill Trustee Council (EVOSTC) is not in violation of the municipal ethics code.

FACTS OF THE REQUEST

On October 23rd, Austin Quinn-Davidson became Acting Mayor of the city of Anchorage. A lawyer by training, Quinn-Davidson established, and is the sole member of, QD Consulting, which has a contract with the Exxon Valdez Oil Spill Trustee Council. Her primary role at EVOSTC is to manage real estate projects, including coordinating with sellers and purchasers and effectuating closings. The projects have been in Valdez, the Kenai, and Kodiak areas. She has not worked on, nor does she anticipate working on, projects in the Anchorage municipality or ones that involve municipal interests. With the renewal of the contract approaching and Quinn-Davidson moving from the Assembly into the position of Acting Mayor, she reached out to ethics officer Dee Ennis who referred the matter to the Board of Ethics.

DISCUSSION

Assembly members often have employment outside of their elected office and the Code generally permits this. However, the Code requirements are more stringent for the Mayor. "[T]he mayor holds a full-time position of employment with municipal authority presumed incompatible and in conflict with serving as an employee to another person or entity." Nonetheless, it was recognized some time ago that such a categorical imperative, especially in

the case of an acting mayor, was unreasonably draconian.¹ As such, the Code allows the mayor to “seek relief from this presumption” through an advisory opinion from the Ethics Board. The tests laid out by the Code are:

- (a) If due to specific circumstances or unfairness, the mayor seeks relief from this presumption, the mayor shall present the circumstances and proposal for management of the potential conflict of interest to the board of ethics for an advisory opinion.
- (b) Absent factors that clearly present a potential for adversely affecting the mayor's availability, productivity, or independence of judgment in performing municipal duties, a financial interest or corporate office, held by the mayor in a business or economic enterprise managed by others is not other employment under this chapter and the presumption does not apply.²

The key questions for the Board are:

- Does Quinn-Davidson’s contract work with EVOSTC create a substantial conflict of interest?
- Does Quinn-Davidson’s contract work with EVOSTC clearly present a potential for adversely affecting her productivity and availability as acting mayor?

The Code requires that “[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” and outlines a constellation of criteria to be weighed when assessing the substantiality of the public servant’s personal or financial interest in an official action.³ In light of those criteria the Board finds that Quinn-Davidson’s contract work does not create a substantial personal or financial interest in her official actions as Acting Mayor. Quinn-Davidson’s work with EVOSTC is geographically and economically unrelated to Anchorage municipal interests and therefore her contract work is not entangled with reasonably foreseeable official actions she might take as Acting Mayor. Because her work is not entangled with her official duties as acting mayor, her contract interests do not vary with her official actions as acting mayor. Moreover, there is no reason to conclude that her work with EVOSTC would impair her independence of judgment.

¹ Advisory Opinion 2008-9: “Being an “acting” mayor raises a unique set of circumstances. The acting mayor will only serve, as acting mayor, for a few months, and it would perhaps be draconian to require such an individual to resign his or her position (with the attendant career sacrifices) for a few months of public service. The ethics code allows for relief from Section 4 provided that the mayor presents a plan for the management of the potential conflicts of interest. If the acting mayor were to present an acceptable plan to the board, then his continued employment could be consistent with the Ethics Code.”

² 1.15.090B.3(a) & (b)

³ 1.15.060

Quinn-Davidson reports that she does not anticipate working regularly with EVOSTC during her term as Acting Mayor and that she would be working on a “very limited basis” to assist her colleagues at EVOSTC during her term. She plans to return to her regular workload with EVOSTC only after her term as Acting Mayor ends. Given the limited nature of the work involved, the Board finds that Quinn-Davidson’s availability and productivity as Acting Mayor will not be adversely affected. The Board reminds the Acting Mayor that municipal resources may not be used for outside business interests.

CONCLUSION

Acting Mayor Quinn-Davidson’s contract work with EVOSTC is permitted under the Code. If the situation should change during her term as Acting Mayor-- for instance if her contract work becomes entangled with municipal interests or the volume of work exceeds initial expectations-- Quinn-Davidson should return to the Board for further guidance.

Respectfully,



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