



CITY OF READING, PENNSYLVANIA

BOARD OF ETHICS
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ADVISORY OPINION

98-4

A. FACTS

Pursuant to Section 10 of the City of Reading Code of Ethics, the Board of Ethics is authorized, upon the written request of any public official or City employee, to render advisory opinions concerning matters of governmental ethics and to consider questions as to ethical conduct, conflicts of interest and the application of the ethical standards set forth in the Code of Ethics.

The Board of Ethics has received a written request from S. Henry Lessig, Chairman of the City of Reading Planning Commission, to issue an advisory opinion concerning Councilman Vincent Gagliardo.

According to Mr. Lessig's letter, on April 14, 1998, the Planning Commission was reviewing a final land development plan for a Rite Aid Pharmacy to be constructed at the southwest corner of Sixth and Greenwich Streets. The safety of the proposed exits and entrances onto Sixth Street and Greenwich Street were being discussed when a call was received in the Penn Room from Councilman Vincent Gagliardo who asked to speak to City Planner Carl Graybill who was leading the discussion. Mr. Graybill went to the phone and the meeting temporarily was discontinued. The Rite Aid Plan was later tabled until traffic issues and other variance issues are resolved.

After the meeting, it was learned that Councilman Gagliardo indicated to Mr. Graybill that the lines of site from the exits onto Sixth Street were fine and that he would like to see this project move ahead. At no time during the meeting was Mr. Gagliardo's name mentioned.

Mr. Lessig's letter raises several issues. First, he questions whether Councilman Gagliardo violated Article 2, Section 209(d) of the Home Rule Charter which states in relevant part "Except for purposes of inquiry, the Council and its members shall deal with all departmental and bureau employees through the Mayor or the Managing Director." Mr. Lessig feels the phone call in question was not for purposes of inquiry. Second, Mr. Lessig questions that since Mr. Gagliardo's business was previously located



at the Sixth and Greenwich site, he would have knowledge of the area but it may raise a potential conflict of interest. Finally, Mr. Lessig asserts the process by the Planning Commission should be independent and not subject to intervention by elected officials.

B. APPLICABLE CHARTER AND CODE PROVISIONS

In addition to Section 209(d) of the Charter, the Board is of the opinion that Section 1201(a) of the Home Rule Charter is potentially applicable. This section provides that "the use of public office for private gain is prohibited" and "no elected official, officer or employee shall act (i) in an official capacity on matters in which the employer or official has a private financial interest clearly separate from that of the general public and (v) appear before city departments, offices, and agencies on behalf of private interest." The Board is also of the opinion that Section 1201 (c) of the Charter, which provides that the Board is to enforce the conflict of interest provisions of the Charter and the prohibition sections of the Charter, is applicable.

C. OPINION

The following is the opinion of the Board of Ethics in response to Mr. Lessig's letter.

With regard to the first issue raised in Mr. Lessig's letter, concerning Article 2, Section 209(d) of the Home Rule Charter, the Board is of the opinion that all Council members need to comply with the terms of Section 209, including Subsection (d). Based on the facts presented, it appears that Councilman Gagliardo's phone call to Mr. Graybill was not for purposes of inquiry, but rather, was placed for other reasons. Therefore, under the facts presented, Councilman Gagliardo would have violated Section 209(d) of the Charter.

Additionally, the Board of Ethics does not believe that Section 209(d) would prevent a member of council from appearing before an independent Board or Commission of the City of Reading on matters which may affect the member of council in his or her individual capacity. However, when this would occur, such an appearance should be made in accordance with the normal rules and procedures of the independent Board or Commission. Additionally, if such a matter were to come before Council, the member of Council may not be permitted to vote on such a matter.

With regard to the second question raised by Mr. Lessig, there are two answers. If Mr. Gagliardo was attempting to influence the Planning Commission for private gain, then pursuant to Section 1201(a) of the City Charter, it would be determined that he was attempting to use his public office for private gain; in acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; and appearing before city departments, offices or agencies on behalf of private interest. Conversely, if Councilman Gagliardo has no direct or indirect financial interest in the subject matter being discussed by the Planning Commission then

no violation of Section 1201(a) of the Charter would have occurred. It is important to note that this is an advisory opinion of the Board of Ethics; it is not an opinion reached after an investigation of the facts.

With regard to the last question posed by Mr. Lessig's letter, the Board of Ethics is of the opinion that independent agencies and commissions should be able to act independently and not be the subject of intervention by elected officials. This appears to be a matter of common sense. This, however, does not mean that elected officials cannot appear before agencies such as the Planning Commission to speak on issues of private concern in an individual capacity or appear before such commissions or agencies in an official capacity, after having been duly authorized to so act in such an official capacity by City Council or whatever other governing body is involved. The Planning Commission and any other board or commission of this City is reminded also that any appearance by officials or employees of the City should be made pursuant to the appropriate Rules of Order and Rules of Procedure established by such independent agencies and commissions, including, but not limited to the Pennsylvania Municipalities Planning Code (Act 247 of 1968, as amended by Act 170 of 1988, as further amended by Act 208 of 1990 and Act 131 of 1992).

CITY OF READING, BOARD OF ETHICS

By: Edmond J. Doherty
Edmond J. Doherty, Chair

Dated: MAY 27 1998

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