



**MUNICIPALITY OF ANCHORAGE**  
**Board of Ethics**

Date: October 30, 2024

To: Municipal Attorney Eva Gardner<sup>1</sup>

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2024-04

Dear Municipal Attorney Gardner:

On September 25, 2024, you asked the Board of Ethics (the “Board”) for an advisory opinion on the interpretation of the code of ethics dealing with restrictions on employment after leaving municipal service (AMC 1.15.130A). Specifically, you asked whether those restrictions prohibit the former Housing and Homelessness Policy Manager in the Anchorage Health Department, A.J., from working for Henning, Inc. within one year after her departure from municipal employment. Per your request, the board provided you with an expedited response on October 6, 2024, notifying you that AMC 1.15.130A does not prohibit A.J. from representing, advising, or assisting Henning, Inc. on this year’s non-congregant housing contract. This response replaces the board’s expedited response and provides a more detailed analysis of the board’s decision.

**EVIDENCE CONSIDERED BY THE BOARD**

The board held a public meeting on October 3, 2024, in which it received information from the following witnesses:

- (1) A.J., current Director of Strategy for Henning, Inc., and former Housing and Homelessness Policy Manager in the Anchorage Health Department
- (2) Kimberly Rash, Director, Anchorage Health Department
- (3) Farina Brown, Special Assistant for Homelessness and Health
- (4) Eva Gardner, Municipal Attorney
- (5) Joe Busa, Deputy Municipal Attorney

The board also considered the written statement you attached to your request. Finally, because several witnesses mentioned text messages involving Henning employees and A.J., the board considered as background information the publicly available information contained in Assembly Information Memorandum (AIM) 124-2024 (Aug. 27, 2024). This

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<sup>1</sup> The name of the person requesting an advisory opinion is normally redacted and a response is published in genericized form. In this case, Municipal Attorney Gardner waived confidentiality regarding this request.

opinion is based on the information that was presented to the board and is without force or effect if material facts were omitted or misrepresented by any witness.

## **FACTUAL BACKGROUND**

In September of 2022, former Mayor Bronson appointed A.J. as the Housing and Homelessness Policy Manager in the Anchorage Health Department. A.J. had previously been serving as the mayor's chief of staff. In her role as Housing and Homelessness Policy Manager, she oversaw all homelessness efforts by the municipality, including, among other things: direct oversight of contractor Henning, Inc., in its provision of congregate and non-congregate shelter services at East 56<sup>th</sup> Ave. and in hotels; direct oversight of Henning, Inc. as lessee of the former Golden Lion (100 E 36<sup>th</sup> Ave.) for the purpose of providing transitional housing; reviewing contracts and leases for those projects; approving invoices for those projects; and finding money for those projects.

A.J. informed the board that she did not have final decision-making authority on any contracts for Henning that she reviewed. She said issues would usually be sent to her via automated workflow systems, which she would then review and forward for action. She said contracts would be sent to either the assembly or the purchasing director for approval, depending on the type of contract or amount of money involved. She participated in the process to award a non-congregate shelter contract to Henning, Inc., which ended May 30, 2024, and a congregate shelter contract, which ran through October 2024.

A.J.'s municipal employment ended on July 1, 2024, when the new administration took office. She said she did not have any discussions with any representatives from Henning, Inc. before July 1, 2024, about working for Henning after her municipal employment ended, nor did she have any plans to do so at the time. She desired to continue working in the field related to issues of housing and homelessness, which is why she accepted municipal employment in this field. She said she had an exit interview before leaving municipal service, and no one mentioned any restrictions on her future employment during this interview. She told the board that she never signed any agreement limiting her future employment opportunities. She said the first time she had heard of any restrictions on employment after leaving municipal service is when she was asked to appear before the board for this advisory opinion.

A.J. said that during July and August of 2024, she applied and interviewed with various non-profit organizations for positions related to housing and homelessness. She accepted a position as director of strategy for Henning, Inc. on August 9, 2024. As Director of Strategy, she is responsible for executing long-term strategies for Henning, which includes funding identification, braiding state, local, and federal funds, as well as project management. A.J. said she has not had any discussions with Henning about her recusal from any matters she worked on as a municipal employee because she did not believe that her employment with Henning would be subject to any restrictions.

