



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

July 14, 2015

**Re: Response to Request for Advisory Opinion 2015-3**

On June 24, 2015, a confidential Request for Advisory Opinion was filed inquiring whether under the Ethics Code appointed members of municipal public bodies are allowed to write letters to the editor, publish blogs, post on Facebook, write compass pieces or commentaries, or otherwise communicate private opinions while identifying themselves as members of an appointed public body. The requestor also cites Anchorage Municipal Code § 1.15.030(L)(4) as the relevant provision of the Ethics Code.

Attached to the Request was a "Readers Write" opinion letter drafted by an individual identifying himself by name and title as a member of a specific municipal public board or commission. The letter was published in the Alaska Dispatch News.

AMC § 1.15.030 establishes Ethics Code provisions specifically applicable to members of the public appointed to public bodies.

AMC § 1.15.030(L)(4) provides:

A member of an appointed public body shall not:

4. Act in a manner to suggest that the member is acting in the member's official capacity or otherwise representing the appointed public body or the municipality, when engaging in political activity during personal time.

As a general rule, public officials should not use official time, facilities, equipment, supplies, or funds to engage in personal political activity. Assuming no public resources are used in creating the communications, the inquiry turns on whether the individual's actions suggest he was acting in his official capacity or representing the board/commission when engaging in political activity. In other words, does the use of an official title, when engaging in political activity, indicate that an individual is acting in his official capacity or representing the public body?

In Keyishian v. Board of Regents of Univ. of State of N.Y., 385 U.S. 589, 605-606 (1967), the United States Supreme Court stated, "a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment." The logical extension of the Court's holding would make application to elected and appointed

public officials. Thus, under the terms of AMC §1.15.030(L)(4), an appointed official, on personal time, would only be prohibited from acting in a manner to suggest he is using his official capacity or representing the body as a whole when engaged in political activity. This Board is of the opinion that use of an official title or status by an appointed member of a public body (board or commission), while engaged in political activity, suggests that the individual is acting in his official capacity.<sup>1</sup>

Based on the aforementioned language, the Board further concludes that any meaningful analysis of AMC § 1.15.030(L)(4) requires a fact-specific inquiry and the Code section does not readily lend itself to broad admonitions. Notwithstanding the complexities of the Code, in the context of publications of private opinions by appointed members of public bodies, such as published opinion letters or commentaries that constitute “engaging in political activity,” the Board recommends refraining from use of official titles or positions.

Municipality of Anchorage Board of Ethics:



David Nesbett, Chair  
Terrence Kelly, Vice-Chair  
Keith Silver  
Kathleen King

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<sup>1</sup> Upon review of the example provided by the requestor, it is unclear to the Board whether the letter was drafted at the behest of the board/commission upon which the member sits or whether the action by the board/commission member constitutes “engaging in political activity,” a term that is undefined in the Ethics Code.