

Submitted by: Assemblymember Tesche
Prepared by: Assemblymember Tesche
For reading: October 9, 2007

Rescinded indefinitely 10/9/07 ANCHORAGE, ALASKA
AR NO. 2007-228

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY OFFICIALLY
ADMONISHING ASSEMBLY MEMBER PAUL A. BAUER FOR KNOWINGLY VIOLATING
SECTIONS 1.15.070(K)(1), 1.15.070(K)(2), 1.15.070(K)(3) OF THE CODE OF ETHICS BY
PUBLICLY DISCLOSING THE CONTENT OF A NOTICE OF POSSIBLE VIOLATION OF
THE CODE BEFORE THE BOARD HAD THE OPPORTUNITY TO COMPLETE ITS
PRELIMINARY REVIEW OF THE CLAIM AND REQUIRING ASSEMBLY MEMBER
BAUER TO ATTEND AND COMPLETE ETHICS TRAINING WITHIN SIX MONTHS.**

WHEREAS, the municipal Code of Ethics (AMC 1.15) requires that notices of possible violation of the Code be kept confidential by the Board, its staff, and persons filing those notices, before the Board has finished its preliminary investigation of those complaints; and,

WHEREAS, the purpose of requiring confidentiality of potential violations of the Code during the Board's preliminary review of those complaints is to ensure the integrity of the process of investigation and, with respect to elected and appointed officials, to prevent the politicization of ethics; and,

WHEREAS, by letter directed on September 6, 2007 to the members of the Anchorage Assembly, the Board of Ethics found Assembly Member Paul A. Bauer knowingly violated Sections 1.15.070(K)(1), 1.15.070(K)(2), 1.15.070(K)(3) of the Code of Ethics by disclosing the content of a Notice of Possible Violation before the Board had determined whether that complaint was supported by probable cause; and,

WHEREAS, under AMC 1.15.100 the Board recommended to the Assembly that Assembly Member Paul A. Bauer be officially admonished for these violations and that he be required to undergo ethics training within the next six months; and,

WHEREAS, as required by AMC 1.15.100 Assembly Member Bauer was given an opportunity to address the Assembly in public session, limited to the issue of sanctions, referrals and corrective action recommended by the Board before official action was taken by the Assembly on those recommendations;

NOW, THEREFORE, the Anchorage Assembly resolves:

Section 1. The Anchorage Assembly officially admonishes Paul A. Bauer for the violations of the Code of Ethics as determined by the Board of Ethics in its report of September 6, 2007.

Section 2. Assembly Member Paul A. Bauer shall attend and complete an ethics training relevant to the Municipal Code of Ethics within six months from the effective date of this resolution and as approved by the Director of the Department of Employee Relations of the Municipality of Anchorage.

PASSED AND APPROVED by the Anchorage Assembly this ____ day of _____,
2007.

Chair

ATTEST:

Municipal Clerk

Municipality of Anchorage



BOARD OF ETHICS

C/O OFFICE OF THE CLERK
P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
TELEPHONE: (907) 343-4311



September 6, 2007

Members of the Anchorage Assembly
Municipality of Anchorage
Municipality Clerk's Office
PO Box 196650
Anchorage, AK 99519-6650

Dear Members of the Anchorage Assembly:

We write to report our findings, determination and recommendations regarding Notice of Potential Violation 2007-1, an official complaint against Assembly Member Paul A. Bauer. The Board of Ethics (the "Board") has found that Assembly Member Bauer violated the Ethics Code sections 1.15.07(K) by making public a Notice of Potential Violation, which under the rules must be kept confidential.

Rules

The Code of Ethics of the Municipality of Anchorage was established and recently revised and adopted by the Assembly to maintain the highest degree of integrity of Municipal employees and elected and appointed public officials. It was designed 'to avoid improper conduct' and 'conflict of interest' and, to ensure 'the solemn responsibility' on the part of 'all who serve the municipality' 'in creating a government that has the trust and respect of its citizens' (1.15.010.A [AMC]).

Ethics Code section 1.15.070 (K) provides as follows (emphasis added):

K. *Disclosure of notification of potential violation prohibited.*

A notification of potential violation filed under this chapter is confidential until the board completes the written report for distribution as a public record under 1.15.070I.2

1. No person shall knowingly disclose to another person, or otherwise make public in violation of this chapter, the contents of a notification of potential violation filed with the board, unless

- a. The respondent elects to proceed in public; or
- b. The written report of the board is electronically published by the municipal clerk.

