

Kenai Peninsula Borough
Legal Department

MEMORANDUM

TO: Peter Ribbens, Assembly President
Members, KPB Assembly

FROM: Sean Kelley, Borough Attorney

COPY: Peter A. Micciche, Mayor
Clayton Holland, KPBSD Superintendent

DATE: May 13, 2025

RE: Conflict of Interest Opinion – School District Employees or Immediate Family
Members' Ability to Vote on School Funding Items

Introduction

This office was asked for a conflict of interest opinion.

Issue

Whether, under any of the three scenarios outlined below, a conflict of interest exists prohibiting an Assembly member from voting on the school district budget and/or the resolution approving the total school district budget and setting the minimum local contribution for the school district:

1. The member is a school district employee or the member's spouse is a school district employee; or
2. The member occasionally serves as a substitute teacher for the school district; or
3. The member or the member's spouse is an employee with the school district *and* serves on the executive board for the union.

Conclusion summary

The Assembly it is not vested with line-item school budget control. The Assembly purview is limited to an "industry-wide"¹ funding decision. Alaska statutes expressly permit an employee of the school district to serve on the Assembly and provide that an

¹ This term as used to apply to a public school system is explained later, at page 6, in discussing the *Carney* decision.

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employee of the school district is not a municipal employee.² With no specific prohibition found in the law, and as applied to any one member within a generally large class of persons, there is an attenuated causal link between the Assembly's statutory requirement to set a total local contribution school funding amount and potential salary or personnel decisions, which remain within the exclusive purview of the KPBSD Board of Education ("school board").

As detailed below, there is not a conflict of interest under any of the scenarios presented above that would *prohibit* a member's participation and vote on the school funding resolution or annual budget.

I. Factual Background

Past and current Assembly members have either been employed by the school district, have a spouse employed by the school district, or work or have worked as substitute teachers for the district. In addition, a recent inquiry focused on whether the conflict of interest analysis changes if a member's spouse is on the teacher union's executive board. The KPB Legal Department is not aware of a single instance in recent history where a member was disqualified from voting due to their status as a school district employee.

II. Recusal – Appearance of Impropriety or Other Good Cause.

This memo only addresses whether a member is prohibited from voting due to a disqualifying conflict of interest. As such, this memo does not address whether a member can or should request to be excused from voting based on the scenarios set out above due to a, perceived, serious appearance of impropriety or for other good cause reasons under KPB 22.40.140.

III. Discussion

There are no published Alaska court opinions that address this precise issue. There are no published Alaska Attorney General opinions addressing this issue.

² For purposes of this memo, the term "school district employee" includes the employee's spouse because a conflict of interest analysis focuses on the household's financial interest.

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A. State Law: Express right to serve weighed against lack of express prohibition

No provision of State law prohibits a school district employee from voting on the annual budget or school funding legislation due to it being a conflict of interest. AS 29.20.630(c) provides that a school district employee may not be denied the right to serve as an elected municipal official because of employment by a school district. Legal standards (known as canons of statutory construction) presume that the legislature is intentional with the language it includes and the language it omits in a statute. Alaska statutes must be construed as a whole. The expression of one thing implies the exclusion of others was purposeful. If possible, every word and every provision is to be given effect.

Applying these principles to the present issue, the legislature is presumed to have known that a borough's annual budget, the school budget process, and a borough's mandatory local contribution would be significant legislative items that come before a borough assembly every year. Despite being aware of this dynamic, the legislature, nonetheless, chose not to explicitly prohibit an assembly member who is a school district employee from voting on either the municipal budget or school funding legislation. The lack of such a prohibition is presumed to be intentional. By providing an express right to serve and not prohibiting budgetary votes, it appears that the legislature purposefully did not intend to undercut a member's ability to serve by forbidding a school district employee from participating and voting on the most consequential duty of that service: the deliberation and vote on a borough's annual budget, which includes the statutorily required local contribution school funding amount.

