

Introduced by: ~~Staff~~
Date: Aug. 16, 1983
Hearing: Sept. 20, 1983 Defeat
with reconsideration. 10-11-83
Action: Enacted 11 Yes; 3 No

KENAI PENINSULA BOROUGH

ORDINANCE 83-65

ENACTING CERTAIN PROVISIONS WITH REGARD TO CONFLICTS OF INTEREST AND ENGAGING IN BUSINESS RELATIONSHIPS WITH THE BOROUGH.

WHEREAS, AS 29.23.555 provides for the adoption of a conflict of interest ordinance by municipalities; and

WHEREAS, AS 29.23.555 requires that an officer or employee of a municipality disqualify himself or herself from participating in any official action in which the officer or employee has a substantial financial interest; and

WHEREAS, at common law, officers and elected officials of the municipality are prohibited in any circumstances from engaging in business relationships and contracts with a borough; and

WHEREAS, this assembly wishes to adopt new provisions to govern business relationships between the Kenai Peninsula Borough, its employees, assemblymembers, officers, and board and commission members; and

WHEREAS, AS 29.23.555 grants to a municipality the power to enact such an ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. The Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter 2.58 entitled Conflicts of Interest, which shall read:

2.58.010 Definitions.

1. "Contract" or "contractual relationship" means any agreement or business relationship between the Borough, division of the Borough, or service area, whether such contract or agreement is expressed or implied. Sales of retail items or establishment as an approved source of supply of materials or goods are also included in the meaning of contract or contractual relationships.

2. "Municipal officer" or "employee" means an officer or employee of the Borough, whether paid or unpaid and includes any members of any

boards or commissions of the Borough other than service area boards.

3. "Service area board members" means those persons, whether elected or appointed, who serve upon boards of the various service areas as may be from time to time be established within the Borough. Service area officers or employees means an officer or employee of the service area involved in the contractual relationship, but does not include officers or employees of service areas other than the one with which a contractual relationship is sought or entered.

4. "Service area officer or employee" means an officer or employee of a service area, whether paid or unpaid.

5. "Substantial interest" means a pecuniary or material benefit accruing to the person as a result of a private, business, or professional transaction with the Borough, or service area. The person shall be deemed to have an interest in the affairs of:

- a) His or her spouse, minor children or dependents;
- b) a firm, partnership, or association of which such person is a member or employee;
- c) a corporation of which the person is an officer, director or employee;
- d) a corporation in which a person owns more than 5% of the stock, or which is controlled directly or indirectly by such person.

2.58.020 Limitations on contracting. Unless the provisions of this chapter have been complied with, no contract or contractual relationship may be created between the Borough and any of its officers, employees, or assemblymembers, or where such person has, or would have a substantial interest in the contract in a capacity other than his or her position with the Borough. Nor may such persons with a substantial interest participate in the consideration, award, or administration of any contract with the Borough in which the person has a substantial interest.

2.58.030 Limitations on contracts with service area. Unless the provisions of this chapter have been complied with, no contract or contractual relationship may be created between a service area and any of its service area board members, service area officers, or employee of the service area, or where such person has, or would have a substantial interest in the contract in a capacity other than his or her position with the service area. Nor may such persons with a substantial interest participate in the consideration, award, or administration of any contract with the Borough in which the person has a substantial interest.

2.58.035 The following shall not constitute a substantial interest prohibited by this section:

1. A contract with a person, firm, corporation or association in which the person has an interest solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation, or performance of any part thereof;

2. A contract in which the person has an interest if such contract was entered into prior to the time he was elected or appointed as such service area board member, service area officer or employee, but this exception shall in no event authorize a renewal of any such contract;

3. A contract with or sale by a corporation in which the person has an interest by reason of stockholdings when:

- a) The stock of the corporation is listed on either the New York or American stock exchanges; or
- b) less than 5% of the outstanding stock of the corporation is owned or controlled directly or indirectly by such board member, officer or employee;

4. A contract or sale in which a service area board member, service area officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under

contract in which such person had an interest during the fiscal year, does not exceed the sum of \$100.

2.58.040 Voting on certain questions prohibited.

A. No assemblymember or member of any service area board or commission may vote on any question on which he or she has a substantial financial interest.

B. The following do not constitute a vote on a question on which an assemblymember, a service area board member or commission member has a substantial financial interest:

1. A vote to adopt or approve a variance request, a conditional use request, or an amendment to a zoning text or map unless the assemblymember, service area board member or commission member is directly or indirectly the applicant initiating the request;

2. A vote on the question of recommending, approving or directing a condemnation proceeding;

3. A vote on a question of granting or modifying a franchise, or, a vote on a question of setting the rates charged or charged by a corporation, firm or partnership whether under franchise or not and whether authorized by law, ordinance or contract to set or alter such rates, provided the assemblymember, service area board member or commission member has an interest in such franchise or rate setting solely by reason of employment as an officer or employee of such corporation, firm or partnership, and the remuneration of such employment will not be affected as a result of such franchise grant or modification or such rate setting, and the duties of such employment do not directly or indirectly involve the negotiation or setting of the terms of the franchise or rates; or

4. Provided he has an interest solely by reason of the ownership of stock in the corporation if it is listed on the New York or American stock exchanges ownership direct or indirect of less of 5% of the outstanding stock or shares in the subject corporation.

2.58.050 Ability to contract upon disclosure of interest. A. Notwithstanding, the provisions of KPS 2.58.020, municipal officers, employees or assembly-

members may engage in business or contractual relationships with the Borough upon compliance with the provisions of this section.

B. Notwithstanding, the provisions of KPA 2.58.030 a service area board member, director or employee of the service area board may engage in business or contractual relationships with the service area upon compliance with the provisions of this section.

C. Any of the persons described in subsections A and B in this section may engage in the authorized transactions if the conditions have been met:

1. At least 10 days before the business relationship or contract is entered into or sought or bid upon, whichever event is earliest, the person shall file a notice of intent to do business with the Borough or service area board. The notice will be upon the form to be prepared by the Administration.

2. The notice of intent to do business shall fully disclose the conflict between the person who is otherwise prohibited from entering into such contractual relationship and shall fully disclose the nature of the proposed business relationship and specify the department or service area with whom the contract will be made. The notice of intent to do business shall be sworn under oath as to the information supplied therein.

3. Such notice of intent to do business shall be filed with the office of the clerk and a copy shall be provided by the Clerk to the particular department, service area board, or other division of the Borough with whom the person intends to enter into the business relationship or contract.

4. The notice of intent to do business shall be kept on file with the Borough Clerk until such time as any business or contractual relationship that arises in connection with the notice is completed. The notice will be available for public inspection.

D. Filing a notice of intent to do business or enter into a contractual relationship with the Borough, department, or service area board shall in no way affect the prohibition on voting or participating in decisions as set forth in KPA 2.58.040.

2.58.055 Prohibition of contracts involving conflicts seriously affecting performance of duties. If the award of a contract, involving a conflict, would create a situation in which an assembly member, service area board member, municipal officer, or employee could not adequately perform the duties of his or her office due to the conflict, then the conflict of interest is absolute and the contract must be awarded to another person.

2.58.060 Penalty for violations. Any violation of the provisions of this chapter shall be punished by a fine of not more than \$500 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. Each act of violation shall constitute a separate offense.

Section 2. That this ordinance shall take effect November 1, 1983.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 11th DAY OF October, 1983.


Joseph Arness, Acting President

ATTEST:


Jeanne Supina
Borough Clerk