

CITY OF READING
BOARD OF ETHICS
ADVISORY OPINION 2008-2

The Board of Ethics has received a request for an Advisory Opinion. The request is dated July 23, 2008 and is from Vaughn E. Spencer, City Council President.

The request is for an opinion regarding whether a potential conflict of interest exists with the City of Reading (“City”) appointing Aldora Horne (“Ms. Horne”) to the City of Reading Fire Diversity Board (“FDB”), when her son, Cortney Horne, was a lead plaintiff in the 1995 civil lawsuit against the City of Reading Fire Department (“Fire Department”), the resulting settlement of which led to the creation of the FDB. The apparent basis for this potential conflict of interest concerns having Ms. Horne serve as one of the appointed public officials charged with the responsibility to remedy and oversee the Fire Department employment practices and policies at issue in the underlying lawsuit filed by her son.

The relevant portions of the Home Rule Charter and the City of Reading Code of Ethics reviewed for this Opinion were Section 1201 of the Home Rule Charter and Sections 3 and 6 of the Code of Ethics.

It should be noted that Section 8 of the Code of Ethics authorizes any public official or City employee to request an advisory opinion. Therefore, the Board of Ethics finds that the request of Mr. Spencer as a member of City Council is an appropriate request for an advisory opinion.

I. FACTUAL BACKGROUND

On or about December 8, 2005, Cortney Horne brought suit along with the National Association for the Advancement of Colored People (“NAACP”), and the Reading branch of the NAACP to enforce his rights, as well as the rights of African Americans and minorities, against alleged discriminatory employment practices by the Fire Department. Cortney Horne is an African American resident of Berks County, Pennsylvania, who resided at the time in the City of Reading, and sought employment as a firefighter with the Fire Department.

It is stated in his Amended Complaint that as of February 24, 2006, he still sought employment with the Fire Department. Among other claims, Cortney Horne alleged that he was denied an opportunity to sit for the City’s Civil Service Examination for appointment as a firefighter in 2004 and that, in general, the Fire Department neither staffs nor hires a representative portion of minorities and African Americans as exemplified in the City census and general population demographics.

As part of the Consent Decree attained in resolution of the litigation, the City agreed to establish and create by Ordinance a seven (7) member FDB comprised of individuals who will serve the City without compensation and who will play an integral role in the development and implementation of municipal policies and procedures to increase the representation of African Americans and other minority groups within the Fire Department and assure fair and equitable treatment of applicants to positions within the Fire Department.

After the creation of the FDB in February 2007, Ms. Horne is being considered for appointment as a member. Ms. Horne is the mother of Cortney Horne and in sitting as a member of the FDB would oversee the policies and procedures, as well as, the treatment of potential applicants to the Fire Department.

II. ADVISORY OPINION

The issue presented is whether Ms. Horne's potential appointment to the FDB creates a potential conflict of interest based upon her son's lawsuit, which was the basis for the creation of the FDB.

Section 1201(2) provides the enabling language for the City Council to adopt and enact a City Code of Ethics which will implement regulations enforcing the conflict of interest provision set forth in Section 1201 of the Home Rule Charter.

Section 1201(3) enables the Board of Ethics to enforce the provisions of the City Code of Ethics, as well as the Conflict of Interest and Prohibition provisions of the City Home Rule Charter.

Section 3(F) of the Code of Ethics defines a "Conflict of Interest" as,

"[s]ituation(s) or potential situation(s) in which a public official or employee uses or may use his/her office or employment for the private gain of himself/herself, a member of his/her immediate family for a business of any type with which he/she or a member of his/her immediate family has a material interest."

Section 3(I) of the Code of Ethics defines "Immediate Family" as, "[a] parent, spouse, living partner, child, brother or sister, natural or adopted."

Section 3(L) of the Code of Ethics defines an "Official" as "any elected or appointed paid or unpaid member of the government of the City of Reading."

Section 6(A)(2)(a) of the Code of Ethics states that employees and officials of the City may not "use or attempt to use their official position to secure special privileges or exemptions for themselves or others."