The goal of statutory construction is to give effect to the legislature's intent. In this case, the legislative intent appears to be to protect a school district employee's right to run and serve on the assembly. That intent should not be cast aside lightly. In other words, it is seemingly incompatible to both recognize that AS 29.20.630 provides an express right for a school district employee to serve on as elected official on a municipality's governing body and take the position that, through the general application of conflict of interest law, the member can't ever vote on a school funding issue when one of the primary tasks of the governing body is the school and municipal budget. The express right to serve in AS 29.20.630(b), and the associated legislative intent, is even more telling when it is contrasted against AS 14.14.140. AS 14.14.140 prohibits a school district employee and immediate family members from serving on the school board.

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That is largely due to the school board's involvement on personnel decision or issues (including salaries and benefits).

In *Acevedo v. City of North Pole*³, the Court briefly reviewed then-AS 29.23.555 (conflict of interests). Former AS 29.23.555, since renumbered as part of the 1985 Title 29 reorganization and rewrite, was titled "conflict of interests" and required municipalities to adopt a conflict of interests ordinance. Subsection (c) provided the right to serve provision that now exists via AS 29.20.630(b). Thus, there was a through line between the State's requirement for a municipality to enact conflict of interest code and the State's mandate protecting a school district employee's right to serve on the governing body. This history provides an additional indication that the legislature acted purposefully when it chose not to enact a provision disqualifying an assembly member who is a school district employee from the budget and school funding votes. This interpretation is buttressed in light of AS 14.14.140. In *Acevedo* the court stated:

"AS 29.23.555 states in part:

Conflict of interests. Each home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

There is no express pre-emption based on these provisions in this case. The City has enacted a charter section prohibiting members of the City Council from voting on matters in which they have a pecuniary interest. Thus the mandate of AS 29.23.555 has been obeyed. Section 2.3 goes beyond what is required by AS 29.23.555, but the statute does not prohibit the enactment of ordinances which go beyond its requirements. To the contrary, it states that a conflict-of-interest ordinance must be enacted which *includes* a provision governing pecuniary conflicts. The clear implication is that other conflict-of-interest provisions may also be enacted, so long as pecuniary conflicts are addressed in the manner provided by AS 29.23.555. To rule otherwise would render AS 29.23.540(c) meaningless. It provides that "[n]o state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district *unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election.*" (Emphasis added)."⁴

³ 672 P.2d 130 (1983)

⁴ 672 P.2d 130, 133 (1983)

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B. Borough Code: Substantial financial interest and the large class of impacted persons measured against the inability of the assembly to direct specific line-item school budget allocations

1. The Borough's local contribution per the State's school funding formula

Determining the local contribution amount for public school funding is an assembly function. AS 14.17.410(b)(2) requires a city or borough school district local contribution for school funding equal to or equivalent of a 2.65 mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year; not to exceed 45 percent of a district's basic need for the preceding fiscal year (e.g., the "minimum" local contribution). In addition, pursuant to AS 14.17.410(c), a city or borough school district may provide a local contribution of not more than the "greater of" (1) the equivalent of a two mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110; or (2) 23 percent of the total of the district's basic need for the fiscal year under AS 14.17.410(b)(1) and any additional funding distributed to the district in a fiscal year according to AS 14.17.410(b) (the local contribution "cap"). This is known as the local contribution school funding minimum and the cap, or maximum.

The local contribution school funding minimum and maximum amounts are fixed by statute. Alaska statutes also make it clear that determining how public school funding dollars are spent – which includes state aid, the required local contribution and any applicable federal impact aid – is the exclusive territory of the school board. The Assembly's decision-making authority is limited to deciding a total funding amount within the State's public school funding formula. The school board determines how to best allocate those dollars. The school board is vested with operational control and oversight of the school district. School district employees are not municipal employees. As such, neither the Borough Mayor nor Assembly oversee school district personnel or contract decisions. The Assembly does not review, approve, or otherwise ratify bargained-for agreements between the school district and its various employee unions or associations. Accordingly, the Assembly in no way controls salaries, benefits, or other terms of employment for school district employees. The legislature clearly understood and recognized this reality when it enacted AS 14.14.140 and AS 29.20.630.

