From:	Jones, Barbara A.
To:	Demboski, Amy; Dahl, Marc
Cc:	McConnell, Erika B.; LaFrance, Suzanne; Constant, Christopher; Gates, Dean T.
Subject:	RE: Muni Home page - please correct the website regarding Elections information as the Clerk"s Office requested in the email below
Date:	Monday, September 27, 2021 4:06:00 PM
Attachments:	image001.png image002.png image003.png
Importance:	High

Dear Marc and Amy: I understand the Muni webmaster Heather Holland was directed to add the information in the snippet below to the Municipal Home page regarding the Special Election. This was done without knowledge or notice to anyone on the Municipal Clerk's Election Team, and is very concerning.

The Municipal Clerk's Office has all authority regarding running and supervising municipal elections as detailed in the Charter and Title 28. The Charter states that "[t]he assembly by ordinance shall establish procedures for regular and special municipal elections…." Section 11.02(a). The Assembly's ordinances codified in Title 28 specifies that "[t]he municipal clerk shall prepare for, conduct, and supervise all municipal elections…." AMC 28.10.020. There is no role in Title 28 for the Mayor nor the Administration in the running and supervising of municipal elections.

The Municipal Clerk's Office and OIT have an "OIT Elections Playbook" to discuss election operations for which the Clerk's Office uses OIT's assistance. Nothing in the Playbook authorizes OIT to update the website without the Clerk's Office authorization. This is important, because of the rules in state statute and Ethics Code regarding use of municipal resources to influence an election.

At the least Marc, you and I discussed that if OIT has concerns about elections, OIT should communicate that concern to the Clerk's Office. The failure to communicate this change is troubling, not the least of which is that it appears that the Administration is conducting outreach and education about the Special Election.

As detailed above, only the Municipal Clerk's Office has the authority to conduct outreach and education about elections. No other Municipal entity – neither the Assembly nor the Mayor – has the authority to conduct outreach and education about elections because it is not in the Mayor's nor the Administration's usual course of duties to conduct outreach and education about elections. Because this banner was not authorized by the Municipal Clerk's Office, it appears to be conduct in violation of state law and an APOC violation.

In consultation with Assembly Counsel, the following provisions of law are important here:

- AS 15.13.145:
  - "(b) Money held by [a municipality] … may be used to influence the outcome of an election concerning a ballot proposition or question, but ***only if the funds have been specifically appropriated for that purpose*** by … a municipal ordinance."
  - "(c) Money held by an entity identified in (a)(1)-(3) of this section may be used … (1) to disseminate information about the time and place of an election and to hold an election;"
  - "(d) When expenditure of money is authorized by ***(b) or (c) of this section*** and **is used to influence the outcome of an election**, the expenditures shall be reported to the commission in the same manner as an individual is required to report under AS 15.13.040." THIS REQUIRES REPORTING TO APOC.
- The questions that arise here are whether the use of the Municipal website with the recent change is use of "money" and whether it is used "to influence the outcome of an election" There are APOC implementing regulations directly on point to these questions
- Money includes use of the Municipal website:
  - 2 AAC 50.356(d): "… "money" means government money, ***government property and assets, and the use of property, assets, or human resources*** belonging to a government entity."
  - In *Eberhart v. Alaska Public Offices Commission,* 426 P.3d 890 (Alaska 2018) the court held use of the city email system was within the definition of "money" for purposes of AS 15.13.145 and 2 AAC 50.356, and upheld APOC's interpretation.
- Action by someone other than the Municipal Clerk to give notice of the time and date of the special election, or any

