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January 6, 2006

Mr. Steven McCracken, Chair
1255 Eckert Avenue
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Mr. Jeffrey Darlington
1621 Union Street
Reading, PA 19604

Ms. Dorris Persky-Leisawitz
1525 Rockland Street
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Rev. Demetrius Nicolaidakis
58 Sycamore Drive
Reading, PA 19606

Dr. Joseph Amprey
118 Oley Street
Reading, PA 19601

Re: Advisory Opinion 2006-1

Dear Board Members:

I enclose herewith a draft of an advisory opinion for review and comment.

I have also enclosed a copy of the option agreement which Shelly Katzenmoyer provided to me for your review in conjunction with the draft advisory opinion.

Call me if you have any questions.

Very truly yours,

ROLAND & SCHLEGEL, P.C.



Edwin L. Stock

ELS/baf:32351-0/126848.1
Enclosures

DRAFT

CITY OF READING

BOARD OF ETHICS

ADVISORY OPINION

2006-1

The Board of Ethics has received a request for an Advisory Opinion. The Request is dated November 18, 2005 and is from the President of Strategic Reports, Inc.

The Request is as follows, as set forth in the letter. "The ethical question concerns the process of providing unbiased legal representation to protect the interest of the citizens of Reading in negotiations with private entities. In the current option agreement between the City of Reading and M.B. Investments for the sale of 50% of City-owned property surrounding Antietam Lake, it is stated on page 23 that: 'M.B. shall be responsible for payment of all its counsel fees and costs related to the negotiation and approval of this option agreement and legal fees to proceed to exercise in the option and closing on the sale of the Antietam Lake property. The City shall be responsible for the first \$6,500 of its counsel fees and costs for this transaction; thereafter, M.B. shall pay or reimburse the City for all reasonable counsel fees and costs related to the option agreement for the Antietam Lake property.'"

The apparent concern regarding the request for an advisory opinion from the Board of Ethics seems to be that this provision in the option agreement (1) would be disadvantageous to the City in the negotiations with M.B. Investments and (2) that it will place the law firm of Klett, Rooney, Lieber & Schorling in an untenable ethical position. It is understood that this law firm represents

the City. It is stated in the letter: "It seems problematic how the law firm would balance the need for a comprehensive legal analysis of all aspects of a highly complex real estate transaction with the budget considerations of the ultimate payor, which is M.B. Investments."

Section 1201 of the Home Rule Charter provides in subsection (a) as follows: "The use of public office for private gain is prohibited. No elected official, officer, or employee shall (i) act in an official capacity on matters in which the employee or official has a private financial interest clearly separate from that of the general public; (ii) accept gifts and other things of value in return for a favorable decision or vote . . . ; (iii) act in a private capacity on matters dealt with as a public official or employee; (iv) use confidential information for personal gain; and (v) appear before City departments, offices and agencies on behalf of private interest."

Section 6 of the Code of Ethics, adopted May 9, 2005 by the City of Reading, sets forth certain types of behaviors which are prohibited. Section 6A entitled "Conflicts of Interest" lists ten specific types of behavior which are prohibited such as using or attempting to use one's official position to secure special privileges or exemptions for themselves or others. Section 6B provides that "no official or employee shall accept gifts and other things of value in return for a favorable decision or vote" and otherwise regulates the receipt of gifts by City officials or employees. Section 6C addresses the issue of nepotism. Section 6D deals with whistle blowing. Section 6E deals with the use of City property and personnel. Section 6F addresses political activities.

The Board of Ethics has reviewed an unsigned option agreement between the City of Reading and M.B. Investments, a Pennsylvania general partnership. Section 37 of the Option Agreement

reviewed provides: "M.B. shall be responsible for payment of all its counsel fees and costs related to the negotiation and approval of this Option Agreement and any legal fees to proceed to exercise in the option and closing on the sale of the Antietam Lake property. The City shall be responsible for the first \$6,500.00 of its counsel fees and costs for this transaction; thereafter, M.B. shall pay or reimburse the City for all reasonable counsel fees and costs related to the Option Agreement for the Antietam Lake property.

