



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

Date: November 4, 2021

To: Deitra Ennis, Deputy Municipal Attorney

Re: Response to Request for Advisory Opinion 2020-9 – Confidentiality Waived¹

Dear Ms. Ennis:

This advisory opinion responds to the above *Request for Advisory Opinion* (Request). In the Request, you asked the Board of Ethics (Board) whether Dan Zipay's past or present business interests or those of his immediate family members present an unmanageable conflict of interest with his service to the Municipality as the Director of Solid Waste Services (SWS). The opinion constitutes the findings and conclusions of the Board of Ethics (Board), based on the facts set forth in your Request, including a September 10, 2021 memo to you from Mr. Zipay, as clarified at the Board meeting on September 15, 2021. If material facts were not disclosed or were misrepresented, this opinion is without force and effect.

I. FACTS OF THE REQUEST

A. SWS

On August 16, 2021, Mayor David Bronson appointed Dan Zipay to serve as the SWS Director, subject to confirmation by the Assembly. SWS provides solid waste collection and disposal services to residents of the service area within the boundaries of the former City of Anchorage (SWS Area).² Municipal residents outside the SWS Area are served by private waste companies. Mr. Zipay estimated that SWS serves roughly 20% percent of municipal residents, while private haulers serve roughly 80%.

Residents of the SWS Area are required to use SWS for waste collection and disposal unless they qualify for an exemption.³ SWS will grant an exemption to customers for services SWS cannot provide.⁴ This is the case for SWS customers requiring roll-off

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 AMC 26.70.030 (referencing the area of the former City of Anchorage, as described in AMC 27.30.010.)

³ *Id.*

⁴ *Id.*

cans - i.e., large boxes for construction or demolition debris – because SWS does not provide roll-off cans or trucks to service them.⁵ According to Mr. Zipay, SWS grants exemptions to customers requiring roll-off services, irrespective of which private hauler they wish to use.⁶

To dispose of solid waste collected outside the SWS Area, private waste companies are required to use the municipal transfer station and regional landfill operated by SWS.⁷ SWS does not otherwise regulate private waste companies and does not have any contracts with any of them.

B. Mr. Zipay’s Business Interests

Mr. Zipay currently owns Alaska Pro Truck, Inc., an aggregate material hauling company based in Anchorage.⁸ He operated the company with his sons until his appointment as SWS Director in August. Since that time, the company has been operated exclusively by Mr. Zipay’s sons. Alaska Pro Truck is not currently a party to any contracts with the Municipality.⁹

Prior to working for SWS, Mr. Zipay held an ownership interest in Alaska Waste. He relinquished his interest in Alaska Waste in 2009, when the company was sold.

Additionally, Mr. Zipay previously held a 12.5% ownership interest in Denali Disposal, a private waste company run by his daughter. Denali Disposal is one of several private waste companies operating within the Municipality. Mr. Zipay transferred his interest in the company to his wife and daughter in July of 2021, prior to his appointment as SWS Director. His wife and daughter are now the sole owners of the company.

II. DISCUSSION

The issue before the Board is whether any past or present business interests of Mr. Zipay or his family members create any unmanageable conflicts of interest with his service as the SWS Director. The Municipal Code of Ethics (Ethics Code) contains a general rule regarding conflicts of interest. Pursuant to this general rule, “[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.”¹⁰ Official action is defined as “participation in a process, including deliberation, in which a recommendation is reached,”¹¹ but it does not include “clerical or ministerial action on a matter”¹² or “action

⁵ AMC 26.70.030 allows the SWS to grant exemptions to persons requiring solid waste collection and disposal services that the SWS is unable to provide.

⁶ Mr. Zipay described SWS’s granting of exemptions for roll-off services as a formality.

⁷ AMC 26.80.010.

⁸ Mr. Zipay is the sole owner of the company.

⁹ Mr. Zipay said Alaska Pro Trucks has not held any municipal contracts for about five or six years.

¹⁰ AMC 1.15.060D.

¹¹ AMC 1.15.060C.

¹² AMC 1.15.060C.1 (describing ministerial action 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.”)

on a matter that does not substantially evaluate or impact the merits of [a]recommendation or decision.”¹³ A public servant is deemed to have a financial interest in an organization in which he or she has an ownership interest or serves as a director, officer, or employee.¹⁴ The determination of whether a public servant possesses a “substantial financial or private interest” is to “be determined on a case-by-case basis” by balancing the factors specified in AMC 1.15.060E.¹⁵

Similarly, Ethics Code contains a conflicts of interest section specific to municipal contracts. According to this section, “ 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 contract” unless the public servant “does not take official action that could directly affect the request for services, [or] the award, execution, or administration” of the contract.¹⁶ To ensure compliance with this requirement, the employee, before bidding on a contract, is required to file a notice of intent to respond to a public solicitation with the Municipal Clerk, subject to review by the Municipal Ethics Officer and/or Board of Ethics.¹⁷

A. Alaska Pro Truck

Under the Ethics Code, Mr. Zipay has a financial interest in Alaska Pro Truck because he is the owner of the company.¹⁸ The company is not currently doing business with the Municipality, as it is not a party to any municipal contracts. Nor is Mr. Zipay involved in operating the company. Thus, Mr. Zipay’s current interest in Alaska Pro Truck does not constitute a conflict of interest with his municipal service as SWS Director.

