




MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

DATE: December 2, 2009

TO: Debbi Ossiander, Assembly Chair
Assembly Members

FROM: Dennis A. Wheeler, Municipal Attorney 

SUBJECT: AR 2009-241 REPORT
DEPT. OF LAW MATTER No. 09-0293

THIS COMMUNICATION AND ANY DOCUMENT(S) ACCOMPANYING IT ARE
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION(S)
AND/OR PROTECTED BY OTHER LEGAL GROUNDS OF CONFIDENTIALITY. IT MAY NOT BE
REPRODUCED, FORWARDED, DISTRIBUTED OR OTHERWISE DISCLOSED OR DISSEMINATED
WITHOUT THE EXPRESS PERMISSION OR UPON THE ADVICE OF AN ATTORNEY IN THE
MUNICIPALITY OF ANCHORAGE DEPARTMENT OF LAW.

*Disclosure of Confidential Information is Prohibited by AMC § 1.15.020A
This communication is also covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521.*

I wanted to take this opportunity to make a request and recommendation. First, the request. In the future, this office would appreciate the professional courtesy of being given an opportunity to address concerns regarding work product from this office. This office is responsible for representing and defending all departments and agencies of the Municipality, including the Assembly. There is substantial exposure to the Municipality when a department or agency does not work with counsel to address issues – whether in something such as this report, or any other work product received from the Department of Law. Truth is, this office worked long and hard on the report; we believe the process and the report were fair, upfront with witnesses, and thorough. Nevertheless, we do not profess perfection and we should be apprised of any concerns – especially if you think there are errors.

THIS COMMUNICATION AND ANY DOCUMENT(S) ACCOMPANYING IT ARE
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION(S)
AND/OR PROTECTED BY OTHER LEGAL GROUNDS OF CONFIDENTIALITY. IT MAY NOT BE
REPRODUCED, FORWARDED, DISTRIBUTED OR OTHERWISE DISCLOSED OR DISSEMINATED
WITHOUT THE EXPRESS PERMISSION OR UPON THE ADVICE OF AN ATTORNEY IN THE
MUNICIPALITY OF ANCHORAGE DEPARTMENT OF LAW.
Disclosure of Confidential Information is Prohibited by AMC § 1.15.020A
This communication is also covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521.

Instead of working with us on any perceived errors, some members of the body and the public believe the report is flawed, and have based comments and decisions on that premise. In the past few weeks, there have been repeated statements that the report is full of errors, leading to the conclusion that either the factual findings or legal conclusions are incorrect. No one on the Assembly has identified any errors, or how such errors, if they exist, are material to the factual findings or legal conclusions. No one, including Ms. Weddleton, has shared a list, or sent an email, or notified this office of errors in the report. Allegations of errors are not facts, and should not be the basis for incorrect conclusions and bad decisions. I do not want this to be how our relationship works.

The Assembly requested this investigation on September 29, 2009, and set a delivery date of November 15. As part of the initial process, former municipal employees were contacted, including Ms. Phillips, for interviews. Ms. Phillips agreed to an interview, originally scheduled for October 16, and then rescheduled, at her request, to October 22. After the 16th, but before the 22nd, I informed her by phone of the potential for civil and criminal exposure, and the option to bring an attorney with her to the interview. Thereafter, she cancelled the interview.

I reviewed Ms. Phillips' letter to the Assembly on Monday afternoon, November 30. Ms. Weddleton and Ms. Phillips have both suggested there was a failure to ask Ms. Phillips questions. However, since Ms. Phillips declined to discuss the investigation, there was no opportunity to ask Ms. Phillips questions pertinent to the investigation within the time frame set by the Assembly.

It is interesting to review Ms. Phillips' written concerns about the investigation, and her belief that certain evidence was not going to be considered for the report. Contact with her occurred from early to mid-October, during the preliminary stage of collecting information, preparing transcripts of Assembly meetings and work sessions, and reviewing other documents. I did not share with Ms. Phillips, or any witnesses, the full range of evidentiary details that had been, or would be, gathered and reviewed for the investigation, or utilized during interviews. Her concerns were unwarranted and presumptuous.

