

# Municipality of Anchorage



BOARD OF ETHICS

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M.O.A.  
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CLERK'S OFFICE

March 23, 2010

Re: Request for Advisory Opinion 2010-1

Dear Mayor Sullivan,

We write in response to your request for advisory opinion regarding a potential conflict of interest related to your fiduciary responsibilities as the Trustee for the George M. Sullivan Irrevocable Life Insurance Trust. In issuing this opinion we have relied on the information presented to us in your letter of March 18, 2010, and addition information provided by you and the Employee Relations Department at the Board's Special Meeting held March 23, 2010. We have not undertaken an independent investigation of such information. If material facts have not been disclosed or have been misrepresented this opinion is without force and effect.

Your requests asks whether in your capacity as the Trustee for the Trust you have a disclosure requirement under the ethics code; which code provision applies, when the disclosure should be made; and what information must be disclosed.

In your capacity as the Trustee for the Trust there is not a disclosure requirement. However, there is a disclosure requirement for you in your capacity as Mayor. Specifically, the Ethics Code states as follows:

The potential for conflict of interest presented by a financial or private interest held by the mayor shall be disclosed prior to action to the ethics board for determination and management of the potential for conflict of interest under the factors of 1.15.025.B.1.

*See* AMC 1.15.025.B.3. The Ethics Code further states that a "private interest" means an interest affecting, belonging, or accruing to an individual or private entity as distinct from the public interest at large. *See* AMC 1.15.110.R.

The Board finds that your obligation to the Trust as a fiduciary creates a private interest that is distinct from the public interest at large. As such, the Board believes that you should have made a disclosure to the Board of Ethics on or before the City was required to take action related

to the Trust. Your March 18 letter states that in late 2009 you delivered a copy of George M. Sullivan's death certificate to the MOA Benefits Department. Upon receipt of the death certificate the MOA was obligated to take some action related to the Municipality's obligations to the Trust. The Board believes that when the death certificate was delivered to the Benefits Department (or soon thereafter) is when you should have disclosed to the Board that there was a potential for conflict of interest (i.e., prior to action by the MOA). It was the delivery of the death certificate that triggered the need for action by the MOA, and when the potential for conflict arose.

The Board should have been told that the potential for conflict existed, because you have a fiduciary obligation to the Trustees, and the Municipal employees who work under your direction would be required to take some official action related to the Trust. The Board should have also been told how you proposed to manage the potential for conflict (e.g., that you planned not to take part in any of the discussions, emails, deliberations or decisions regarding the payment to the Trust). The Board would have then reviewed the potential for conflict under the factors set out in AMC 1.15.25.B.1, and determined whether your approach for managing the conflict was sufficient to maintain the integrity of the decision making process. *See* Advisory Opinion 2007-4 for a similar determination made by the Board.

We understand that in the normal course of business upon receipt of the death certificate the MOA Benefits Department would have completed the necessary paperwork and submitted the claim to the MOA's insurance company for payment. In this case, the Benefits Department consulted with the Department of Law, and the Department of Law forwarded the request for payment to the Assembly. We further understand that you had no participation in any municipal discussions, emails, deliberations or decisions regarding the payment to the Trust. The Board has not formally undertaken a review of the factors set out in AMC 1.15.025.B.1, to determine if these steps were sufficient and appropriate.

The Board has also reviewed the disclosure requirements set out in AMC 1.15.025.D.4 and 1.15.035.K, and determine that no disclosure requirement exists under either of those provisions, because you have no financial or economic interest in the George M. Sullivan Irrevocable Life Insurance Trust.

Respectfully submitted,



Marissa K. Flannery, Chair  
Board of Ethics  
Municipality of Anchorage