



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

Date: January 20, 2016

To: Mayor Ethan Berkowitz, Municipality of Anchorage

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2015-7

Clerk's Note: NOPV  
2015-3 was converted to an  
Advisory Opinion (2015-7)  
by the Respondent to  
provide a public report  
regarding the subject  
matter.

Dear Mayor Berkowitz:

The Ethics Board understands affordable housing and downtown development are issues of great importance to you as the Mayor of the Municipality. We understand that on August 2 through 4, 2015, you traveled to Wichita, Kansas and Oklahoma City, Oklahoma to meet with local leaders to discuss development strategies and partnerships that have been successful in those communities. Other participants included Assembly Member Bill Evans; Chris Schutte, Director of Economic and Community Development for the Municipality; and Andrew Halcro, Executive Director of the Anchorage Community Development Authority. The Rasmuson Foundation (Foundation) provided air and ground transportation and meals for the trip, which you and Mr. Evans, with guidance from the Municipal Ethics Officer, disclosed on gift disclosure forms dated July 30, 2015, in accordance with AMC 1.15.035(O).<sup>1</sup>

On August 17, 2015, a member of the public (Complainant) filed a Notice of Potential Violation (NOPV) asking whether (1) acceptance of the Foundation's gift by you, Mr. Evans, Mr. Schutte, and Mr. Halcro violated the Municipality's Ethics Code, and (2) the meetings that occurred during the trip should have been open to the public. The Board of Ethics determined that no violations of the Ethics Code occurred, and the state and municipal open meetings laws did not apply. Nevertheless, to more fully inform the public about these issues, you agreed that the Board of Ethics could treat the NOPV as a Request for Advisory Opinion concerning the matters covered in the NOPV. This is the Board of Ethics' response to that Request.

In issuing this opinion, the Board of Ethics relied on the information contained in the NOPV, information provided by Ms. Susanne Fleek-Green, and the testimony of the Complainant and Ms. Fleek-Green. The Board did not undertake an independent investigation of the information. If material facts were not disclosed or were misrepresented, this opinion is without force and effect.

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<sup>1</sup> The gift disclosure form you submitted also identified Mr. Schutte as a recipient of air and ground transportation and meals from the Foundation.

## **TESTIMONY AND EVIDENCE PRESENTED**

### **A. Complainant**

On September 10, 2015, the Board of Ethics met with the Complainant regarding the NOPV. The Complainant alleged the disclosures filed for the gift underestimate the travel and meal costs provided by the Foundation. The Complainant expressed concern that the access the trip afforded local developers and nonprofit organizations to you and other government officials could result in special relationships that could influence your future decision-making, at financial benefit to those organizations. The Complainant alleged that the Foundation is very active in matters of a political nature such that a rational person would consider the gift to be suspect.

### **B. Susanne Fleek-Green, Mayor's Chief of Staff**

On October 8, 2015, the Board of Ethics met with your Chief of Staff, Susanne Fleek-Green, to obtain additional factual information about the trip. Ms. Fleek-Green stated that a key theme during your mayoral campaign was a desire to jump start housing and downtown development in the Municipality. She clarified that the Foundation, a major philanthropic organization in Anchorage with housing as a key initiative, approached you after you were elected to discuss how the organization might be able to partner with the Municipality to support its housing and development goals. Towards that end, the Foundation offered to pay for you to travel to Wichita and Oklahoma City with representatives of other public and private organizations to discuss housing and development strategies in those communities.

Ms. Fleek-Green explained that both the invitation list and the itinerary for the trip (attached) were prepared by the Foundation. She clarified that in addition to the individuals identified above, the participants included representatives of Cook Inlet Housing Authority, JL Properties, Inc. and United Way, among others. Ms. Fleek-Green said the Foundation is not a development company and does not have any interests that would be affected by decisions of the Municipality to undertake specific housing or development projects. She described the purpose of the trip as purely informational, with no fundraising or other political activity involved. She explained that you viewed the matter as one in which a potential partner with no conflicts of interests (the Foundation) offered to underwrite a trip of significant potential benefit and cost savings to the Municipality.

In response to the Complainant's concern about the presence of local developers on the trip, Ms. Fleek-Green reiterated that the developers were present at the invitation of the Foundation, not your administration. She also noted that given their housing and development expertise, their presence was relevant to furthering the informational purposes of the trip.

