



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 2021-4 – Confidentiality Waived¹

Dear Mr. Ennis:

This advisory opinion (2018-4) responds to your *Request for Advisory Opinion* (Request), as discussed during the June 16, 2021 meeting of the Board of Ethics (Board) with Jason Bockenstedt, Chief of Staff to former Mayor Ethan Berkowitz and former Acting Mayor Austin Quinn-Davidson.² The Request concerns Mr. Bockenstedt's interest in working as a consultant or strategic advisor to third-party clients on municipal projects after leaving municipal service.³ You have asked what restrictions may exist on Mr. Bockenstedt's potential future employment under the Ethics Code. This opinion provides the Board's response. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Relevant Code

AMC 1.15.130 establishes restrictions on the employment of municipal employees after they leave municipal service. Subsection A contains a general one-year rule: for one year after leaving municipal service, employees may not work on "matters" in which they "personally and substantially" participated while in municipal service. A "matter" is defined to include a case, application, and contract on which the former employee worked, but not an ordinance or other legislative measure in which the employee's involvement was in the context of general application only. Subsection A states:

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

² Mr. Bockenstedt left his position as Chief of Staff effective July 1, 2021, concurrent with the incoming administration of Mayor David Bronson.

³ For example, you indicated that some Assembly members have expressed interest in contracting with you to capture your knowledge and expertise regarding executive branch procedures and processes. Other potential clients include entities seeking your assistance in applying for CARES Act funding from the Municipality, given your experience drafting ordinances regarding the CARES Act application process and award criteria.

- A. General One-Year Rule: An employee who leaves municipal service may not, for one year after leaving municipal service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by the employee, if the municipal employee participated personally and substantially in the matter through the exercise of official action. In this subsection, “matter” includes a case, proceeding, application, contract, or determination but does not include consideration of ordinances, resolutions, charter amendments, draft legislative measures, or the adoption of administrative regulations if consideration by the employee was only in the context of general application.

Subsections B and C provide exceptions to the one-year rule as follows:

- B. Waiver: The assembly or school board may waive application of this restriction upon determination that a proposed action by a former employee is not adverse to the public interest. The waiver shall be by formal action and a copy shall be provided to the board of ethics.
- C. Municipality Option to Contract: The restriction on employment after leaving municipal service does not prohibit the municipality from contracting with a former employee to provide service on a matter on behalf of the municipality.

Discussion

In light of the language of AMC 1.15.030, the Board concludes that for one year after leaving municipal service, you may not work on cases, applications, contracts or determinations in which you were personally or substantially involved at the Municipality. You may, however, do the following without being subject to the one-year restriction:

- (1) Work on future projects involving ordinances and other legislative measures in which you were involved at the Municipality, so long as your municipal work on these items was limited to their general application, rather than their specific application to a particular entity. For example, you may work for a client seeking your assistance in applying for CARES Act funding, so long as your prior municipal work drafting CARES Act ordinances concerned the application and funding process generally - not reviewing and approving specific applications.
- (2) You may work on projects the Assembly determines are not adverse to the public interest, so long as the Assembly provides a waiver of the one-year rule.

- (3) Enter into contracts with the Municipality, in light of the exception in Subsection C. This includes contracts with the Assembly, as the “Municipality” is interpreted to include the Assembly.

The Board further advises that you be mindful of the prohibitions in the Ethics Code regarding the use and disclosure of confidential and nonpublic information. AMC 1.15.020.A states that municipal employees shall not “use, disclose or release confidential or nonpublic information gained through the person’s municipal position unless authorized by law or order of the court.”

Summary

The Board concludes that your future work on municipal projects would not violate the Ethics Code so long as you abide by the restrictions described above. This will require you to use your judgment on a case-by-case basis to determine when your work will be subject to the one-year restriction in AMC 1.15.130. If you have any questions or concerns about specific employment opportunities as they arise, we suggest you consult with the Board further.

Respectfully,



Municipality of Anchorage Board of Ethics

Terrence Kelly, Chair
Jack McKenna
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Rebecca Windt Pearson