2. Breach of confidentiality under this subsection is a violation of this chapter. (Underlining added)

3. A person filing a notice of potential violation shall keep confidential the fact that the person has filed the notice with the board, as well as the contents of the notice of potential violation. If the board finds probable cause to believe that the person filing the notice of potential violation has violated confidentiality under this chapter, the board shall immediately dismiss the notice of violation. Dismissal under this subsection does not affect the right of the board or another person to initiate a proceeding on the same factual allegations by filing a notice of potential violation.

Process

The Board's investigation of Notice of Potential Violation 2007-1, a complaint against Assembly Member Paul A. Bauer, involved review of written, published, and publicly broadcast materials relevant to the complaint, and hearing sworn testimony from both the complainant and respondent. The Board then held confidential deliberations and made the following findings.

Findings

The Board of Ethics has found the following:

1. Assembly Member Bauer testified that between a work session held on Friday, February 9, 2007¹ and the Assembly meeting held the following Tuesday (February 13, 2007) he "heard a rumor" concerning Mayor Begich, perhaps from a constituent which he felt might involve a conflict of interest. He testified further that he thought about bringing the issue up at the Assembly meeting, but did not.

¹ Mr. Bauer's memory might be a month off. His testimony concerning the work session and the Assembly meeting concerned the topic of Road Bonds. Those topics were apparently discussed at the work session of February 9, 2007 and the Assembly meeting of February 13, 2007. Mr. Bauer testified that the work session was held, to the best of his recollection, on a Friday in early March and at the Assembly meeting which was held on the following Tuesday. However, the bond package was passed at the February 13, 2007 Assembly meeting, and notices of the election were being published in March. Even under Mr. Bauer's timing the Board's determinations would remain the same.

2. More than a month later, on March 19, 2007 Assembly Member Bauer filed a Notice of Potential (Ethics) Violation. Mr. Bauer emailed the Notice of Potential Violation to the Municipal Clerk's Office and asked that it be forwarded to the Ethics Board. Mr. Bauer's email clearly states that the transmittal is a complaint, both in the subject line of the email (subject line reads "Ethics Complaint"), the title of the attached document (attachment titled "Complaint-Mayor Begich-Ethics Board.doc"), and in the text of the email (e-mail reads "this complaint to the Ethics Board on the Mayor of Anchorage"). At the end of Mr. Bauer's March 19th attached document he clearly states that he intended to make the matter public; "... there is an ethical obligation on my part to make the public aware of appearances or impropriety and conduct unbecoming to a public official."
3. Mr. Bauer testified that given the timing situation he was in, and because he was a representative of the people; he had to "use every avenue I can to get information out" because there was an election concerning a bond taking place 13 days later. Mr. Bauer did not explain why he neither raised the issue of the rumored conflict at the Assembly meeting, earlier with the Ethics Board either as a complaint or a request for an advisory opinion or earlier with the media between the time he first hear the "rumor" and March 19, 2007.

Mr. Bauer later asserted that he did not file a Notice of Potential Violation; rather he was seeking advice of the Board.² The Board of Ethics, after hearing from Assembly Member Bauer, determined his March 19 email constituted a Notice of Potential Violation. Therefore, the Board finds that Mr. Bauer should have maintained the confidentiality of the Notice pursuant to Ethics Code section 1.15.070.K [AMC].

4. On March 20, 2007 at approximately noon, Assembly Member Bauer held what he described in testimony as a "press conference." At the Press Conference Mr. Bauer provided the media with a document cited "For Immediate Release," and titled **"ASSEMBLY MEMBER ALLEGES ETHICS VIOLATION WITH HIGH COST OF ROAD PROJECT."** The content of that document and Assembly Member Bauer's statements during the Press Conference, widely covered in print, radio, and television reports, described the ethics complaint he submitted to the Board of Ethics on March 19. Therefore, the Board finds that by making public his Notice of Potential Violation Mr. Bauer violated the confidentiality provisions set forth in the Ethics Code section 1.15.070.K [AMC].

² Note that under Ethics Code 1.15.080.A Advisory opinions may only be requested for a particular situation involving the inquirer, and such requests are confidential unless confidentiality is waived by the person requesting the advice. Assembly Member Bauer's clarification provides him no sanctuary since (1) his original inquiry (even ignoring his own labeling of it as a "complaint") dealt not with a question concerning his own actual or contemplated activities but, rather, with the activities of another person; and (2) in any event the requirements of confidentiality adhere to advisory opinions as well.

