



MUNICIPALITY OF ANCHORAGE
Board of Ethics

Date: August 15, 2024

To: Municipal Manager Becky Windt Pearson¹

From: Municipal Board of Ethics

Re: Response to Request for Advisory Opinion 2024-01

Dear Municipal Manager Windt Pearson:

You asked the Board of Ethics (the “Board”) for an advisory opinion on whether you may continue to serve as an “on-call” employee for GCI for a limited number of hours per week after you accept employment as the municipal manager. In your request, you identified steps you would take to protect the municipality’s interests and avoid potential conflicts, and asked the board whether there were any additional steps you should take to ensure your employment by GCI does not violate municipal code. This advisory opinion constitutes the findings and conclusions of the board, based on the information you provided in your written request. If material facts were not disclosed or were misrepresented, the opinion is without force or effect.² The board concluded at its July 18, 2024, public meeting that your contemporaneous employment does not violate the code of ethics and the steps you identified in your request to comply with municipal code are both appropriate and sufficient. The chair informed you of the board’s decision on July 19, 2024, and the assembly confirmed you as municipal manager on July 30, 2024.

FACTS OF THE REQUEST

You requested an advisory opinion from the board on June 19, 2024. You said in your request that you accepted appointment as municipal manager and intended to transition into that role full time around July 29, 2024. You said you would be leaving behind a complex senior executive role at GCI, which is a telecommunications provider headquartered in Anchorage. You said that after you transition to municipal employment, you plan to continue to serve as an “on-call” employee for GCI for a limited number of hours per week through December 31, 2024, to help GCI with the transition of your responsibilities to a successor.

You plan to perform any work for GCI using a phone and computer provided by GCI. You also will take any meetings for GCI during your designated lunch hour or while taking leave, or you would address GCI concerns after normal working hours. You intend to recuse yourself from any GCI-related matter both during the period of contemporaneous employment, and permanently

¹ Requests for advisory opinions are normally confidential under AMC 1.15.150.D and the board’s responses are normally published in redacted form. In this case, Municipal Manager Windt Pearson waived confidentiality.

² AMC 1.15.150.B reads as follows: “In any later proceeding involving the inquirer, the inquirer is entitled to rely on the advice of the board and may not be sanctioned for acting in compliance with the board’s advice so long as the facts remain substantially unchanged from those represented to the board in the inquiry.”

during your tenure as municipal manager because you own stock in GCI's parent company. You asked the board if there are additional steps you should take to ensure your proposed employment arrangement does not violate the municipal code.

DISCUSSION

The code of ethics' general rule on contemporaneous employment for municipal employees reads as follows:

Employee: 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.³

The municipal duties of the municipal manager are listed in Section 5.03 of the municipal charter and AMC 3.20.070.C. The municipal manager is a senior executive employee⁴ with responsibility over a wide variety of departments. The municipal manager's duties generally include leadership and oversight of those departments, along with other executive leadership functions within the municipality. Your contemporaneous employment with GCI would be prohibited if it was incompatible or in conflict with the proper discharge of any of those municipal duties.

To help interpret the words "incompatible or in conflict with" the board looked to another code provision dealing with contemporaneous employment. Like the ethics code, the personnel rules in Title 3 of the code also contain a restriction on outside employment for municipal employees:

3.30.164 – Outside Employment

A. No employee shall engage in any other employment other than that assigned by the municipality, whether public, private, or self-employment, during scheduled work-hours, nor outside scheduled work-hours if such employment conflicts with the municipality's interests or adversely affects the employee's availability or productivity.⁵

While this personnel rule does not apply to executive employees,⁶ the board believes the personnel rule was intended to cover and prohibit the same conduct as the ethics code. Therefore, the words "incompatible or in conflict with" in the ethics code should be interpreted consistently with AMC 3.30.164. With that in mind, the board believes that contemporaneous employment by a municipal employee will be incompatible or in conflict with the proper discharge of the employee's municipal duties if any of the following is true:

- (1) the employee engages in contemporaneous employment during scheduled work-hours;
- (2) the contemporaneous employment conflicts with the municipality's interests; or
- (3) the contemporaneous employment adversely affects the employee's availability or productivity in their municipal duties.

