



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

Date: February 8, 2018

To: Michael Edgington
mike.edgington@gmail.com

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2017-4 – *Confidentiality Waived*¹

Dear Mr. Edgington:

You have inquired whether the Municipal Ethics Code (Code) permits you to serve as an elected member on the Girdwood Board of Supervisors (GBOS) while at the same time serving as an appointed member on the Heritage Land Bank Advisory Commission. Some history and explanation of these entities' roles may be helpful.

HISTORICAL TREATMENT

Historically, the previous Ethics Code² distinguished between municipal employees, municipal board and commission members, and municipal elected officials. The Code was thought by many, including a primary drafter, to preclude both employees and elected officials from simultaneously serving on boards and commissions. The underlying reasoning appeared to be that (1) the Charter intended that as many residents as possible make up the boards and commissions to represent and maximize resident involvement in local government; and (2) elected officials should not serve on entities (boards and commissions) over which the elected official would have review and decision making authority. For example, an elected official on the Assembly would not concurrently sit on the Heritage Land Bank Advisory Commission because recommendations by the Heritage Land Bank Advisory Commission come before the Assembly. With a few exceptions, the practice city-wide was that Assembly members and elected officials do not serve on Municipal boards and commissions.³

The current revised Code recognizes an exception to the above practice by distinguishing between elected officials and board members. The new Code defines "board members" to include members of limited service area boards (LSRA) regardless of whether they are elected or appointed. (AMC 1.15.030B.) This definition is distinct from the definition of "elected official." (AMC 1.15.030C.) Thus, an elected board member of a LSRA is not treated as an elected official despite being elected to the position. This distinction exists because LSRA board members serve a much more limited role than other elected officials such as the mayor or

¹ See AMC 1.15.150.D. ("A request for advice is confidential unless confidentiality is waived by the person requesting an advisory opinion.")

² The 2007 Municipal Ethics Code was recently repealed and re-enacted in March 2017.

³ Some of the Municipal boards and commissions are by Code expressly comprised of representatives of different groups, which may include Assembly members or Administration representatives.

Assembly members. Therefore, the current Code would not preclude an elected member of a LSRA board from also serving as an elected official.

The new Code offers no further direct guidance to the question before the Ethics Board.

ROLES OF THE ENTITIES

In the case at hand, GBOS is a general service area board whose members continue to fall under the definition of an elected official. The Heritage Land Bank Advisory Commission (HLBAC) is a Municipal commission. May an elected official on GBOS also sit on the HLBAC?

At the Board of Ethics Meeting of January 11, 2018, the director of Real Estate Services and the Heritage Land Bank (the department), Ms. Robin Ward, outlined the roles of the entities involved. Much of the undeveloped land in Girdwood is held by the Heritage Land Bank, a department of the Municipality. The Municipal Code requires that many real estate transactions involving Heritage Land Bank property be presented to the Heritage Land Bank Advisory Commission. The recommendation of the HLBAC is then transmitted by Heritage Land Bank to the Assembly as part of any associated Assembly action. At the same time, Heritage Land Bank (the department) also seeks a recommendation or resolution from GBOS (as the community representatives) to bring before the Assembly in support of the proposed action. GBOS relies on its land use subcommittee (LUC) and generally, ratifies the decision of the LUC.

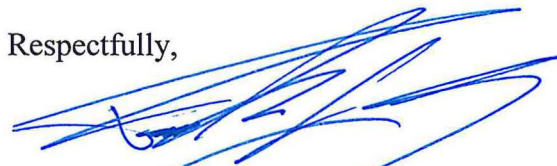
In this case, you currently sit on GBOS and seek to be appointed to the Heritage Land Bank Advisory Commission. Both entities make recommendations to the Assembly on the same land use matter. However, neither entity has review or decision-making authority over the decisions of the other entity. Thus, the concern regarding any conflict created by sitting on two entities, a subordinate entity and an ultimate decision-making entity, is not present here.

The Board of Ethics, however, was concerned with the fact that one individual could be voting on the same matter twice while serving on two different Municipal entities. Specifically, the Board was concerned that this duplication could create the appearance of impropriety or confuse the public.

CONCLUSION

Under the facts of your case, the Ethics Code does not preclude you from serving as an elected member on the Girdwood Board of Supervisors while at the same time serving as an appointed member on the Heritage Land Bank Advisory Commission. In the interest of the public trust, however, the Ethics Board advises that you should recuse yourself from voting as a GBOS elected official on any matter in which you participate or vote as a Heritage Land Bank Advisory commissioner.

Respectfully,



Terrence Kelly, Chair
Ted Carlson
Jack McKenna
David Nesbett
Marsha Olson