Section 6(C) states that,

“[h]iring a relative is a special type of a conflict of interest that should be avoided. No public official or employee shall appoint, hire, advance or advocate the appointing, hiring or advancing of a member of his/her immediate family or household member to a city position, as provided in the City of Reading Personnel Code.”

§1-205 of the City of Reading Personnel Code (“Personnel Code”) states that,

“[n]o public official or public employee shall appoint, hire, advance or advocate the same of a member of his/her direct family to a City position. No public official or public employee’s direct family member shall be appointed, hired, or advanced to a position under the direct supervision or control of the official or employee.”

§1-205 of the Personnel Code defines “direct family” as a spouse, parent, son and any step-children, among others. In the event that a relationship as defined in §1-205 of the City Personnel Code is created between employees within the same City department, one of the said employees within 90 calendar days must move to a position outside of said department.

The Board finds as follows: any appointment of Aldora Horne to the City of Reading Fire Diversity Board, in and of itself, is not a conflict of interest as defined in the Home Rule Charter, the Code of Ethics or the City Personnel Code.

Absent a showing that Ms. Horne’s appointment to the FDB would be based on a rationale or made for purposes aside from her unique and individual qualifications, experience, and achievement; the Board of Ethics can neither infer nor assume that her appointment would be the result of her son’s lawsuit or the type of conduct or interests that would violate the provisions of the City Code of Ethics and Home Rule Charter. No information or evidence has been provided to the Board of Ethics indicating that Ms. Horne’s potential appointment was the direct result of her son’s lawsuit against the city. The Board of Ethics can not make such an assumption based on the circumstantial evidence provided.

However, violation of the provisions of the Code of Ethics and Personnel Code could exist if Aldora Horne were to use her position and influence on the FDB to “appoint, hire, advance or advocate the appointing, hiring or advancing of a member of her immediate family to a City position.”

Specifically, Section 3(F) states that a conflict of interest exists when a public official uses their office or appointment for the private gain or employment of a member of their family. In addition, Section 6(C) of the Code of Ethics and Section 1-205 of the Personnel Code expressly prohibit nepotism or similar activities by City officials and employees. For purposes of the Code of Ethics, Ms. Horne would be considered an “official” as she is an appointed, unpaid member of the City government.

Ms. Horne may be in a unique position of influence as a FDB member with the authority to ensure the fair and equitable treatment of persons who have and will have applied to the Fire Department for job positions. Should Cortney Horne follow through on his stated intent to apply for a position with the Fire Department, a potential conflict of interest could arise if Ms. Horne were to use her position to advocate, influence or advance her son’s employment application.

However, there has been no action or evidence provided indicating that Cortney Horne has reapplied for a position with the Fire Department since the termination of his lawsuit, nor has there been any evidence provided that Ms. Horne has engaged in advocacy or used her position to provide her son with a position in the Fire Department.

In the event that Cortney Horne reapplies for a position with the Fire Department, the FDB must take into consideration the provisions of the Code of Ethics and Personnel Code to ensure that any potential for nepotism is avoided in the Board’s activities as related to that application. The FDB should, in general, have uniformly-applied, preventative provisions in

place so as to prevent a potential conflict of interest or avoid the appearance of nepotism in its daily business and routine oversight of the Fire Department and its hiring practices. The safest way to avoid any potential conflict of interest is to create and enforce a uniform policy to protect against such situations.

Based upon the Board of Ethics' review of the documents provided, the Board of Ethics finds no conflict of interest present in the potential appointment of Aldora Horne to the City Fire Diversity Board given the information provided. The Board of Ethics does express concern about the potential for a future conflict of interest should Cortney Horne apply for a position with the City of Reading Fire Department; however, the Board of Ethics anticipates that should such a situation arise, the City Fire Diversity Board will fulfill its duties in such a manner so as to avoid any potential conflicts of interest.

CITY OF READING, BOARD OF ETHICS

By: Steven R. McLochen

Date: 8/26/2008