THIS COMMUNICATION AND ANY DOCUMENT(S) ACCOMPANYING IT ARE
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION(S)
AND/OR PROTECTED BY OTHER LEGAL GROUNDS OF CONFIDENTIALITY. IT MAY NOT BE
REPRODUCED, FORWARDED, DISTRIBUTED OR OTHERWISE DISCLOSED OR DISSEMINATED
WITHOUT THE EXPRESS PERMISSION OR UPON THE ADVICE OF AN ATTORNEY IN THE
MUNICIPALITY OF ANCHORAGE DEPARTMENT OF LAW.
Disclosure of Confidential Information is Prohibited by AMC § 1.15.020A
This communication is also covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521.

The report is thorough, based on a collection of information from multiple sources as well as testimony (with specific excerpts) from meetings, work sessions, and committee meetings. The evidence for the report included more than (mass quantities of) emails; it included numerous documents, statements, and reports shared by the Administration with the Assembly, responses to Assembly member questions, memos regarding union contracts, and 2008 quarterly financials through September 30, the last quarter available at the time the 2009 budget was adopted. (The September 30 quarterly report did not speak to the revenue projections in October, November or December.)

Again, I welcome the opportunity to review additional relevant documents from any source, including Ms. Phillips and Ms. Weddleton.

Finally, there is the PERS issue. Ms. Weddleton and Ms. Phillips co-authored a Compass piece on November 24, and provided misleading statements to the press, claiming to be "disappointed" that no questions were asked about PERS. We did ask Ms. Weddleton about PERS; this is reflected in the interview transcripts available to anyone – which are now posted on the Municipal Clerk's website. Ms. Phillips declined to be interviewed.

Now, the recommendation. In accepting the report, the recommendation for an independent third-party audit was not specifically addressed. While there is no requirement for the Assembly to take further action, the "cosmetic" PERS adjustments, addressed in the report, may have resulted in the expenditure of unappropriated fund balance, in violation of the Charter and Anchorage Municipal Code. Charter section 13.08 provides:

- (a) No payment shall be made, or obligation incurred except in accordance with appropriations. Obligations otherwise incurred are void. The assembly by ordinance may provide for exceptions in the case of tax refunds and other routine payments.

Anchorage Municipal Code section 6.30.050 provides:

No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order

THIS COMMUNICATION AND ANY DOCUMENT(S) ACCOMPANYING IT ARE
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION(S)
AND/OR PROTECTED BY OTHER LEGAL GROUNDS OF CONFIDENTIALITY. IT MAY NOT BE
REPRODUCED, FORWARDED, DISTRIBUTED OR OTHERWISE DISCLOSED OR DISSEMINATED
WITHOUT THE EXPRESS PERMISSION OR UPON THE ADVICE OF AN ATTORNEY IN THE
MUNICIPALITY OF ANCHORAGE DEPARTMENT OF LAW.
Disclosure of Confidential Information is Prohibited by AMC § 1.15.020A
This communication is also covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521.

for expenditure of money be passed by the assembly or be authorized by any officer of the municipality, unless the chief fiscal officer shall first certify to the assembly or to the proper officer, as the case may be, that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose. Likewise, no officer of the municipality shall authorize commencement of work on any contract, agreement or obligation without first having been notified of funding approval. The sum so certified shall not thereafter be considered unencumbered until the municipality is discharged from the contract, agreement or obligation.

I want the record to be clear. The report recommends a third-party audit to help in making the determination if unappropriated fund balance was improperly used, in violation of the charter and code. Third party verification, through an audit, would help avoid future allegations of improper motive in looking at this issue.

My door is open to anyone – Assembly member, employee, or former employee, who may have additional information, or to discuss the details in the report.