5. Mr. Bauer testified that on March 20, 2007 prior to the Press Conference, he was notified by the Municipal Clerk's Office that it may be a violation of the Ethics Code to make public a Notice of Potential Violation. He testified that even though he knew it might be a violation he went ahead with the Press Conference and made the Notice public in violation of the Ethics Code. This testimony was confirmed by the testimony of an employee of the Clerk's office.

Determination

The Board of Ethics, in consideration of Notice of Potential Ethics Violation 2007-1, determines that Assembly Member Paul A. Bauer knowingly violated the Code of Ethics 1.15.070.K.1; 1.15.070.K.2; and 1.15.070.K.3, by the above described actions. The Board of Ethics further determines that any filing of a document with the evident intent of making a complaint of violation of the Code of Ethics or the seeking of an Advisory Opinion will trigger the confidentiality provisions of 1.15.070.K [AMC] which will remain in effect unless waived or released pursuant to other provisions of the Code.

Recommendations

1. Pursuant to 1.15.070.G.2 of the Code, the Board of Ethics recommends that the Anchorage Assembly officially admonish Assembly Member Paul A. Bauer for these violations.
2. Pursuant to 1.15.070.G.2 of the Code, the Board of Ethics recommends that the Anchorage Assembly require Assembly Member Paul A. Bauer to attend and complete ethics training relevant to the Municipal Code of Ethics within six months. (Such ethics trainings are regularly offered by the Employee Relations Department of the Municipality of Anchorage.)

The determination of these violations and of subsequent recommendations was approved unanimously by all voting members of the Board of Ethics at its August 17, 2007 meeting.

Summary

The Code of Ethics, in particular its confidentiality concerning potential violation sections, was established by the Assembly to ensure the integrity of a process for considering allegations of ethics violations. With respect to elected and appointed officials, it was particularly intended to prevent the politicization of ethics. The Code of Ethics lays out a disinterested, fair, and robust process for the Board of Ethics,

September 6, 2007

Page 5

concluding in the above determination of violations and recommendations in case 2007-01.

Respectfully submitted,

Municipality of Anchorage Board of Ethics

Municipality of Anchorage
MUNICIPAL CLERK'S OFFICE
Agenda Document Control Sheet

AR 2007-228

(SEE REVERSE SIDE FOR FURTHER INFORMATION)

1	SUBJECT OF AGENDA DOCUMENT	DATE PREPARED	
	ADMONISHING ASSEMBLY MEMBER PAUL A. BAUER FOR KNOWINGLY VIOLATING ... OF THE CODE OF ETHICS BY PUBLICLY DISCLOSING THE CONTENT OF A NOTICE OF POSSIBLE VIOLATION OF THE CODE...	10/2/07 Indicate Documents Attached <input type="checkbox"/> AO <input checked="" type="checkbox"/> AR <input type="checkbox"/> AM <input type="checkbox"/> AIM	
2	DEPARTMENT NAME	DIRECTOR'S NAME	
	Assembly	Dan Coffey, Assembly Chair	
3	THE PERSON THE DOCUMENT WAS ACTUALLY PREPARED BY	HIS/HER PHONE NUMBER	
	Assembly Member Tesche	276-3284	
4	COORDINATED WITH AND REVIEWED BY	INITIALS	DATE
	Mayor		
	Municipal Clerk		
	Municipal Attorney		
	Employee Relations		
	Municipal Manager		
	Cultural & Recreational Services		
	Fire		
	Health & Human Services		
	Merrill Field Airport		
	Municipal Light & Power		
	Office of Management and Budget		
	Police		
	Port of Anchorage		
	Public Works		
	Solid Waste Services		
	Transit		
	Water & Wastewater Utility		
	Executive Manager		
	Community Planning & Development		
	Finance, Chief Fiscal Officer		
	Heritage Land Bank		
	Management Information Services		
	Property & Facility Management		
	Purchasing		
	Other		
5	Special Instructions/Comments		
	Consent Agenda - Resolutions for Action-Other		
6	ASSEMBLY HEARING DATE REQUESTED	7	PUBLIC HEARING DATE REQUESTED
	10/9/07		

2007 OCT - 2 AM 9:02
 M.C.A.
 CLERK'S OFFICE