

Introduced by: Brown
Date: 12/14/99
Hearing: 01/18/00
Action: Enacted as Amended
Vote: 8 Yes, 1 No

**KENAI PENINSULA BOROUGH
ORDINANCE 99-74**

**AN ORDINANCE AMENDING KP.B 2.58, CONFLICTS OF INTEREST, IN PART, TO
PROVIDE THAT MEMBERSHIP ON THE BOARD OF A NONPROFIT
CORPORATION DOES NOT NECESSARILY CONSTITUTE A CONFLICT, AND
AMENDING KP.B 22.40.140 TO COINCIDE WITH STATE STATUTES**

WHEREAS, in Ordinance 83-65 the Assembly enacted KP.B Chapter 2.58 which allowed assembly members and employees to enter into contracts with the borough upon meeting certain disclosure requirements, and which clarified that certain activities are prohibited; and

WHEREAS, assembly members are frequently asked to serve on the board of directors of non-profit corporations which provide public services in the borough; and

WHEREAS, the current code provides that a person is deemed to have an interest in the affairs of a corporation of which a person is a director without distinguishing between for profit and nonprofit corporations; and

WHEREAS, under this provision an assembly member on a nonprofit board of directors may be deemed to have a conflict of interest that could prevent him or her from voting on an ordinance benefitting the nonprofit corporation; and

WHEREAS, the director of a nonprofit corporation is not ordinarily financially interested in the affairs of the nonprofit corporation; and

WHEREAS, prohibiting an assembly member from participating in and voting on ordinances or resolutions concerning a nonprofit corporation solely because he or she serves as a director on the board of the nonprofit corporation deprives the voters of their elected representative's participation;

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

SECTION 1. That KPB 2.58.010(E) shall be amended to read as follows:

2.58.010. Definitions.

- E. "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:
1. His or her spouse, spousal equivalency, minor children or dependents;
 2. A firm, partnership or association of which such person is a member or employee;
 3. A corporation of which the person is an officer, director or employee, except that a person shall not necessarily be deemed to have an interest in the affairs of a non-profit corporation of which the person is an unpaid director, solely by virtue of the directorship;
 4. A corporation in which a person owns more than five percent of the stock, or which is controlled directly or indirectly by such person.

SECTION 2. KPB 2.58.040(A) shall be amended as follows:

2.58.040. Voting on certain questions prohibited.

- A. No assembly member or member of any service area board or commission may vote on any question on which he or she has a substantial direct or indirect financial interest unless an assembly member is not excused from voting as provided in KPB 22.40.140.

SECTION 3. That KPB 2.58.070 be enacted to read as follows:

2.58.070. Common law superseded.

The provisions of this chapter supersede the common law on conflicts of interest arising out of substantial interests that may apply to borough officers, employees, and elected officials.

SECTION 4. That KPB 22.40.140 shall be amended as follows:

22.40.140. Voting—Conflict of interest.


- A. All assembly members present at a meeting shall vote upon each question unless their participation is excused or prohibited as a result of a conflict of interest.
1. Unless an assembly member is required to vote pursuant to paragraph B of this section,

[N]no assembly member shall vote on a question in which the assembly member has a substantial direct or indirect financial interest.

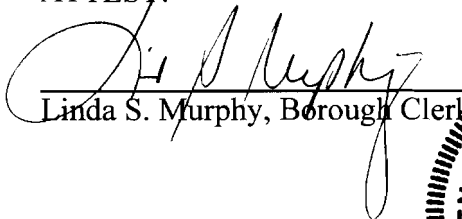
2. A member may not be compelled to vote on matters where there is a reasonable likelihood of a breach of privilege or confidence protected by law or where participation would create a serious appearance of impropriety.
 3. A member may be excused by the body from voting for other good cause.
- B. An assembly member intending to abstain from voting shall state the reason for abstaining [BEFORE THE ROLL CALL] as soon as practicable after the matter is before the assembly. [IF A MEMBER IS UNSURE AS TO WHETHER HIS OR HER PARTICIPATION WOULD CONSTITUTE A CONFLICT OF INTEREST, OR IF ANOTHER MEMBER CHALLENGES A MEMBER'S PARTICIPATION AND VOTE UPON A MATTER, THEN THE ASSEMBLY SHALL DETERMINE BY ROLL CALL VOTE WHETHER THE AFFECTED MEMBER'S PARTICIPATION OR VOTE ON THE ISSUE WOULD CONSTITUTE A CONFLICT OF INTEREST.]
1. A member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter.
 2. The presiding officer shall rule on a request by a member of the governing body to be excused from vote.
 3. The decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body.
 4. The affected assembly member or members with the same conflict may not vote on [THE] any determination of [A] that conflict of interest.

SECTION 5. That this ordinance shall be effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 18TH DAY OF JANUARY, 2000.


William Popp, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