Section 1201(c) provides for the creation of the Board of Ethics. Section 1201(c) provides: "The Mayor, with the approval of City Council, shall establish an independent Board of Ethics consisting of five (5) city residents holding term for three (3) years to administer and enforce the conflict of interest provision 1201 of this charter and the prohibition sections of this charter." In addition, the Code of Ethics provides for the powers and the duties of the Board of Ethics which includes receiving and disposing of complaints of violations of the ethics provision of the charter and the Code of Ethics. Finally, Section 8 of the Code of Ethics authorizes any public official or City employee to request an advisory opinion, or should a majority of the Board deem it in the public interest, the Board to render advisory opinions concerning matters of governmental ethics, consider questions of ethical conduct and conflicts of interest, and the application of ethical standards set forth in the Code of Ethics. The Board, therefore, interprets its powers and duties to be generally constrained to matters which fall within its jurisdiction as set forth in Sections 1201 and 1202 of the Home Rule Charter and the Code of Ethics.

Although the request for an Advisory Opinion from the President of Strategic Reports appears to come from someone who is not a public official or City employee, the Board of Ethics deems it to be in the public interest to render an advisory opinion pursuant to Section 8 of the Code of Ethics based on the request of the President of Strategic Reports.

One question framed by the request for the Advisory Opinion and to which the Board offers this advisory opinion is, does the provision of paragraph 37 of the Option Agreement between the City of Reading and M.B. Investments violate any provision of Section 1201 or 1202 of the Charter or the Code of Ethics. The answer of the Board of Ethics is that such a provision does not violate any provision of Section 1201 or 1202 of the Home Rule Charter or any provision of the Code of Ethics.

Section 1201(a) directly addresses conflicts of interest. In the opinion of the Board of Ethics, the inclusion of paragraph 37 in the Option Agreement does not alone violate or implicate any provision of Section 1201(1) of the Charter. Nor does the inclusion of paragraph 37 in the Option Agreement violate or implicate any provision of Section 1202(a) of the Charter. Additionally, the inclusion of paragraph 37 in the Option Agreement does not violate or implicate any provision of Section 6 of the Code of Ethics.

Any attorney retained to represent the interest of the City of Reading in any transaction with any private party would be bound by the attorney's ethical duties to zealously represent the interest of the client, in this case the City of Reading. The same would hold true for any attorney representing the private party, such as M.B. Investments. It is not uncommon for attorneys who are

representing a client to have their fees for the representation paid by an individual or entity other than the client being represented by the attorney and the fact of the manner of such payment does not change or alter the attorney's ethical obligations to the client. Accordingly, any attorney representing the City of Reading would be ethically bound to represent the City of Reading, even if some or all of the counsel fees for such representation were to be paid, directly or indirectly, by MB Investments.

Furthermore, there has been no information presented which would suggest in any way that any City official or employee has had their position influenced with respect to the option agreement simply by virtue of the fact that the option agreement contains Paragraph 37 which would limit the amount of attorney's fees to be directly paid by the City to \$6,500. With the information presented, there is simply no reason to think that the position of any City Official or employee would be influenced in whole or in part solely by the inclusion of a provision such as Paragraph 37 of the option agreement or for any reason because MB Investments has, as part of a larger transaction involving millions of dollars, agreed to such a provision as Paragraph 37. In fact, in the context of the transaction described in the option agreement reviewed, the provision of Paragraph 37 could in fact be deemed to be advantageous to the City of Reading.

Paragraph 37 is simply one paragraph of an option agreement which appears to be highly complex and which presumably was drafted as a result of discussions and negotiations between the parties. Including a provision such as Paragraph 37 in an option agreement of the type reviewed, within the context of the significant and complex transaction described in the agreement, does not, standing alone, appear to create any ethical issue within the jurisdiction of the Board of Ethics, for

the reasons described herein. The Board of Ethics, by this advisory opinion, it must be stated, is not providing any endorsement of the transaction described in the option agreement, nor suggesting support for any terms of the transaction. Whether or not the transaction described in the option agreement, and any specific terms of the option agreement, constitute good public policy and/or are in the civic best interests of the City of Reading and its citizens cannot be determined by the Board of Ethics and instead would have to be determined by those responsible for the affairs of the City of Reading and its citizens.

CITY OF READING BOARD OF ETHICS

By: _____
Steven McCracken, Chairman

Date: _____