



Municipal Board of Ethics

#: 2015 - 1

632 West 6th Ave. Ste. 250 Anchorage, Alaska 99501

BOE Date: 2/2/2015

Mailing Address: P.O. Box 196650 Anchorage, AK 99519-6650

Phone: 343-4311 Fax: 343-4313

Municipal Clerk: Barbara A. Jones

CONFIDENTIAL Request for Advisory Opinion CONFIDENTIAL

Anchorage Municipal Code: Chapter 1.15 **CODE OF ETHICS**

1.15.080 A. A current or former employee, current or former appointed member of any municipal authority, current or former elected official, or current candidate for municipal office or employment may request written advice regarding the applicability and interpretation of this chapter in a particular situation involving the inquirer.

1. In any later proceeding involving the inquirer, the inquirer is entitled to rely on the advice of the board, and may not be sanctioned for acting in compliance with the board's advice, so long as the facts remain substantially unchanged from those represented to the board in the inquiry.

2. A request for advice under 1.15.080A is confidential, unless confidentiality is waived by the person requesting an advisory opinion.

- | | |
|--|---|
| <input type="radio"/> Current Employee | <input type="radio"/> Former Employee |
| <input type="radio"/> Current Appointed Member of Authority | <input type="radio"/> Former Appointed Member of Authority |
| <input checked="" type="radio"/> Current Elected Official | <input type="radio"/> Former Elected Official |
| <input type="radio"/> Municipal Clerk | <input type="radio"/> Municipal Attorney |

In accordance with AMC 1.15, I am requesting interpretation and applicability of the following section of the Municipal Code of Ethics:

The situation is:

See attached letter

I affirm to the best of my knowledge that my statement is true, correct, and complete. I understand Board of Ethics Advisory Opinions are required to be posted on the Municipal website (AMC 1.15.080 C.)

- | | |
|--|--|
| <input type="radio"/> Waive Confidentiality | <input type="radio"/> I Request Confidentiality |
|--|--|

Print Name:

Dan Sullivan

Phone Number:

(907) 343 - 7100

e-mail Address:

mayor@muni.org

Mailing Address:

Mayors Office / CityHall
632 W. 6th Ave.

Signature of Requestor:

Dan Sullivan

Date:

1/30/15



MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Mayor Dan Sullivan

Phone: 907-343-7100
Fax: 907-343-7180



January 30, 2015

The assembly is considering an ordinance that would put to the voters the question of whether to impose a tax on the retail sale of alcoholic beverages. If the assembly passes the ordinance and if the voters approve the tax in April, 2015, the tax itself would likely not go into effect until months later, after the Municipality adopts implementing legislation. The most probable scenario is that the tax would not go into effect until January 1, 2016, so as to allow time for the Municipality to adopt the necessary implementing laws, develop the tax filing procedures and forms, and work with the industry on implementation. The tax can only be used for alcohol related treatment and housing programs.

The tax rate has not yet been established in the pending ordinance. If the Assembly passes the ordinance on February 3, it will need to add in the tax rate. General conversation suggests the rate will probably settle between 3 and 8% of the sales price of the beverage.

I own a partial interest in a downtown business that sells alcoholic beverages. Absent amendment to the proposed ordinance, these sales would be subject to the tax. Within the Municipality, the tax would apply to all package stores (stores that sell beer, wine, and/or spirits in bottles, cans, boxes, etc.), and all bars, restaurants, and other establishments that are licensed to sell alcoholic beverages for consumption on the premises. I may wish to influence the legislation through a threat of veto or actual veto if either the tax rate is too high or the legislation itself is simply, in my considered opinion, not in the best interests of the Municipality. I am concerned about the bill for three reasons. First, the State already collects an alcohol tax. It is a wholesale tax:

Product	SOA Wholesale Tax Rate Per Gallon
Liquor (more than 21% alcohol)	\$12.80
Wine (21% alcohol or less)	\$2.50
Beer (malt beverages and cider)	\$1.07
Beer (small breweries)	\$0.35

Statewide, the tax collected in 2013 was \$39.5 million dollars. I've been advised that none of this is directly shared with the Municipality. And, according to available Department of Revenue information, only 50% of it is put to alcohol treatment programs. I am concerned that adding a local tax dedicated to the same purposes will only encourage the State to retain more of its own alcohol tax or encourage the State to continue to not provide assistance to the Municipality. Because of this, the net effect of the proposed ordinance will be either no improvement in available resources for local alcohol treatment or an actual reduction in local alcohol treatment.

In addition, because the tax is structured as a special tax "outside" the Municipality's tax cap (Charter section 14.03), it "busts" the tax cap. That is, because of the way the tax cap is calculated, it will have the effect of giving the Municipality the ability to raise real and personal property taxes, even though people will perceive that the alcohol tax is solely borne by people who drink alcoholic beverages. Over my two terms, I have consistently worked to control expenditures and this is contrary to my policies and one of the reasons I was elected, and re-elected.

Finally, the proposal includes a separate provision that waives the charter's requirement that 60% of the voters approve any sales tax. The proposal would have the voters agree to only a 50% +1 voter approval at the same time they vote on the tax. While legal, this violates the spirit of the Charter and creates some degree of voter confusion.

In determining if my personal or financial interest is substantial, I understand that the Board must review the factors in AMC 1.15.035D. Respectfully, I would ask the Board to consider the following:

- This proposed tax applies to a very broad class of business entities:
 - retail stores –major retail stores as well as small specialty wine stores
 - warehouses (Costco and Sam's Club)
 - all bars, taverns, pubs and the like that serve alcoholic beverages
 - virtually all restaurants
 - every other business in town that operates with a liquor license: including bowling alleys, the Alaska Zoo, the Alaska Native Heritage Center, the Egan and Deniana Center, most hotels, night clubs, Alyeska Resort, Sullivan Arena, and the Performing Arts Center.

This tax is not aimed only at small restaurants with liquor licenses in the downtown area.

- Since the tax applies to every business, my business would not have any substantial competitive advantage or disadvantage because of the tax.
- The effect of this tax on my minority share of the business income is conjectural – will customers drink less due to the tax? Or perhaps, would the tax substantially increase my business expenses. To the contrary, the cost of complying with any new tax (or other compliance changes such as a change in Worker's Comp. or a change in federal tax treatment) are business expenses which are readily handled in the day to day operation of any successful business – a new software program for the tills, for example in this case. The evidence regarding the impact on my financial or private interest would be speculative, either from an income or expense perspective.

As Mayor, I review and act on a great deal of legislation that touches my business interest – Title 21 (planning and zoning) issues, comprehensive plans, traffic, food regulation, police funding, choice of police chief, choice of fire chief, inspections – all of these touch my business interest, but the question is whether my business interest varies directly and substantially with the outcome of this official action. In this case, I suggest it does not.

With 9 years on the Assembly and now almost 6 as Mayor, I have considerable expertise in matters pertaining to local taxation and governance. This should be considered when crafting any recommendations that might shield my participation in significant legislation affecting the Municipality.

Finally, it is worth considering that the veto power cannot be delegated. Under Charter section 5.03, the municipal manager can "assume the powers and duties of the mayor" during my temporary absence or incapacity, "except emergency and veto powers." In the past, this Board has recommended I be recused and that I designate the municipal manager as the "point person." See Opinion 2010-3. That simply is not an option in this instance because it wholly destroys the Mayoral veto power and denies the people the governance they voted for in electing me as Mayor.

I respectfully request an advisory opinion on whether I can publicly oppose the proposal, in its various forms, including vetoing the proposal, if necessary.

Sincerely,



Dan Sullivan
Mayor