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Per KPB 2.90.320 it is "conjectural" to assume that any increase to the local contribution amount will go toward salary increases. There is no indication in the public record that the KPB's local contribution decision has a direct tie to the contract negotiations. To the contrary, the public record indicates that the KPB's local contribution decision may impact the school district's fund balance, ability to retain school programs, non-tenured staff, drama and athletics staff, and possibly keep pools or even specific schools open for a transition year.

In *Carney v. Bd. of Fisheries*, the Alaska Supreme Court held that a fisherman who sat on the Board of Fisheries could vote on matters affecting the fishing industry as a whole but was disqualified from voting on regulations which affected the area in which they actively fished. The *Carney* reasoning is that the members could vote on "industry-wide" issues but must abstain from decision-making in areas in which they had a narrow and specific interest.⁵

Applying the *Carney* holding to the present facts, the statutorily required local contribution for school funding is akin to an "industry-wide" decision. For the purposes of this analogy, the public school system is the industry. The Assembly's vested authority, within the statutory guardrails, is to set the total local contribution amount. Similar to the reasoning in *Carney*, a school district employee or their spouse would have a disqualifying narrow and specific interest if the employee was making decisions specific to their school, or their contract status. A school district employee would be disqualified from voting on a raise or benefits package that directly benefits the employee or their household.⁶ Such a vote, however, is not within the Assembly's purview. The Assembly's funding vote is therefore an "industry-wide" total funding amount. State law vests the school board with the authority to make line-item funding allocation decisions that impact specific schools and persons.⁷

2. The interest is possessed by a large class of persons

Per KPB 2.90.320, "a public official shall not be disqualified from participation in matters in which the public official... has a financial interest that is possessed generally by the public or a large class of persons to which the public official belongs."⁸ I am aware of

⁵ *Carney v. State, Bd. of Fisheries*, 785 P.2d 544, 548 (Alaska 1990)

⁶ See AS 14.14.140, a school district employee is prohibited from serving on the school board.

⁷ See above, AS 14.14.140 recognizes this fact and thus the prohibition therein.

⁸ See KPB 2.90.320, definition for "financial interest".

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prior attempts by this office to measure this exception by dividing the total number of school district employees by the total population of the KPB to arrive at a KPBSD employee percentage of the total population. Using that math, it could then be argued that when compared to the total population, the total number of school district employees did not comprise a large enough or broad enough class of persons. I disagree with using faulty math to arrive at that conclusion. Such a formula is not supported by code of ethics or conflict of interest law. Even if one assumes that is the correct way to determine the size of the class, the formula fails to account for the percentage of the population that are minors and/or not in the workforce.

The following numbers are approximate figures but they nonetheless should paint the picture: KPBSD employs 1200 individuals; the total population of the KPB is 61,000.⁹ The KPBSD is one of the largest employers in the Kenai Peninsula Borough. According to a January 2025 KPB economic update published by the Kenai Peninsula Economic Development District (KPEDD), the largest employment sector is "Government". The KPBSD is the largest single employer within the "government" sector. The correct dividend is the number of KPBSD employees (1200) and the divisor should then be the total workforce (25,630) not the total population. Using that math, the KPBSD employees comprise roughly 4.6% of the total workforce.

Additionally, a "substantial financial interest" analysis includes the entire household impact. The "class of persons" must then include spouses and dependents. It is hard to know what that exact number is but it is clearly greater than 1200 persons. 1200 employees as a standalone figure should be considered a large class of persons within the KPB workforce. A total number that is 2x, 3x, or 4x the 1200 figure only further bolsters the argument. Viewed as a whole—all 1200 KPBSD employees, plus any spouses and dependents—this constitutes a "large class of persons" for purposes of KPB 2.90.320.

3. The Assembly's local contribution decision has an insubstantial or conjectural effect on the matter

To be disqualified or prohibited from voting, an assembly member must possess a substantial, individual, financial interest in the matter being voted on. On a past occasion this office assumed that a school district employee serving on the assembly

⁹ Based on figures available through KPEDD, in 2023 the KPB population was 60,898. Of that population, 25,630 are listed in the category of "Working Age (25-59)".