If Alaska Pro Truck sought to bid on a municipal contract in the future, Mr. Zipay would be required to abide by the requirements in AMC 1.15.100 concerning municipal contracts. Specifically, he would be required to file a notice of intent to respond to the solicitation with the Municipal Clerk subject to ethics review, and he would be precluded from taking official action that could directly affect the request for services, the award, or the execution of the contract, such as establishing the bid or contract terms. So long as he abides by these restrictions, there would be no unmanageable conflict between his interest in the contract and his role as SWS Director under the Ethics Code.

B. Denali Disposal

¹³ AMC 1.15.060C.2.

¹⁴ AMC 1.15.180.H.2.

¹⁵ These factors are (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; and (6) other factors deemed appropriate by the presiding official under the specifics of the disclosure and the nature of the action.

¹⁶ AMC 1.15.100.B.2.a.

¹⁷ AMC 1.15.100B.1 (requiring notice to be filed with the Municipal Clerk at least seven days before the deadline for responding to the solicitation.)

¹⁸ AMC 1.15.180H.2.a.

As owners of Denali Disposal, Mr. Zipay's wife and daughter have a financial interest in the company.¹⁹ Thus, Mr. Zipay is also deemed to have a financial interest in the company under the Ethics Code.²⁰ But Denali Disposal does not compete with SWS for customers. The company operates exclusively outside the SWS Area, except when it provides roll-off services to SWS customers, in which case SWS grants exemption to the customers because SWS does not offer that service itself. Because exemptions are given for roll-off services irrespective of which company a customer wishes to use, the exemption process for these services is ministerial in nature and does not rise to the level of official action. Nor does SWS regulate or have any contracts with private waste companies. On these facts, it is unlikely that Mr. Zipay would be in a position as SWS Director to take official action that could affect his or his family member's financial interest in Denali Disposal.

The Board also considered whether Mr. Zipay might have an unmanageable conflict of interest in the future if a proposal were eventually made to privatize all or a portion of SWS services, as Denali Disposal could potentially benefit from such a proposal. Because SWS is considered a utility,²¹ privatization could be accomplished by the Municipality selling the utility – a process that would require developing a proposal to sell the utility and having it approved by the Assembly and municipal voters.²² The Board could foresee Mr. Zipay, as SWS Director, participating in general discussions with the Administration regarding the possibility of privatization. We are of the opinion that this type of general participation would not rise to the level of creating an unmanageable conflict of interest because of the multiple contingencies that would have to occur for a benefit to Denali Disposal to accrue. If general discussions about privatization were to ripen into a more specific plan to privatize, however, we recommend that Mr. Zipay, before participating in the development of such a proposal, return to the Board for further guidance regarding the extent of his involvement in the proposal going forward. Depending on the details of the proposal, including the likelihood that Denali Disposal would receive a benefit from it, the Board will provide further guidance at that time as to whether Mr. Zipay's participation in the proposal would create an unmanageable conflict under the Ethics Code.

¹⁹ Under AMC 1.15.180H.2.a, a person has a financial interest in an organization in which he or she has an ownership interest or is a director, officer, or employee. Additionally, an employee of an organization is also deemed to have a financial interest in the organization under AMC 1.15.180H.2.b, Mr. Zipay's daughter has an additional basis for her financial interest in the company.

²⁰ Under AMC 1.15.180H.1, a "financial interest of a person includes a financial interest of any member of the person's household."

²¹ AMC 26.10.015 (the utility consists of two components: the refuse collections utility and the solid waste disposal utility.)

²² Another possible mechanism for privatization would entail contracting out services performed by SWS to private waste companies. But this mechanism is largely theoretical, as SWS employees are covered by four unions, and the Municipality is prohibited from contracting out union work except in very limited circumstances and only under certain collective bargaining agreements. Another option is managed competition, but it is a very lengthy and expensive process with no guarantee of a specific outcome, and the Municipality is prohibited from engaging in managed competition under some collective bargaining agreements. Moreover, the Public Employee Retirement System (PERS) establishes specific rules to the elimination of job classifications or departments. These rules would require the Municipality to engage in a termination study to determine future liability for terminating classifications or departments. A reasonable estimate of this amount is between \$500,000.00 to \$1.5 million per position.

Additionally, the Board advises that Mr. Zipay abide by the restrictions delineated in AMC 1.15.040 regarding the use of municipal resources, including Mr. Zipay's time, while serving in his municipal capacity. That section prohibits the use of any municipal resources for outside business interests.

CONCLUSION

Based on the facts presented, the Board concludes that Mr. Zipay's past and present business interests and those of his immediate family members do not currently pose any unmanageable conflicts of interest with his service as SWS Director. The Board also concludes that Mr. Zipay may participate in general discussions in the future regarding the possibility of privatizing SWS, but he should return to the Board for further guidance before participating in the development of a specific privatization proposal.

Beyond the situations identified above, the Board recognizes that it is not possible to anticipate every scenario that could create a potential conflict of interest in the course of Mr. Zipay's municipal work. We recommend that Mr. Zipay be vigilant and continue to exercise good judgment regarding the circumstances that could present potential conflicts, create the appearance of a conflict that could diminish the public trust, or give him or his family members a competitive advantage. We urge him to return to the Board with any concerns he may have about specific matters that arise in the future.

If you have any questions about this advisory opinion, please contact us.

Respectfully,



Municipality of Anchorage Board of Ethics

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