



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

March 11, 2015

Mayor Dan Sullivan

City Hall

632 W. 6th Avenue

Anchorage, Alaska 99501

Re: **Advisory Opinion 2015-1**, Action on AO 2015-10(S), an ordinance submitting to the qualified voters of the Municipality of Anchorage a ballot proposition amending the Anchorage Municipal Charter to adopt an alcoholic beverage sales tax, to dedicate the revenue to health and public safety uses related to alcoholic beverages, to allow use of the revenue to finance bonds for projects related to alcohol treatment, and to provide for approval by a majority (fifty 7 percent plus one) of qualified voters voting on the question.

Mayor Sullivan:

This advisory opinion (2015-1) responds to your *Request for Advisory Opinion*, dated January 30, 2015. You have advised the Board of Ethics that you wish to waive any confidentiality of your Request.¹

The Assembly recently considered proposed AO 2015-10(S), an Assembly ordinance (the "Ordinance") that, if passed, would, among other things, submit to voters the question of whether the Anchorage Municipal Charter should be amended to levy a tax on "all retail sales of alcohol."

In light of your partial interest in a business that sells alcoholic beverages, you have asked the Board of Ethics to advise whether, consistent with the Municipal Code of Ethics,² you can "publicly oppose the proposal, in its various forms, including **vetoing the proposal if necessary.**"

In issuing this opinion, the Board relied solely on the facts and information that you presented and verified for us. If material facts have not been disclosed, or have been misrepresented, this opinion is without force or effect.³

¹ See AMC 1.15.080A.2 ("A request for advice under 1.15.080A is confidential, unless confidentiality is waived by the person requesting an advisory opinion.").

² See generally AMC 1.15.

³ See AMC 1.15.080A.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. (emphasis added).

Summary of Opinion

On the facts presented to us, the Board of Ethics concludes that the Code of Ethics does not prohibit you from taking a public position on, or vetoing, the Ordinance.

Factual Background

The facts of your particular situation,⁴ as disclosed in your letter of January 30, 2015, and subsequent discussion with the Board of Ethics in its meeting of February 2, 2015, are as follows:

1. You own a partial interest in McGinley's Pub, a business located in downtown Anchorage that sells food and alcoholic beverages.
 - a. McGinley's Pub is owned by Highwater LLC.
 - b. The current owners of Highwater LLC are as follows:

Name	Percent Owned
DAN SULLIVAN	10
DON KESSLER	12
GEORGE SULLIVAN GRANDCHILDREN TRUST	6
JACK LEWIS	12
JOHN PETERSON	12
MATTHEW FINK	12
PAUL NELSON	12
RAYMOND & ANATI KIZER	6
RICHARD HOBBS	12
ROGER MOORE	6

- c. No owner of Highwater LLC is a member of your immediate family,⁵ though your daughter is one of the approximately 16 beneficiaries of the George Sullivan Grandchildren Trust.

⁴ See AMC 1.15.080A:

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. (emphasis added).

⁵ Cf. AMC 1.15.110J:

Immediate family means:

1. The spouse, child (including a stepchild and an adoptive child), parent, sibling, grandparent, aunt, or uncle of the person; and
2. A parent or sibling of the person's spouse; and
3. Any member of the person's household.

2. In a Public Official Financial Disclosure Form you filed with the Alaska Public Offices Commission in 2012, you valued your 10% interest in Highwater LLC at between \$20,000 and \$50,000.⁶
3. A large fraction of the revenue generated by McGinley's Pub derives from its retail sale of alcoholic beverages.
4. Highwater LLC pays to its owners dividends, the size of which depends on, among other things, the profitability of McGinley's Pub.
5. In recent years, the dividends resulting from your 10% interest in the Highwater LLC have amounted to hundreds, not thousands of dollars per month, amounts that are significantly less (by an order of magnitude) than the salary you receive from your service as mayor.
6. The retail sales tax on alcoholic beverage currently under consideration would apply to all stores that sell beer, wine, and/or spirits in bottles, cans, or boxes; as well as all bars, restaurants, and other establishments that are licensed to sell alcoholic beverages for consumption on the premises.

Question Presented

In light of your partial interest in Highwater LLC, you have asked the Board of Ethics to advise whether, consistent with the Municipal Code of Ethics, you can "publicly oppose [draft AO 2015-10(S)], in its various forms, including vetoing the proposal if necessary."

Discussion

The Municipality's Code of Ethics provides that "[t]he potential for conflict of interest presented by a financial or private interest held by the mayor shall be disclosed prior to action to the ethics board for determination and management of the potential for conflict of interest under the factors of 1.15.025B.1."⁷ Section 1.15.025B.1 provides as follows:

Whether [a] municipal employee is prohibited from participation in official action due to substantial financial or private interest shall be determined . . . with evaluation of these factors:

- a. Whether the financial or private interest held by the employee or a family member is a substantial part of the official action under consideration;

⁶ See <https://aws.state.ak.us/ApocReports/POFD/View.aspx?ID=668>

⁷ AMC 1.15.025B.3.

- b. Whether the financial or private interest varies directly and substantially with the outcome of the official action;
- c. Whether the financial or private interest is significant monetarily;
- d. Whether the public disclosure requirements applicable to municipal employees under this chapter have been fully met;
- e. Whether public disclosure of the municipal employee's financial or private interest and management of the potential for conflict of interest are sufficient to maintain the integrity of the decision making process.⁸

The Board is guided in its review and application of these factors by the Assembly's recognition that "in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government, such that "standards of ethical conduct for officials . . . need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society governed by a representative democracy, and those conflicts of interest that are substantial and material."⁹

The Board is further guided by the Assembly's instructions that "there is no substantial conflict if, as to a specific matter, the personal or financial interest of the official . . . in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the official . . . belongs"¹⁰; nor is there substantial conflict "if [an official's proposed] action or influence would have only insignificant or conjectural effect on the matter."¹¹

Relevant to its application of the factors listed in AMC 1.15.025B.1, the Board noted the following:

- a.&c. that Highwater LLC d/b/a McGinley's Pub is one member of a larger class of enterprises to which the proposed AO 2015-10(S) would apply; the measure has not been specifically tailored to Highwater LLC or McGinley's Pub;
- b.&c. that, assuming for purposes of discussion that passage of AO 2015-10(S) leads to a marginal reduction in the sale of alcoholic beverages, a marginal reduction in the sale alcoholic beverages by McGinley's Pub would cause only a marginal reduction in a fractional part of McGinley's Pub's

⁸ AMC 1.15.025B.1.

⁹ AMC 1.15.010C.

¹⁰ AMC 1.15.010D.

¹¹ AMC 1.15.010D.

revenues, the effects on the size of future dividends to 10% owner of Highwater LLC would be uncertain; and

- d. that we are not aware of any public disclosure requirements related to this matter that have not been fully met.

On balance, the Board does not believe there to be sufficient grounds upon which to conclude that your 10% interest in Highwater LLC is a factor that would “clearly . . . adversely affect[your]. . . independence of judgment in performing municipal duties,”¹² and is of the opinion that the existing public disclosures of your interest in Highwater LLC and McGinley’s Pub are sufficient management of any potential conflict of interest.

The Board consequently advises that you are not prohibited by the Code of Ethics from “publicly oppos[ing] [draft AO 2015-10(S)], in its various forms,” and that the Code would not preclude you from exercising the Mayor’s veto in these circumstances.

Sincerely,

Municipality of Anchorage Board of Ethics

David Nesbett, Chair
Terrance Kelly, Vice Chair
William D. Falsey
Kathleen King
Keith Silver

¹² Cf. AMC 1.15.025C.4.b.