



MUNICIPALITY OF ANCHORAGE
Board of Ethics

December 28, 2020

Subject: *Request for Advisory Opinion 2020-07 (Confidential)*

Relevant Ethics Topics: Private Conflicts of Interest – AMC 1.15.060(B)

In Advisory Opinion 2020-04, a public servant requested a confidential advisory opinion on whether the requestor had a conflict of interest under AMC 1.15.060(B), which would prevent the public servant from taking official action in a recall petition of an assembly member. This request is a follow-up to that earlier advisory opinion based on the changed status of the issue. Certain facts have been redacted or altered to honor the confidentiality of the request.

SUMMARY OF OPINION

The Board found that a public servant in the Department of Law would not be precluded from defending in Superior Court the Municipal Clerk's decision regarding non-certification of a recall petition against an assembly member, even if the public servant had previously donated to the assembly member's campaign or done volunteer work for the assembly member. The private interest of the public servant would be in concert with their municipal duties, which would be to zealously defend the Municipal Clerk's decision in Superior Court.

FACTS OF THE REQUEST

A recall application was filed against an assembly member. In order to accept the petition, the Municipal Clerk must determine, based on impartial legal advice from the Department of Law, that the sponsors of the recall petition adequately alleged conduct that amounts to "misconduct in office, incompetence, or failure to perform prescribed duties." In Advisory Opinion 2020-04, the requestor sought an advisory opinion from the Board of Ethics on whether the requestor had a possible conflict of interest in that process. (See advisory opinion 2020-04). The Board concluded the requestor had a substantial private interest that precluded the requestor from taking official action on the recall petition.

The requestor was "firewalled" from the decision process, and the clerk subsequently rejected the recall petition. The petitioners then appealed that decision to the Superior Court. Defending decisions of municipal departments in litigation is a central responsibility of the Department of Law. This request seeks advice from the Board of Ethics as to whether the private interest described in advisory opinion 2020-04¹, would also prevent a public servant in the Department of Law from participating in the Municipality's legal defense.

¹ The facts presented in that opinion were that before the public servant became a municipal employee, they had previously donated to and served as a volunteer in the assembly member's campaign.

DISCUSSION

The crux of the matter is whether the private interests that created a conflict of interest in the recall certification decision also preclude participation in the city's legal defense of the Clerk's decision in litigation. The Municipal Code of Ethics requires that "[a] public servant shall place the public interest above any financial or private interest when taking official action. If a public servant's private relationships or interests prevent the servant from placing the public interest above a financial or private interest, or will diminish the public trust, the public servant shall disclose this fact on the record and shall be excused from participation." [1.15.060.B] For this reason, municipal servants are typically forbidden to have substantial private or financial interests in their official acts. In the case of the Department of Law, a private interest in the assembly member's continued service as an Assembly Member is in conflict with the duty of the Department to provide impartial and objective advice on whether to certify the recall petition. Such a conflict would, at a minimum, have reduced public trust in the Department.

Now that the Clerk's decision is being appealed in Superior Court, the Department of Law's potential role in this matter has changed considerably. Rather than being asked to provide impartial and objective advice, the Department of Law has been tasked with providing a defense of the Clerk's decision—a scenario in which an individual public servant's private interests regarding the assembly member would be in concert with their municipal duties. The Board was unable to identify a scenario in which the requestor's private interest would create motivation, even implicit motivation, to place their private interests over the public's interest (here understood to be the public's interest in government employees' effective and efficient performance of their municipal duties.) While there may be public disagreement about the Clerk's decision, it is clear that the Municipal Attorney and the Department of Law have a duty to zealously defend that decision. The Board, therefore, finds that the private interest described in Advisory Opinion 2020-04 would not prevent a public servant from participating in the legal defense of the Clerk's decision under the Municipal Code of Ethics.

Approved by the Municipality of Anchorage Board of Ethics

Terrence Kelly, Chair