³ AMC 1.15.090.A.

⁴ AMC 3.30.172.H

⁵ AMC 3.30.164.A

⁶ AMC 3.30.177.A

If none of those statements are true, then the contemporaneous employment is allowed. However, even if contemporaneous employment is allowed, the ethics code prohibits the employee from using any municipal resources for the outside employment.⁷ This prohibition includes *de minimus* use of municipal resources involving little or no cost to the municipality because such use cannot be for outside business interests.⁸

Here, the board does not believe your contemporaneous employment with GCI is incompatible or in conflict with the proper discharge of your municipal duties for several reasons.

First, you stated in your request that any work you perform for GCI would be done on your personal time such as during the weekend or after hours. If it was necessary for you to take a meeting for GCI during working hours, you intend to do so while you are on approved leave, or during a designated lunch hour. As an executive employee, the specific time you allocate for your lunch hour may change daily based on operational requirements.⁹ Therefore, none of the work for GCI will be performed during your scheduled working hours.

While not required, practical steps that any municipal employee engaging in contemporaneous employment might take to avoid unintentionally violating the ethics code include proactively setting boundaries and managing expectations with the outside employer, as well as restricting access to electronic devices associated with the employer during municipality-scheduled working hours. For example, automated email responses and voice message greetings for accounts associated with the outside employment might state that inquiries will not be responded to immediately during working hours. Additionally, not carrying a cell phone associated with the outside employer avoids inadvertently answering a quick phone call or reading a short email during municipality-scheduled working hours.

Second, the board does not believe working for GCI, a telecommunications provider, is by its nature incompatible or in conflict with your duties as municipal manager. Issues related to telecommunications providers such as GCI would likely encompass a very small portion of the municipal manager's duties and it is not foreseeable how your connection to GCI would conflict with the municipality's interests. Of course, being employed by GCI and owning stock in GCI's parent company does give you a personal financial interest in any official actions that could benefit or harm GCI, which might include actions associated with GCI's business competitors that could indirectly benefit or harm GCI. Therefore, you stated that your intention was already to recuse yourself from any such matters, if they came up. Thus, your temporary employment with GCI is not likely to require any additional recusals that would not have already been required due to your stock ownership. So long as you recuse yourself from any action that would create a conflict of interest, the board does not believe your temporary employment conflicts with the municipality's interests.

Third, your employment arrangement contemplates a temporary "on-call" role for a limited number of hours per week. These limited hours are not likely to adversely affect your availability

⁷ AMC 1.15.040.B

⁸ *Id.*

⁹ See AMC 3.30.177.A (executive employees are not protected by the guidance in AMC 3.30.134, which says that employees should normally be allowed to take their lunch hours mid-shift).

or productivity in your municipal duties. If that changes and you find that your work for GCI is enough of a time commitment that it adversely affects your availability or productivity in your municipal duties, then the contemporaneous employment would be prohibited.

Finally, you plan to only use GCI-provided phones and computers for GCI-related work and will not use any municipal resources for such work. That plan avoids violating AMC 1.15.040.B.

CONCLUSION

The board concludes that your contemporaneous employment with GCI while serving as municipal manager does not violate the code of ethics, so long as you do not perform such work during scheduled working hours, your availability or productivity in your municipal duties is not adversely affected, no municipal resources are used for work on behalf of GCI, and you recuse yourself from any official actions in which you have a prohibited conflict of interest. Your request properly identified these concerns, and the board does not believe any additional steps are necessary. The board wishes to thank you for your dedication to ethical principles in raising this issue with the board before commencing with the contemporaneous employment.

Respectfully submitted,



Daniel Bellerive, Chair
Kelly Moghadam
Forrest Nabors
Patrick Teagarden

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- (1) Requestor
- (2) Municipal Clerk for electronic publication