



MUNICIPALITY OF ANCHORAGE
Board of Ethics

September 2, 2022

Subject: *Ethics Complaint for Potential Violation 2022-01*

Allegation: Violation of AMC 1.15.040 – Use of Municipal Resources

On January 19, 2022, the Board of Ethics (“the Board”) received *Ethics Complaint for Potential Violation 2022-01* (“the Complaint”). The complaint alleged a municipal employee (the respondent) violated Anchorage Municipal Code 1.15.040 and Alaska Statute 39.52.120¹ when he utilized his work email and job title to gain information that might be valuable in civil litigation against the complainant. On February 16, 2022, pursuant to AMC 01.15.160(B), the Board accepted the Complaint for further review. The complainant appeared before the Board on March 16, 2022. The Board subsequently met with the respondent and the respondent’s supervisor before issuing its final report.²

AMC 01.05.040

Under Anchorage Municipal Code 01.05.040(c) “except to the extent the general public has the same access to or as otherwise authorized, a municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee’s personal endeavors.” Municipal resources include, but are “not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time.” AMC 04.01.040(a). While *de minimus* personal use of municipal resources is permitted, no personal use may be for any outside business interest. AMC 04.01.040(b).

Allegations and Reply

The respondent has a position with the municipality where information about floor surfaces and the types of sealants used on floors is relevant to the respondent’s position. Two years prior to the events at issue in the complaint, the respondent’s supervisor directed the respondent to gather information about floor surfaces and sealants used in local privately owned buildings that might be used in similar municipal buildings to minimize the risk of slip and falls. The respondent considered this task a lower priority because of a lack of funding to undertake any repairs.

¹ AS 39.52.120 prevents a state officer from using or attempting to use his position for personal gain, but the Board lacks jurisdiction to interpret or enforce it. As such, the Board’s review was limited to the potential violation of AMC 01.15.040.

² This is a summarized version of the report that was changed to protect the confidentiality of the complainant, any witnesses, and the respondent pursuant to AMC 1.15.160(E).

Two years later, the respondent was injured when he slipped and fell at a business owned by the complainant. The respondent's presence at the complainant's business was on his personal time and was not connected to his municipal employment. Based on the respondent's experience related to his municipal employment, he was well aware of the surface upon which he slipped and that it was not sealed.

The respondent reported to work shortly after his fall. The Board interviewed the respondent's supervisor. The supervisor stated she saw the respondent's injury, which reminded her to again direct the respondent to gather information on floor surfaces and sealants. The respondent stated he was following that directive when he emailed a local engineering firm, utilizing his municipal email address, and asked about the product line and installation used on the floor of the complainant's business. This email was subsequently forwarded through three other individuals at two other organizations and eventually reached the complainant. The complainant called the respondent, who did not refuse the complainant's call and did not inform the complainant that he had recently fallen at the complainant's business.

Shortly thereafter, the respondent filed a personal injury lawsuit against the complainant. For purposes of this lawsuit, he was deposed six months later. At the close of a three-hour deposition, the respondent was asked about the email he sent and the conversation he had with the complainant. When asked what the purpose of his contact was, the respondent never mentioned he did so at his supervisor's request. In the subsequent interview with this Board, the respondent stated he did not mention his supervisor, because the question came at the end of the deposition, and he was tired. He further stated he learned nothing in the discussion with the complainant that was a factor in his lawsuit.

In a subsequent interview, the supervisor confirmed she directed the respondent to return to the assignment of collecting information on floor surfaces and sealants. She said the respondent's fall caused her to repeat her request.

Analysis and Conclusion

Despite the mystifying coincidence, the Board accepted the respondent's explanation, as substantiated by the supervisor, that the respondent emailed the local engineering firm at his supervisor's request. The Board does conclude the respondent should have refused the complainant's call. At a minimum, it was bad judgment -- making room for a potential violation of AMC 01.15.040 -- for the respondent to take the complainant's call knowing about his injury and the potential of receiving information that would personally advantage him by virtue of his municipal employment. However, the Board also concludes the respondent was still gathering information pertinent to his employment and that no information gathered during that call supplemented facts already known to him.

Notwithstanding this conclusion, the Board was greatly concerned about the respondent's lapse in judgment and requested the Municipality's Human Resources Department to provide the respondent further ethics training. "Holding public office or employment is a public trust" and "[t]he proper functioning of democratic government requires ethical behavior by public officials and employees." While this code supersedes any common law prohibition against acting when there is a mere appearance of impropriety, how government looks to the public is nevertheless

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important. It was the Board's hope that this additional training will permit the respondent to avoid any similar situation in the future and that the public can maintain its trust in its public servants.

Approved by the Municipality of Anchorage Board of Ethics

Rebecca Windt Pearson, Chair

Aesha Pallesen, Vice Chair

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