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would have a "not insubstantial" influence on KPBSD salaries and benefits. This logic is flawed for two reasons. First, as previously outlined, the Assembly has no direct decision-making authority over school district employee salary and benefits. The Assembly does not set salary ranges, does not allocate money toward salary and benefits, and does not approve employment contracts.

Second, turning to the "substantiality" of the question for individual members, it may be a closer call when looked at generally but is still missing a key fundamental link. It is generally mathematically correct to conclude that *grouped together* teachers' salaries and benefits are "not insubstantial". They comprise a significant portion of school district budget. The analysis does not end there though. What also must be considered is the substantiality, or lack thereof, of a single school district employee's salary and benefits as compared to the whole. For purposes of whether an assembly member has a disqualifying financial interest in a matter before the Assembly, the measurement is the individual financial interest. It is not to be measured across an entire group.

The logical incongruence of past reviews of this issue seems to occur when it is first determined that school district employees are not part of a sufficiently large class to fit within the KPB 2.90.320 exception but then simultaneously using the salary and benefits of the entire class when analyzing whether the financial interest of an individual member is substantial and/or to determine that the result of a school funding vote will have "not insubstantial" impacts on groupwide salary and benefits.

To be clear, that is not to say that groupwide salary and benefits applied to one individual is not a substantial financial interest. It is to say that to disqualify someone with such an interest from voting on the matter there must be both an individualized substantial financial interest and a clear connection between the vote and that interest. Applied to school funding, the Assembly is not voting on employee salaries, benefits, and other employment terms. The crux of the Assembly's vote is the statutorily required local contribution. The local contribution amount set by the Assembly for school funding is a percentage of the total budget adopted by the school board. The KPBSD's total expenditure budget for all funds for FY26 is \$157,041,526.

Viewed on the whole, the substantiality of a single employee's salary is greatly diminished by the lack of any direct connection between the Assembly's local contribution decision and the school district's salary and benefits decision. Therefore, the link between a school district employee voting on a local contribution and the

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impact that may have down the line on their (or their spouse's) individual salary or benefits is undisputedly diluted. The Assembly cannot simply decide to appropriate funds at any number it chooses; local contribution is capped under State law.

4. Specific concern relating to a member's spouse serving on KPEA's executive board

A community member has written a complaint to Assembly members, the State ombudsman, and the State Attorney General. The complaint appears to center on a specific concern that a member's spouse serves on the Kenai Peninsula Educator Association's (KPEA) executive board and the idea that through that position there is an increased conflict of interest concern. I don't view it the same way. A spouse's service on KPEA's executive board does not alter the findings and conclusions herein. It is far too early in the process to know if there will be a new CBA and what the terms of that CBA will be. The assumption may be that an Assembly decision to "fund to the cap" will go toward employee salary and benefits, but that is not a certainty by any means. More funding may go toward fund balance, retaining non-tenured teachers, or toward keeping programs and activities that will be cut if funding stays flat. The point being, there is no straight-line connection between the Assembly "funding to the cap" and the CBA negotiations. The direct connection is the school board and its funding decisions. Again, the legislature's recognition of this reality is the reason AS 14.14.140 prohibits a school district employee from serving on the school board. Additionally, any changes to the CBA impact the entire class of school district employees whose employment conditions are subject to the terms of the CBA. Thus, in my view, the conflict of interest analysis does not change significantly due to the fact that the school district employee or their spouse is on the union's executive team.

IV. Conclusion

While there is no court decision or statute directly on point, this issue is not necessarily a close call from a prohibitive conflict of interest standpoint. The reason for this conclusion is that the legislative intent is relatively clear in this case. AS 29.20.630 provides, subject to AS 14.14.140, express authorization for a school district employee to serve on the Assembly. AS 14.14.140 specifically prohibits a school district employee from serving on the school board. The legislative intent should be accorded due deference. It should also be presumed that the legislature acted purposefully by not also

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providing that it would be a conflict of interest for a school district employee to vote on the borough's budget and school funding items that come before the body.

