



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

Date: November 9, 2021

To: Deitra Ennis, Deputy Municipal Attorney

Re: Response to Request for Advisory Opinion 2021-11 – Confidentiality Waived¹

Dear Ms. Ennis:

This advisory opinion responds to the above Request, in which you asked the Board of Ethics (Board) whether Joseph Gerace's past employment with Visit Healthcare creates a conflict of interest with his position as Director of the Anchorage Health Department. The opinion constitutes the findings and conclusions of the Board based on the facts set forth in the Request, including a November 1 email from Mr. Gerace and a discussion Mr. Gerace had with the Board during the Board's November 3 meeting. If material facts were not disclosed or were misrepresented, this opinion is without force and effect.

I. FACTS

Joseph Gerace was appointed as the Director of the Anchorage Health Department on September 17, 2021. His appointment is subject to confirmation by the Assembly.

A. Visit Healthcare

Prior to his appointment, Mr. Gerace was the Director of Operations for the Alaska operations of Visit Healthcare. Visit Healthcare is a national company that has been providing COVID testing and vaccination services for the Municipality of Anchorage since approximately June of 2020.

As the Director of Operations for Visit Healthcare, Mr. Gerace reports that he was a salaried employee; he did not own any interest in the company and was not paid any bonus, commission, or the like. Mr. Gerace's role was to ensure that Visit Healthcare was in compliance with its Municipal contract and delivered services according to the contract.

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

Mr. Gerace joined Visit Healthcare in March of 2021, well after the Municipal contracts for testing and vaccination had gone out for bid and been awarded.

Mr. Gerace's last day of work with Visit Healthcare was September 15, 2021. He was given his final paycheck on September 16 and he began work as the Director of the Anchorage Health Department on September 17.

B. Red Cross of Alaska

Mr. Gerace is currently the Board Vice Chair of the American Red Cross of Alaska. Mr. Gerace is a long-time volunteer with the Red Cross; in the past he has traveled frequently to volunteer in response to crisis situations.

Mr. Gerace explained to the Board that he intends to be less involved with the Red Cross while he is the Director of the Anchorage Health Department because he does not expect that he will have time to volunteer. He may step down from his Vice Chair position.

II. DISCUSSION

The primary issue before the Board is whether Mr. Gerace's immediate past employment with Visit Healthcare creates a conflict of interest with his service as the Director of the Anchorage Health Department. The Board concludes that it does not.

The Municipal Code of Ethics (Code) contains a general rule regarding conflicts of interest: "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."² "Financial interest includes the receipt of a pecuniary benefit and the expectation of receiving a pecuniary benefit."³ Additionally, a public servant has a financial interest in an organization in which he or she has an ownership interest, or serves as a director, officer, or employee.⁴

Based on his testimony to the Board, as a former employee with no continuing relationship with Visit Healthcare, Mr. Gerace does not have a financial or private interest in Visit Healthcare and therefore there is no conflict of interest between his current role as Director of the Department of Health and his past employment with Visit Healthcare.

Mr. Gerace might want to be mindful that his very recent employment with Visit Healthcare, an entity with a large and public Municipal contract, could give the appearance of a conflict even where none exists.⁵ In the interest of promoting public trust, Mr. Gerace

² AMC 1.15.060D.

³ AMC 1.15.180.H.2.

⁴ *Id.*

⁵ This appearance may be lessened if Visit Healthcare's relationship with the Municipality ends in the near term, as Mr. Gerace understands that it will.

might consider letting others handle matters involving Visit Healthcare, though, again, the Code does not demand that he do so. In addition, Mr. Gerace must take care to ensure that he does not share any non-public information that he learns as Director of the Anchorage Health Department with his former colleagues at Visit Healthcare. Mr. Gerace told the Board that he fully understands and will follow this prohibition.

Because Mr. Gerace's involvement with the Red Cross of Alaska was discussed during the Board meeting, this opinion will briefly address this potential conflict. The Board believes that Mr. Gerace's position as a board member of the Red Cross creates a financial interest on his part in the Red Cross. This is because, as defined by the Ethics Code, a public servant has a financial interest in an organization in which he or she serves as a director, officer, or employee. Whether Mr. Gerace's financial interest implicated by an official action affecting the Red Cross would be substantial according to the factors laid out in the Code,⁶ and so would prohibit Mr. Gerace from taking the official action, is too conjectural to analyze in this opinion. Mr. Gerace should keep this potential conflict in mind when approaching his work, and he is encouraged to return to the Board with any concerns he has about specific situations that come up in the future.

III. CONCLUSION

Based on the facts presented, the Board concludes that Mr. Gerace's past employment with Visit Healthcare does not create a conflict of interest with his service as Director of the Anchorage Health Department. Nor does his current position on the board of the Red Cross of Alaska appear to create a conflict at this time.

The Board thanks Mr. Gerace for his willingness to discuss these issues.

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

Respectfully,



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

⁶ 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.