Health Department Director Kimberly Rash informed the board that she was involved in and is aware of the process the municipality used to seek bids for contractors to operate non-congregate shelter services for the coming winter. She said that the municipality put out a Request for Proposals (RFP) through a competitive procurement process. This competitive process resulted in an intent to award the contract to Henning, Inc., which the Health Department anticipated being brought to the assembly for review and possible approval on October 8, 2024.

Health Department Director Rash informed the board that A.J. did not participate in this year's non-congregant shelter contract as a municipal employee because A.J. was no longer employed by the municipality when the matter came up for action. All the relevant actions related to this coming winter's contract occurred after A.J. left municipal employment on July 1, 2024.

Farina Brown is the current Special Assistant for Homelessness and Health, and she has been in that position since August 5, 2024. Special Assistant Brown has interacted with A.J. during August and September of this year, when A.J. was acting on behalf of Henning. Special Assistant Brown said A.J. represented and assisted Henning submit its proposal for the non-congregant shelter contract. A.J. also hosted a tour of Henning's operations at East 56<sup>th</sup> Ave., which various municipal employees attended, as well as representing Henning during behavioral health convening procedures dealing with clients housed in facilities maintained by Henning.

Director Rash informed the board that she is aware of text messages between A.J. and Henning employees. Director Rash said these messages are described in AIM 124-2024 and may have led to some concerns about A.J.'s employment by Henning. Finally, you (Municipal Attorney Gardner) informed the board that several assembly members raised concerns to you about A.J.'s employment by Henning. You said this advisory opinion seeks clarity on the application of AMC 1.15.130A to these circumstances. In particular, whether A.J. is representing, advising, or assisting Henning, Inc., on a matter in which she participated personally and substantially as a municipal employee by working on behalf of Henning to secure this year's contract for non-congregate housing services.

## **DISCUSSION**

While most municipal employees may only request advisory opinions for matters that are personal to them as the inquirer, the municipal attorney is one of several listed officials who may request an advisory opinion based on the actions of other public servants.<sup>2</sup> Therefore, the board has jurisdiction to issue this advisory opinion to you.

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<sup>2</sup> AMC 1.15.150B.

AMC 1.15.130 sets restrictions on employment after leaving municipal service and reads as follows:

**1.15.130 – Restrictions on employment after leaving service**

- A. *General one-year rule:* An employee who leaves municipal service may not, for one year after leaving municipal service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by the employee, if the municipal employee participated personally and substantially in the matter through the exercise of official action. In this subsection, "matter" includes a case, proceeding, application, contract, or determination but does not include consideration of ordinances, resolutions, charter amendments, draft legislative measures, or the adoption of administrative regulations if consideration by the employee was only in the context of general application.
- B. *Waiver:* The assembly or school board may waive application of this restriction upon determination that a proposed action by a former employee is not adverse to the public interest. The waiver shall be by formal action and a copy shall be provided to the board of ethics.
- C. *Municipality option to contract:* The restriction on employment after leaving municipal service does not prohibit the municipality from contracting with a former employee to provide service on a matter on behalf of the municipality.
- D. *Charter prohibition:* An assembly or school board member may not, for one year after leaving service, hold a compensated municipal office which was created, or the salary or benefits of which specially increased, during the elected official's last year in office by the body of which the elected official was a member.

The guidance in subsection A that the word “matter” includes a “case proceeding, application, contract, or determination” leads the board to conclude that each contract involving Henning, Inc., is a separate matter. Each contract is subject to new approval, a new competitive procurement process, and new oversight. The word “matter” is not so broad as to cover the general formulation of all housing or homelessness policies.<sup>3</sup> The Alaska Department of Law has consistently interpreted the word “matter” in AS § 39.52.180(a), the state statute upon which the code of ethics provision is based, in accordance with the legislature’s intent that restrictions on future employment be narrowly

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<sup>3</sup> See 9 AAC 52.100 (interpreting a similar post-state employment restriction, AS § 39.52.180(a), upon which the code of ethics restriction is based).

applied.<sup>4</sup> “The goal is to protect the integrity of state actions but recognize that state employees gain expertise and knowledge on the job that they rightfully take with them when they leave state service. It is intended to prevent improper actions or influence on actions, that is, misuse of office to benefit an officer with respect to future employment.”<sup>5</sup> Likewise, consistent with that legislative intent, the board believes that restrictions on future employment after leaving municipal employment should be narrowly applied. Interpreting restrictions on future employment broadly would often make former public servants essentially unemployable within their field of expertise for one year after leaving municipal service. This does not further the intent of the code of ethics.

