



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: CBJ Assembly
cc: Rorie Watt, City Attorney
Mila Cosgrove, Deputy City Attorney

FROM: Amy Gurton Mead, Municipal Attorney

DATE: July 30, 2018

SUBJECT: Charter section 3.4

I've been asked a question relating to the recent announcement from two assemblymembers of their plans to run for mayor. Charter section 3.4 requires an assemblymember (other than an incumbent mayor or when the assemblymember's term ends concurrently with that of the incumbent mayor) to resign from his or her seat prior to becoming a candidate for the office of mayor. The question is: when is a candidate a candidate?

Charter section 3.4(d) provides:

No assemblymember, other than an incumbent mayor, may be a candidate for mayor unless the assemblymember first resigns from the assembly or unless the assemblymember's term ends concurrently with that of an incumbent mayor. A candidate for the office of mayor may not be a candidate for another assembly position in the same election.

CBJ 29.07.050 describes that a "candidate" is eligible to run for an elective office upon the filing of a sufficient nominating petition. "Candidate" isn't defined.

AS 15.13.400 (the chapter on state election campaigns, which includes municipal elections) defines "candidate" as follows:

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

- (i) a candidate's campaign treasurer and a deputy campaign treasurer;
- (ii) a member of the candidate's immediate family;
- (iii) a person acting as agent for the candidate;
- (iv) the candidate's campaign committee; and
- (v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

State law allows a person to file a “letter of intent” with APOC that allows the person to make campaign expenditures and to accept contributions prior to formally declaring for office with the municipal clerk. Other individuals may not accept contributions or make expenditures on behalf of the campaign, unless first registered on a Candidate Registration or Municipal Exemption Statement. AS 15.13.067; AS 15.13.076; AS 15.13.100; 2 AAC 50.274”¹

A letter of intent can be filed up to 18 months in advance, and “must be filed with the APOC before any candidate engages in campaign activity. A Letter of Intent allows the candidate to begin accepting and spending contributions ...”²

The triggering event that moves someone from being a person who ‘intends’ to run for office to an actual “candidate” is described in APOC’s candidate registration form. APOC requires municipal candidates to

file a Candidate Registration within 7 days of filing a declaration of candidacy or nominating petition with the clerk’s office. The registration provides contact information and designates campaign officers. Only registered campaign officers are permitted to accept/spend contributions on behalf of the campaign, or be reimbursed. Registered candidates must file campaign disclosure reports for the duration of their campaign. AS 15.13.060; 2 AAC 50.282; 2 AAC 50.298.”³

Reading the state statutes, which do define “candidate” and set hard and fast timelines for “candidates” to register, answers when someone is legally a candidate and can be held to have violated the law for failing to file with APOC. And when a seated assemblymember files a nominating petition and declaration of candidacy for mayor with the CBJ, that answers when that person must resign or be in violation of the CBJ charter.

But there appears to be tension between the intent or policy decision that seems to have precipitated Charter section 3.4 and the absolute deadline for resigning triggered by someone

¹ <http://doa.alaska.gov/apoc/pdf/LetterOfIntent.pdf>

² <http://doa.alaska.gov/apoc/pdf/2016-Municipal-Candidate-Handout.pdf>.

³ <http://doa.alaska.gov/apoc/forms/10candreg.pdf>

declaring him or herself a candidate to APOC or declaring him or herself a candidate to the CBJ in order to be eligible to be on the ballot.

To figure out what the intent was behind the charter provision requiring resignation of seated assemblymembers running as mayoral candidates, I turned to the minutes from the Charter Commission. This issue was discussed at least twice. The first time:

The provision that an assemblyman may run for mayor but must first resign his assembly seat was felt desirable, in order to prevent mayoralty campaigns from being launched from the assembly. Mr. Machyowsky pointed out that one disadvantage of this provision was that it might prevent experienced people from running for the office. Chairman Loken commented that this was the council-manager form of government now under discussion. Mr. Machyowsky again said that it seemed to him a sacrifice of talent. *Greater Juneau Charter Commission Minutes, December 26, 1967 (Minutes at p. 26).*

This second discussion gives better insight into the intent behind Charter section 3.4(d). Here the commission members discussed the possibility of allowing assemblymembers to run as mayoral candidates and require resignation only “if elected.” That idea failed though, in large part because it would deprive the residents of their right to vote:

Mr. Parker moved to remove the third paragraph of subsection (e): “An assemblyman may run for mayor but must first resign his office on the assembly.” Mr. Machyowsky seconded the motion. Mr. Engstrom stated that he was against the motion; that it would cause the electorate to lose some of its power, and that one man might win two votes, that there would be eight instead of nine assemblymen. Mr. Halsted stated that from the practical effect, should the assemblyman be successful in his candidacy, he would cease to be an assemblyman and the post would be vacant. Mr. Parker said that it was his feeling that his leaving the post of assemblyman for that of mayor would create a vacancy in the assembly; he could only serve in one seat. The assembly would fill the vacancy. Mr. Craddick stated he thought this was a sloppy way to do [it], and that it robbed the public of their vote. Mr. Engstrom inquired why not require the assemblyman to resign? Mr. Parker replied that this would lead to the loss of some good people. Mr. Craddick inquired whether he meant to resign before or after he was elected. Mr. Engstrom replied that he meant that if an assemblyman were elected mayor, he must resign his previous position. Mr. Craddick pointed out that in effect this was what the draft now required. Mr. Engstrom replied that the difference was, as the draft stood, he would have to resign before he ran. Mr. Craddick agreed, but added that this would not meet his objective, that the public was being automatically deprived of their vote for this position. Mr. Craddick said that he moved the question; he favored deleting this provision from the Charter. Mr. Machyowsky suggested the words “if elected” be added. Mr. Engstrom seconded the motion. Mr. Machyowsky restated the suggested wording: “An assemblyman may run for mayor but must resign his office on the assembly if elected.” Mr. Craddick repeated his objection: If the

assemblyman were elected, there would be a vacancy on the assembly which the assembly will vote to fill. He called for a vote on the motion. The motion failed. *Greater Juneau Charter Commission Minutes, March 26, 1968 (Minutes at p. 128).*

Thus it seems the intent behind the charter language requiring resignation was to allow for an election process to fill the seat being vacated by the mayoral candidate, and not leave it to the assembly to simply fill the vacancy after the election.