This issue has cropped up on at least three recent occasions during the budget process. Interestingly, the issue only appears to be in controversy when the Assembly is considering a local contribution funding amount that differs from the Mayor's proposed amount. In all three instances in recent history, the member alleged to have a conflict of interest was allowed to vote following a ruling that the member does not have a prohibitive conflict of interest. The Assembly as a body has never successfully overridden the presiding officer's ruling.

A school district employee serving as an assembly member should be considered part of a generally large class, not disqualified from voting on what amounts to an "industry-wide" decisions similar to the Board of Fish analysis in *Carney*, with the substantiality of the member's salary and benefits as an individual employee measured against a \$157 million total school budget. Importantly, any conflict of interest analysis must recognize that the tenuous causal link between a borough's local contribution decision and a school district decision on the bargained-for salaries, benefits and other employment terms it agrees to with its employees.

The school district, not Assembly, decides how to allocate precious public funds. Without an express directive in the law that provides otherwise, neither a school district employee, substitute, nor their spouse should be deemed to have a prohibitive conflict of interest that disqualifies the member from voting on the annual budget or school funding legislation.

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V. Applicable Law

State Law

AS 29.20.630 (Prohibited discrimination)

- (a) A person may not be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position or municipal employment because of the person's race, color, sex, creed, national origin or, unless otherwise contrary to law, because of the person's political opinions or affiliations.
- (b) **Subject to AS 14.14.140, a state employee or school district employee may not be denied the right to serve as an elected municipal official because of employment by the state or a school district. For purposes of this subsection, a school district employee is not a municipal employee.**
- (c) This section applies to home rule and general law municipalities.

(Emphasis added.)

AS 14.14.140 (Restriction on employment; compensation of board members)

- (a) While serving on the school board, a member may not be employed by that local school board. Members of the immediate family of a school board member may not be employed by the school board except upon written approval of the commissioner.
- (b) Members of the immediate family of a chief school administrator may not be employed by the chief school administrator except upon written approval of the school board.
- (c) A school board member may receive compensation for time spent in the performance of duties as a school board member if the compensation is authorized by resolution adopted by the school board. The restriction in (a) of this section does not apply to this compensation.

AS 29.20.010 (Conflict of Interest)

- (a) Each municipality shall adopt a conflict of interest ordinance that provides that
 - (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;

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- (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a 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; and
 - (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.
- (b) If a municipality fails to adopt a conflict of interest ordinance by June 30, 1986, the provisions of this section are automatically applicable to and binding upon that municipality.
- (c) This section applies to home rule and general law municipalities.

Borough Code

KPB 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, 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 as soon as practicable after the matter is before the assembly.
- 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.

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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 any determination of that conflict of interest.

KPB 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.
- B. The following do not constitute a vote on a question on which an assembly member, 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 assembly member, 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 assembly member, 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

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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 than 5 percent of the outstanding stock or shares in the subject corporation.

KPB 2.90.030 (Code of Ethics). Violations.

...

- I. Financial Interest. A public official or a member of the public official's immediate family shall not have a financial interest in any matter being considered by the public official. A public official shall disclose a financial interest, if known. The public official shall be disqualified from further participation in any matter in which the public official has a financial interest.

...

- R. Disclosure of Conflict of Interest. A public official shall not fail to disclose a conflict of interest.

KPB 2.90.320 (Code of ethics). Definitions.

"Financial interest" means:

1. An interest held by a person or entity subject to this chapter or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive anything of value; or
2. An interest held by a business in which the employee or person listed in paragraph 1 holds a position in business, such as an officer, director, trustee, partner, employee, or the like, or management position.

This definition, however, shall be interpreted and applied in a manner that distinguishes between minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material. Specifically, a public official shall not be disqualified from participation in matters in which the public official:

1. Has a financial interest which is insubstantial;

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2. Has a financial interest that is possessed generally by the public or a large class of persons to which the public official belongs;
3. Merely performs some duty or has some influence which would have insubstantial or conjectural effect on the matter; or
4. Has an interest because it involves compensation and benefits for the performance of public official duties.