## **ISSUES, APPLICABLE LAW AND ANALYSIS**

**Issue 1: Whether Mayor Berkowitz, Mr. Evans, Mr. Schutte, or Mr. Halcro violated the Municipality's Ethics Code by accepting the gift of out-of-state travel and meals from the Foundation.**

**A. Mayor Berkowitz and Mr. Evans – Elected Officials**

AMC 1.15.035 establishes Ethics Code provisions specifically applicable to elected officials of the Municipality. AMC 1.15.035O generally prohibits an elected official from soliciting or accepting a gift “if it can be reasonably inferred that the gift is intended to influence the elected official’s independence of judgment in the exercise of official duties.” However, AMC 1.15.035O.3 specifies unsolicited gifts that are allowed, which include:

- h. state travel and hospitality discounts or accommodations offered or provided to an elected official shall be applied to any municipal expense for the travel. No disclosure is required. *Out of state gifts of travel and hospitality related to providing or obtaining information primarily on matters related to the duties of the elected official are allowed. Gifts in this category in excess of \$250.00 shall be disclosed for electronic publication by the municipal clerk prior to acceptance.* (Emphasis added).

AMC 1.15.035 applies to you and Assembly Member Bill Evans, as elected officials of the Municipality. In this instance, the Foundation’s payment of travel and meal costs for you and Mr. Evans to travel out of state to obtain information pertinent to housing and development in Anchorage constitutes an allowable out-of-state gift of travel and hospitality under AMC 1.15.035O.3.h. Both you and Mr. Evans timely disclosed the gift on gift disclosure forms prior to traveling in accordance with the Ethics Code. Thus, neither you nor Mr. Evans committed a violation of the Ethics Code by accepting the Foundation’s gift.

**B. Mr. Schutte and Mr. Halcro - Municipal Employees**

AMC 1.15.025 establishes Ethics Code provisions applicable to employees of the Municipality or a corporate authority owned by the Municipality. As a general rule, AMC 1.15.025H.2 prohibits such employees from accepting a gift “from an individual or entity with interests that may be substantially affected by the performance of the person’s official municipal duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the person’s judgment in exercising official municipal duties.” But certain gifts are expressly exempt from the requirements of the Ethics Code, including:

- 6. Travel discounts, accommodations, registration, and business travel. Unless specifically referenced in this section, items such as employee travel discounts, vendor provided accommodations and training, and payment of employee registration fees shall not be governed by the Ethics Code but shall be governed by administrative financial policies, procedures, or guidelines.

As the Director of Economic and Community Development for the Municipality, Mr. Schutte is an employee of the Municipality. Because the Anchorage Community Development Authority is owned by the Municipality, Mr. Halcro is an employee of a corporate authority owned by the Municipality. As such, AMC 1.15.035 applies to both Mr. Schutte and Mr. Halcro. But in this

instance, the Foundation's payment of travel and meal costs for Mr. Schutte and Mr. Halcro to attend the meetings in Wichita and Oklahoma City falls within the exemption under AMC 1.15.025H.6. Thus, neither Mr. Schutte nor Mr. Halcro committed a violation of the Ethics Code by accepting the Foundation's gift.

**Issue 2: Whether gatherings of Mayor Berkowitz, Mr. Evans, Mr. Schutte, Mr. Halco, and other public and private individuals to discuss housing and development strategies violated the open meeting laws of the state and municipality.**

Alaska Statute (A.S.) 44.62.310 and Anchorage Municipal Code (AMC) 1.25 establish the types of gatherings subject to state and municipal open meetings requirements, including reasonable public notice. An analysis of the issue here under Alaska State law will be presented first, followed by an analysis under the municipal code.

**A. State law**

A.S. 44.62.310(a) provides:

*All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. (Emphasis added).*

Subsection (h)(1) defines a "governmental body" as:

"governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

Subsection (h)(3) defines "public entity" to include municipalities.

A.S. 44.62.310(h)(2) defines a meeting as follows:

"meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body

has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

The group involved in this case – whether a mix of public officials and private citizens or purely public officials – does not constitute a “governmental body” under the definition cited above. It is not “an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity.” Nor is it, in any configuration, a “subcommittee or subordinate unit of a governmental body.” There is no evidence that the group was anything other than a loose-knit collection of public and private Anchorage citizens who came together to gather information and share ideas.

In particular, there is no evidence that the group had any authority to make decisions or recommendations to the public entity (i.e. the Municipality of Anchorage). The possibility that you as the Mayor, after consultation with staff members, may eventually make some recommendations or sponsor ordinances dealing with housing or development does not turn this group into a “governmental body.”<sup>2</sup> Thus, the Alaska open meetings statute does not apply, and no notice to the public was required.

