

**MEMORANDUM
KENAI PENINSULA BOROUGH
LEGAL DEPARTMENT**

144 N. Binkley Street
Soldotna, Alaska 99669

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Date: 2-1-05

TO: Bonnie Golden
THRU: *CTP* Colette Thompson, Borough Attorney
FROM: *A4F* Amy Fenske, Assistant Borough Attorney
DATE: January 31, 2005

SUBJECT: Whether the Mayor can serve as the "Law Enforcement Executive" for purposes of a Department of Homeland Security COPS Technology Grant.

A member of the borough assembly has expressed concern about whether the Kenai Peninsula Borough's mayor has the legal authority, under state and federal law, to act as the "Law Enforcement Executive" on a Community Oriented Policing Services ("COPS") Technology Grant from the Department of Homeland Security. For the reasons discussed below, it is permissible for the mayor to act as the "Law Enforcement Executive."

The Kenai Peninsula Borough ("KPB") is a second class borough; as such, KPB is a general law municipality that derives its powers from laws enacted by the state legislature. With respect to emergency services communications centers, the Alaska state legislature has enacted legislation that specifically enables a second class borough to establish by ordinance¹ an emergency services communications center under AS 29.35.130² on a nonareawide basis.³

¹ See e.g. Kenai Peninsula Borough, Ordinance 2004-19-29.
² With respect to the establishment of emergency services communications centers, Alaska Statutes 29.35.130 states in-part that:
(a) A municipality may establish an emergency services communications center with one or more other municipalities and one or more state, federal, or private agencies that provide emergency service communications to the same geographic area. ...
(c) An emergency services communications center may assess the feasibility and desirability of providing emergency services communications for the geographic area in which it is located through one central office. An emergency services communications center may
(1) combine or coordinate the existing emergency services communications programs of the participating municipalities and agencies;
(2) operate a dispatch center to receive all requests for emergency services and dispatch those services; ...
(5) apply for and accept federal, state, municipal, and private money, property, or assistance for use in providing the timely delivery of emergency services;
(6) enter into contracts to carry out the provisions of this section; ...
(d) In this section

Under the emergency service communications centers statute, AS 29.35.130, the Alaska Legislature explicitly provides that a second class borough can “apply for and accept federal ... money, property, or assistance for use in providing the timely delivery of emergency services” and “enter into contracts to carry out the provisions of this section.” Accordingly, the mayor of a second class borough is necessarily an individual authorized under state law to apply for federal funds to help develop a emergency services communications center.

With respect to federal law, the legal department has concluded that there is no specific provision of federal law prohibiting the mayor from acting as the “Law Enforcement Officer” for purposes of the COPS Technology Grant. Moreover, the Department of Justice has repeatedly reassured the KPB’s Grants Administrator, Bonnie Golden, that Mayor Bagley is indeed the proper party to act as the “Law Enforcement Executive.” For example, in an e-mail dated January 31, 2005, from John Oliphant at the Department of Justice to Bonnie Golden, Mr. Oliphant stated:

[A]lthough a majority of our earmark recipients are law enforcement organizations, it is becoming more common every year in that we are funding non-traditional organizations. In the last few years, COPS Office Technology grantees have included universities, non-profits, and local municipalities. Recognizing that these non-traditional organizations do not have police powers, the COPS Office defines the “Law Enforcement Executive” (LE) and “Government Executive” (GE) as individuals that have “Programmatic Authority” and “Financial Authority” respectively. The COPS Office understands that the Kenai Peninsula Borough does not have criminal law enforcement powers. The primary concern for the designated executives is that they both need to have the ultimate signatory authority to sign contracts on behalf of the designated organization. Specifically, per Kenai Peninsula Borough’s FY 2004 (and 2005) COPS Technology award, the titles of Mayor and Finance Director are acceptable titles for the LE and GE positions since these individuals have the ultimate signatory authority.

Based on the foregoing, it is proper under both state and federal law for Mayor Bagley to serve as the “Law Enforcement Executive” on the COPS Technology Grant.

(1) “emergency services” means services provided by law enforcement agencies, fire departments, ambulance services, and other organizations that are intended to respond to emergency situations of imminent danger to life or property;

(2) “state agency” means a department, division, or office in the executive branch of state government.

³ See AS 29.35.210 (a)(10).