Here, the evidence presented to the board indicated that A.J. did not have any discussions about future employment with Henning, nor did she have future plans to work for Henning while she was a municipal employee. After leaving municipal employment, she applied at various organizations in the field of housing and homelessness, including another organization that could be viewed as a competitor of Henning for grants and contracts. Thus, there is not a concern that A.J. misused her municipal office to obtain beneficial future employment with Henning. Most importantly, Director Rash told the board that A.J. did not participate at all as a municipal employee in this coming year’s contract for non-congregate shelter services because all the official actions related to this year’s contract occurred after A.J. left municipal employment. Therefore, A.J. is not prohibited from representing Henning, Inc. on this matter.

A.J. did participate personally and substantially as a municipal employee in the process to award a non-congregate shelter contract to Henning, Inc., which ended May 30, 2024, and a congregate shelter contract, which ran through October 2024. AMC 1.15.130A clearly prohibits her from representing, advising, or assisting Henning on these matters for one year after leaving municipal service. In this case, the board did not receive any information that she did so. Serving as the face of the corporation by hosting a walk-through tour at facilities maintained by Henning is not specific enough to qualify as representing, advising, or assisting Henning on individual contracts because no decision distributing municipal resources or determining rights is made during a walk-through tour.<sup>6</sup>

Although A.J.’s position with Henning seems focused on future issues, not litigating past contracts, there is still a potential that ethical concerns could arise in the future. For example, in AIM 124-2024, the mayor’s letter to the assembly raised concerns about whether Henning may have breached the terms of its prior contracts. If there were any proceedings or actions between now and July 1, 2025, dealing with alleged breaches of the prior contracts or other efforts to modify, nullify, or enforce terms of the prior contracts, A.J. would be prohibited from representing, advising, or assisting Henning on those

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<sup>4</sup> 2011 Inf. Op. Att’y Gen. No. AN2010111308, 2011 WL 379425 (Alaska A.G. Jan. 26, 2011).

<sup>5</sup> *Id.*

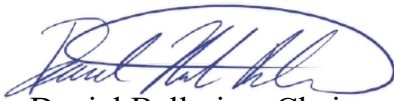
<sup>6</sup> See 1986 Inf. Op. Att’y Gen. No. 663-87-0109, 1986 WL 81207 (Alaska A.G. Sep. 24, 1986) (promotional or educational type activities are not “matters” because these activities do not distribute resources or determine rights).

matters. Therefore, the board does believe it would be prudent for A.J. and Henning, Inc. to develop recusal procedures for any contracts A.J. participated in personally and substantially as a municipal employee. A.J. explained that the reason she has not done so is because she was not aware of any restrictions on employment in the code of ethics and she never agreed to any such restrictions. The board does recognize the need for improved ethics training for public servants. However, A.J. served both as the former mayor's chief of staff and as housing and homelessness policy manager – both of which are senior executive positions. Executive level employees are given a higher level of public trust and must therefore familiarize themselves with and follow the code of ethics. But again, the board did not receive any evidence that AMC 1.15.130A was already violated.

Finally, the board wishes to stress that the scope of this advisory opinion is confined to restrictions on employment after leaving municipal service. While the impetus for concerns about A.J.'s employment by Henning, Inc. may have been caused by her actions while she was a municipal employee, those issues were not before the board.

The board thanks you for your dedication to ethical principles in seeking clarity on this issue. The board also wishes to thank the witnesses who appeared at the board's public meeting on short notice.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Daniel Bellerive", enclosed in a blue oval.

Daniel Bellerive, Chair

Forrest Nabors

Patrick Teagarden

Copy to: A.J.