## **B. Municipal Law**

Although the goals of the Municipality’s public meeting ordinance<sup>3</sup> are the same as those of the Alaska open meetings statute, the language of the AMC is somewhat different. AMC 1.25.010 requires that:

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<sup>2</sup> If, by contrast, this were an official municipal board or commission (for example, the Housing and Neighborhood Development Commission), *and* there were a sufficient number of members of the commission to constitute a “meeting” as defined above, then the open meetings laws would apply.

Another scenario in which the open meetings laws could potentially apply is if a sufficient number of members of an Assembly committee participated in the meetings. (For example, Assembly Member Bill Evans is a member of the Community & Economic Development Committee and is also Chair of the Ad Hoc Committee on Alcohol & Drug Abuse). As noted above, in A.S. 44.62.310(h)(1), the definition of “governmental body” can include a committee or even a subcommittee “or other subordinate unit” of a governmental body, but *only if* the subcommittee or subordinate unit consists of *two or more members*. In this case, only *one* Assembly Member – Bill Evans – attended the gatherings at issue; thus, the criteria for a “meeting” under the State open meetings law are not met either.

<sup>3</sup> The Board of Ethics has jurisdiction to address potential violations of the Municipality’s public meeting ordinance pursuant to AMC 1.25.015F, which states:

F. The board of ethics shall accept and consider complaints of violations of this chapter and may recommend that corrective action be taken by the public body. Upon a recommendation of the board of ethics finding such a violation, the assembly, the school board or the mayor may pursue the full range of corrective action afforded in state law under AS 44.62.310, Open Meetings of Governmental Bodies.



All meetings of the assembly, the school board and other boards and commissions shall be public as provided in Charter section 17.05.

This ordinance would apply to you as the Mayor only if you were formally part of a board or commission that was having a meeting. The ordinance clearly applies to the Assembly, but only if some or all members of the Assembly are having a “meeting” as that term is defined by the ordinance.

Several types of meetings are defined in AMC 1.25.005:

*Informal meeting* means an in-person or telephonic meeting which includes more than three members of a body subject to this chapter, except for regular, special, committee or work session meetings or any meeting which is attended by a quorum of a body.

*Regular meeting* means a gathering of a body for the purpose of conducting business which occurs at a usual and prearranged time and place and, in the case of the school board, which is advertised in accordance with section 29.10.050.C. In the case of the assembly, a regular meeting is a gathering held as designated in section 2.30.030.A and as advertised in accordance with section 2.30.030.K.

*Special meeting* means an in-person gathering of a body called by the presiding officer or by one member fewer than a quorum of the body or, in the case of the assembly, by the mayor, for the purpose of conducting business which is of such urgency as to make waiting for the next regular meeting impractical and which, in the case of the assembly, is held in accordance with applicable provisions of [section 2.30.030](#).

*Work session* means a gathering of assembly or school board members for the purpose of obtaining information and discussing an announced topic. Members may attend telephonically.

Under these definitions, the gatherings at issue here were neither a regular meeting nor a special meeting. Only two of the definitions above could arguably apply: “work session” and “informal meeting.”

“Work session” is defined as a “gathering of assembly...members” (emphasis added). The use of the word “members” is in the plural means more than a single member must be in attendance to have a work session. Although the trip was in part for the purpose of “obtaining information” about a “topic” (housing and development), it involved only a single member of the Assembly. As such, it would not constitute a “work session” subject to the public meeting ordinance.

An “informal meeting” requires “more than three members of a body subject to...” the public meetings ordinance be in attendance for the ordinance to apply. Again, only one member (Bill

Evans) of a “body” (the Assembly) attended the meetings. As such, this definition does not apply.

Because the type of gatherings that took place during the trip do not fit any of the definitions of a meeting under the code, the public meetings ordinance does not apply, and no public notice was required.<sup>4</sup>

## **CONCLUSION**

The Mayor, Mr. Evans, Mr. Schutte, and Mr. Halcro did not commit a violation of the Ethics Code by accepting the Foundation’s gift. The state and municipal open meetings laws did not apply to the gatherings at issue, and no notice to the public was required. The Board recommends continued vigilance by you, Mr. Evans, Mr. Schutte, and Mr. Halcro concerning potential conflicts of interest and the public perception of those potential conflicts, including continued guidance from the Municipal Ethics Officer and disclosure of potential conflicts. If you have any questions, please feel free to contact us.

