



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: May 23, 2016

To: Robert Gustafson  
3705 Arctic Blvd. #2961  
Anchorage, AK 99503-5774

From: Municipal Board of Ethics

Re: Response to Advisory Opinion 2016-6

Dear Mr. Gustafson:

This advisory opinion (2016-6) responds to your *Request for Advisory Opinion* (Request) dated April 14, 2016. You have advised the Board of Ethics (Board) that you wish to waive the confidentiality of your Request.<sup>1</sup> This opinion is based upon the facts disclosed in your Request and during the discussion of this matter at the April 18, 2016 Board meeting. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

**Summary of Opinion**

The issue before the Board is whether the Municipal Code of Ethics ("Ethics Code") allows you, as a current municipal employee for the Anchorage Water and Wastewater Utility (AWWU), to operate a private business to treat and bottle water from Eklutna Lake. The Board finds that your participation in the private business would not constitute a violation of the Ethics Code so long as you abide by limitations on the nature, scope and timing of your private business activities.

**Facts of the Request**

We understand that you have worked for AWWU for nine years and currently are the Water Quality Section Superintendent. In this capacity, you manage the environmental compliance monitoring programs for AWWU, which entails coordinating all required municipal drinking water and wastewater sampling, analyzing the samples for various parameters, and reporting the results to the State of Alaska. All of the data and other information obtained in your current position is available to the public. None of your duties involve treating water, preparing contracts for the sale of municipal water, monitoring the amount of water sold to local bottlers, or preparing contracts for the construction of water access points for local bottlers.

You are interested in starting your own business to treat and bottle water from Eklutna Lake. Unlike other local water bottlers, your company would purchase raw water, before it has been

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

treated, from AWWU, and then treat the water using a physical rather than a chemical treatment process. The company would obtain the raw water by driving a tanker truck to an access or fill point - consisting of a pipe and a valve - at the Eklutna Energy Recovery Station, connecting a hose on the truck to the pipe, and filling the tanker with raw water. Because an access point at the Eklutna Energy Recovery Station does not currently exist, a small diameter pipe would need to be constructed from inside the station through the outer wall to enable the raw water to be accessed from outside.

Your company would likely engineer the specifications for the small diameter pipe, subject to approval by AWWU, and AWWU would then put the construction of the pipe out for bid. Your company would not bid on the contract. According to your Supervisor, David Persinger, this is the same process that was followed for all of the other eight local water bottlers, each of whom has their own water access point.

You indicated that no municipal facilities, supplies or other resources would be used for your water treatment and bottling business.

You have asked the Board whether the proposed private water treatment and bottling business would constitute a violation of the Ethics Code.

## Discussion

A purpose of the Ethics Code is to “give public officials and employees guidance in identifying and resolving potential conflicts” to “preserve the integrity of the governmental process and avoid conflicts of interest.”<sup>2</sup> Towards that end, AMC 1.15.025.C. addresses outside employment by current municipal employees and states in part:

**C. Contemporaneous service and employment.** A municipal employee shall not render services to, or accept employment with, persons or organizations other than the municipality, **if the contemporaneous service or employment is incompatible or in conflict with the proper discharge of the employee’s municipal duties**, including duties with the Anchorage School District. **Contemporaneous service or employment shall not adversely affect the employee’s availability, productivity, or independence of judgment in performing municipal duties.**

1. **A municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee’s personal endeavors, including contemporaneous service or employment, except to the extent the general public has the same access to use.**
2. **A municipal employee shall not engage in activities related to contemporaneous service or employment during scheduled work hours.** Minor or inconsequential personal telephone and computer privileges, when allowed under applicable policy and practice, shall not be

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<sup>2</sup>

AMC 1.15.010.A.

abused or diverted to support contemporaneous service or other employment.

3. **Full time temporary and regular municipal employees engaging or intending to engage in contemporaneous service or employment outside scheduled work hours shall notify the administrative supervisor in writing.**

Applying AMC 1.15.025.C. to this case, your current position and the proposed water treatment and bottling business both pertain to municipal water. However, the nature of your municipal duties – monitoring compliance of municipal drinking water and wastewater “downstream” from the raw water source at Eklutna - are separate and distinct from the “upstream” treatment of raw water and subsequent bottling planned for your private business. Thus, so long as you abide by the restrictions on the use of municipal time, facilities and other resources specified in AMC 1.15.025.C., your proposed enterprise does not appear incompatible or in conflict with your performance of your current municipal duties.

In addition, the proposed business would not violate the prohibition on the award of a municipal contract to a municipal employee under 1.15.025.E.5. because your company would not bid on the municipal contract for construction of the small diameter pipe at the Eklutna Energy Recovery Station. Nor would the proposed business violate the Ethics Code provisions regarding the use and disclosure of confidential information, because all of the data and information obtained in your current position is available to the public – none of it is confidential.

### **Conclusion**

The Board concludes that your proposed private water treatment and bottling business would not violate the Ethics Code so long as you abide by the restrictions described above. Specifically, you may not use municipal time, facilities or other resources to conduct your private business. You must also inform your supervisor in writing of the proposed business so that it may be appropriately managed in light of your current municipal duties.

If you have any questions about this advisory opinion, or if any of the underlying facts change, including the duties of your position, please contact us.

Municipality of Anchorage Board of Ethics



David Nesbett, Chair

Terrence Kelly, Vice Chair

Ted Carlson

Kathleen King

Rebecca Windt-Pearson