

**Office of Administrative Hearings**  
**Code of Hearing Officer Conduct**  
**Opinion No. 2013-01**  
**[Redacted]**

TO:

FROM: Terry L. Thurbon  
Chief Administrative Law Judge

DATE: July 4, 2013

You have asked my opinion on whether the Code of Hearing Officer Conduct (2 AAC 64.010 – 2 AAC 64.050) or AS 44.64.050(a) precludes you from serving on the X School Board. For the reasons explained below, I conclude that it does not, but that you would be unable to participate in certain proceedings of the board. This opinion is limited to the specific circumstances described below.

**Background**

You are a Hearing Officer employed by the Y Agency. Your primary essential duties in this position relate to conducting administrative hearings over which you preside in a quasi-judicial capacity. This is a full-time position, requiring 30 or more hours of work per week.

You are considering running for election to the X School Board. You wish to retain your present position while running for, and if elected, while serving on, that board.

The X School Board is an elective board organized under AS 14.12.030. It is the governing board for the district, with a wide range of oversight functions including acquiring school property and providing for its maintenance, setting compensation and other terms of employment for all district employees, and setting policy for the instruction of students.<sup>1</sup> Among the functions of the board is to hold quasi-judicial hearings, or make final decisions following hearings, regarding disputed matters such as student expulsions and teacher terminations. It is relatively rare for the board to assume this quasi-judicial role. In the last two years, the board's minutes indicate that it may have acted in a quasi-judicial role on two or three occasions.

X School Board members may not be employed by their own district, but they are not otherwise restricted from holding employment outside their board service.<sup>2</sup> Board service, which is compensated by a small monthly stipend, occurs mostly in the evenings and is not inconsistent with outside employment.

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<sup>1</sup> See AS 14.14.060, 14.14.065, 14.14.090, 14.14.100.

<sup>2</sup> See AS 14.14.140. A bylaw also precludes membership in the [elective body].

## Analysis

Alaska Statute 44.64.050(a) provides that “a hearing officer employed full time by an agency may not serve in any other judicial or quasi-judicial capacity.” The Code of Hearing Officer Conduct defines “employed full time” in this context as working “30 hours or more each week, regardless of the number of hours the employee works in a particular week performing non-hearing-related duties, if the employee’s primary essential duties relate to conducting administrative hearings.”<sup>3</sup> You are a hearing officer employed full time by your agency, and accordingly you may not serve in quasi-judicial capacity for the X School Board.<sup>4</sup>

In order to serve, therefore, you would have to recuse yourself or otherwise be excused from all quasi-judicial functions of the X School Board. This exclusion would have to encompass preliminary proceedings, hearings, discussions, deliberations, and votes on final decisions. Because it is possible for some boards to consider matters in a regulatory or administrative capacity and then take up the same matters in a quasi-judicial capacity for reconsideration or appeal, this restriction could require you to take legal advice or otherwise closely monitor the point at which the board’s role might become quasi-judicial, removing yourself from the process as soon as that point was reached.

Provisions of the Code of Hearing Officer Conduct could also limit your ability to participate in board business relating to Y Agency. A hearing officer must conduct activities outside the hearing officer function in a manner that does not “case reasonable doubt on the hearing officer’s . . . adjudicatory capacity or impartiality” or interfere with your official duties as a hearing officer.<sup>5</sup> The Code notes that “activities that could interfere with a hearing officer’s . . . official duties include . . . advocating a position before an executive branch agency on a subject related to decisions that may be heard by the hearing officer.”<sup>6</sup> You would need to ensure that your role in board discussions and votes, if any, on issues relating to worker injuries could not be construed as being connected in some way with knowledge drawn from your tribunal, or as foreshadowing positions you might take in your tribunal.

Conversely, there are other provisions of the Code of Hearing Officer Conduct that could limit your hearing officer role, on occasion, should you be elected to the X School Board. Notably, the Code requires you to refrain from hearing a case that presents a conflict of interest.<sup>7</sup> You are precluded from hearing cases in which a financial or other personal interest could be perceived to influence your official action as a hearing officer.<sup>8</sup> “Personal interest” includes involvement with an organization, such as a school board.<sup>9</sup> Hence, for example, if a school district employee were to come before your workers’ compensation tribunal, you could not hear the case.

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<sup>3</sup> 2 AAC 64.020.

<sup>4</sup> This restriction would not apply if your hearing officer position were reduced to part-time. I am aware of one instance in which a state hearing officer who was employed less than 30 hours per week has served on a school board and participated in quasi-judicial board proceedings.

<sup>5</sup> 2 AAC 64.030(b)(4)(B).

<sup>6</sup> *Id.*

<sup>7</sup> AS 44.64.050(b)(1)-(3). Under 2 AAC 64.030(a), the fundamental canons prescribed by statute are also part of the code of conduct created by regulation.

<sup>8</sup> 2 AAC 64.040(a)(1).

<sup>9</sup> *See* 2 AAC 64.990(a)(19).

I am not able to give an opinion on whether restricting your role as a board member in the manner described above would be permissible under the bylaws or other procedures of the X School Board, nor on whether it might prevent you from fulfilling obligations to the district, nor on whether it is a restriction that ought to be disclosed to voters prior to election. Provided you were able to restrict your role as described, however, your membership on the X School Board would not represent a violation of the Code of Hearing Officer Conduct.

If you have any questions about this opinion, please contact me.