Municipality of Anchorage Board of Ethics



David Nesbett, Chair

Terrence Kelly, Vice Chair

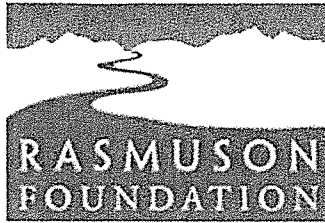
Ted Carlson

Kathleen King

Rebecca Windt-Pearson

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<sup>4</sup> Similarly, the ordinance would not apply to you as the Mayor meeting by yourself with a few public employee advisors and private citizens in an informal way. Presumably, this type of meeting is a frequent occurrence both in the Mayor’s office and at other places around the city. It is apparent that the open meetings laws were never meant to apply to this very common and routine practice in governing.



**Rasmuson Foundation Trip Agenda: Wichita, KS and Oklahoma City, OK  
Aug 2, 2015 – Aug 4, 2015**

**Note:** Agenda subject to change to accommodate important discussions in each session

**Sunday, Aug 2:**

- 1:30pm: Arrive at hangar
  - Address for the Rasmuson Hangar is 6500 Carl Brady Drive - Hangar #4. (map attached). There is ample parking available at the hangar so you can leave your vehicle there while we travel if you wish.
- 2:00 pm: Depart Alaska: Arrive Wichita 10:00pm. (5 hour flight w/a 3 hour time change)
  - Dinner will be served on the plane
- 10:30pm: Check in to Ambassador hotel

**Monday, Aug 3:**

- 7:40am: Meet in lobby and board shuttle for a 7:50am departure
- 8:00am – 10:00am: Working Breakfast at Wichita Downtown Development Corporation (WDDC) Design & Innovation Center – 507 E. Douglas Avenue
  - Topics to include:
    - Formation of Wichita Downtown Development Corporation (WDDC)
    - WDDC's initial focus and evolution
    - Working with Private Sector Developers
  - Conversation with:
    - Bill Livingston – WDDC Chair
    - Gary Schmitt WDDC Past Chair & Chair of GWEDC
    - Tom Docking – WDDC Past Chair
    - Larry Weber WDDC Past Chair
    - Michael Ramsey – Bokeh Development - Downtown Developer
    - Jeff Fluhr – President WDDC and Greater Wichita Partnership
- 10:00am – 11:00am: Partnership with the City of Wichita – WDDC Design & Innovation Center
  - Topics to include:
    - Project Downtown, the Master Plan for Wichita
    - Public Policy
  - Conversation with:
    - Robert Layton – City Manager, City of Wichita
    - Scott Knebel - Downtown Revitalization Manager, City of Wichita
    - Tim Goodpaster – Urban Development, City of Wichita
    - Jeff Fluhr – President WDDC and Greater Wichita Partnership



## Tuesday, Aug 4:

- 7:15am: Meet in Hotel lobby and check out of hotel. Pick up boxed breakfast and board shuttle to airport. Shuttle to depart at 7:30am.
- 7:45am: Depart Wichita. Arrive OKC 8:30am. (no time difference between the cities)
- 8:45am: Board shuttle to offices of Downtown OKC.
  - Driving tour to commence with Downtown OKC President and CEO Jane Jenkins as guide
- 10:15am: Arrive at The Edge Apartments: 1325 N. Walker
- 10:30am: Housing discussion begins
  - Featured resources:
    - Mickey Clagg, President, Midtown Renaissance Group
    - Gary Brooks, President and CEO, Cornerstone Development
    - Richard McKown, Developer, City Center Development LLC
- 11:45am: Depart The Edge Apartments
- 12:00pm: Arrive for lunch at Vast: 333 W. Sheridan, Devon Energy Center
  - Featured Resource:
    - Mayor Mick Cornett
- 1:30pm: Economic Development/Partnership discussion begins (Summit Room at Vast)
  - Featured Resources:
    - Cathy O'Connor, President and CEO, The Alliance for Economic Development of Oklahoma City
    - Brent Bryant, Economic Development Program Manager, City of Oklahoma City
    - Kurt Foreman, Executive Vice President of Economic Development, Greater Oklahoma City Chamber
    - Ian Colgan, Assistant Planning Director, City of Oklahoma City
- 3:00pm: Depart Devon Energy Center
- 3:15pm: Arrive at Boathouse District: 725 S. Lincoln Boulevard
- 3:30pm: MAPS Presentation: Eric Wenger, Director of Public Works, City of Oklahoma City
- 4:15pm: Depart Boathouse District
- 4:30pm: Arrive at Councilwoman Meg Salyer's apartment for reception: 204 N. Robinson.
  - Note - Speakers from the day will be invited so the discussion can continue.
- 5:30pm: Depart downtown for airport.
- 6:00pm: Depart OKC. Arrive Anchorage at 9:00pm. (6 hour flight with a 3 hour time change)
  - Dinner will be served on the plane