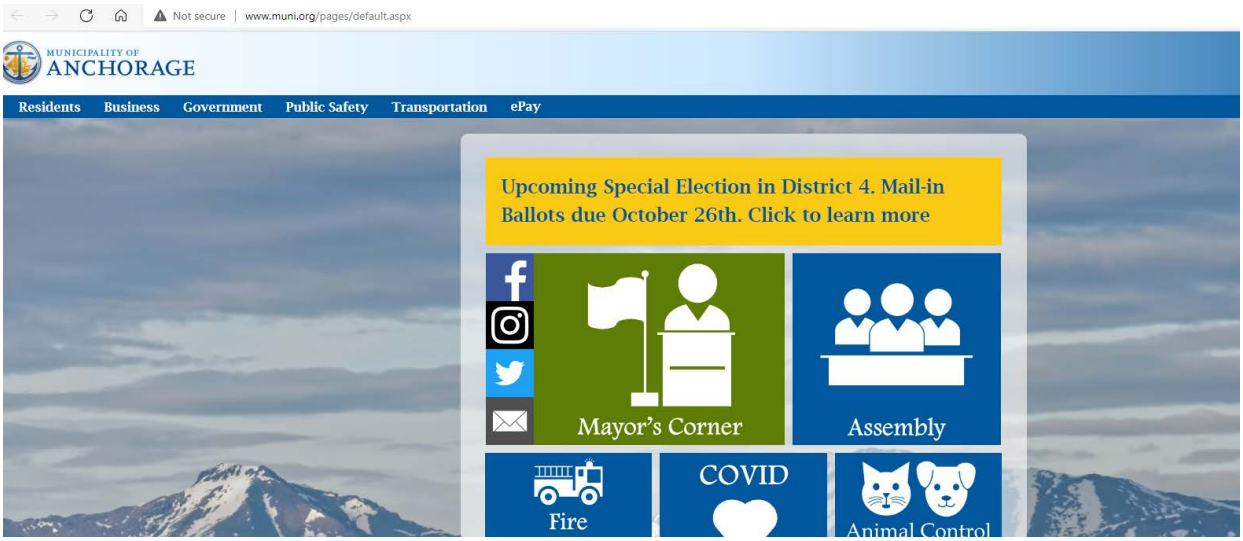
information, is presumptively action to influence the outcome of the Oct 26 special election

- 2 AAC 50.356(a): "… If [municipality] … does not have money specifically appropriated to influence a ballot proposition election, ***an officer or employee of the entity may use money*** held by that entity to communicate about a ballot proposition ***if the communication is made in the usual and customary performance of the officer's or employee's duties.***"
- The direction from the Administration to put notice of the Special Election on the website IS NOT within the Administration's usual and customary performance of their duties. The Code does not authorize the Administration to do this.
- The positioning of the banner on the Municipal Website for this special election has never been done in this way before. This elevates the notice of this Special Election beyond any historical customary notice provided in the history of the Municipality. It is clearly intended to influence this election.
- The *Eberhart* case stated a finding of specific intent to influence is not necessary, APOC can fine based on the circumstances, like those described here.
- APOC Advisory Opinion AAO 10-10-CD has found the usual and customary standard to be narrow, and there is ***no de minimus exception*** to it.

- The terms used in the above state statutes and APOC regulations are mirrored in our Ethics Code, AMC chapter 1.15. Section 1.15.110 includes prohibitions on "political activity" even when it is nonpartisan, with some narrow exceptions. Those exceptions in AMC 1.15.110C. and D.1. are not applicable on the facts above related to the Administration's change to the municipal website outside of the usual and customary process under Title 28 for notice of the time and place of an election.

These issues are serious and of grave concern. I encourage you to seek guidance from the Department of Law immediately, if you are skeptical of the points in this message. The integrity all municipal elections and compliance with Charter, Municipal Code, and state law Is a duty charged to the Municipal Clerk. This message is in an attempt to prevent irreversible taint on the upcoming election and correct what were probably well-intentioned actions but that appear to violate election laws as described above.

Please direct the Muni webmaster to correct the website as the Clerk's Office requested on Friday morning. Barbara



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Vision Statement: *The Anchorage Municipal Clerk's Office is dedicated to excellence by courteously, accurately, and timely performing its duties to facilitate a well-informed, well-served community and government officials, thus, maximizing public participation in the democratic process of local government. Ver. 1.0.*

From: McConnell, Erika B. <erika.mcconnell@anchorageak.gov>
Sent: Friday, September 24, 2021 8:31 AM
To: Holland, Heather M. <heather.holland@anchorageak.gov>
Cc: Jones, Barbara A. <barbara.jones@anchorageak.gov>
Subject: Muni Home page

Good morning Heather,

Would you please replace the yellow box at the top of the muni home page with the standard yellow box that says “Elections” that is part of the group of department/issue boxes?

Please let me know by when you can get that change made.

Thank you!
Erika

Erika McConnell
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