

CITY OF READING
BOARD OF ETHICS
ADVISORY OPINION 2014-1

I. INTRODUCTION

The Board of Ethics ("Board") received a letter dated May 29, 2014, from Linda A. Kelleher, City Clerk, requesting an Advisory Opinion "on the ability of the Mayor's Special Assistant Eron Lloyd to continue to serve on the Reading Area Water Authority." The letter requests an Advisory Opinion "on the ability of Mr. Lloyd to serve on RAWA and if he may continue to serve, what type of activities would constitute a conflict of interest."

II. ADVISORY OPINIONS

Section 8 of the City of Reading Code of Ethics (Bill 28-2013, Adopted May 28, 2013) provides that the Board may render Advisory Opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this Ordinance. The Board hereby decides, by the publication of this Advisory Opinion, that the request for Advisory Opinion is proper and requests an Advisory Opinion on a matter or matters within the scope of Section 8 of the Code of Ethics.

III. FACTS

Per the request for Advisory Opinion, Mr. Lloyd was appointed to the Board of RAWA in February 2011, before employment by the City of Reading. Mr. Lloyd was hired by the City,

in the Mayor's office, in early 2012. Mr. Lloyd continues to serve as a member of the Board of RAWA. Mr. Lloyd continues to remain employed by the City, in the Mayor's office.

IV. JURISDICTION

Preliminarily, the Board is ever mindful of the scope of its jurisdiction, and two questions relating to jurisdiction are potentially raised, by the request for an Advisory Opinion.

First, does the Board of Ethics have any jurisdiction over Mr. Lloyd in his capacity as a member of the Board of RAWA? Second, does the Board of Ethics have any jurisdiction over Mr. Lloyd in his capacity as an employee of the City of Reading?

The answer to the first question is slightly more difficult. To the best of the Board's knowledge, RAWA is a municipal authority created by the City of Reading pursuant to the provisions of 53 Pa. C.S.A. §5601 et seq., known as the Municipality Authorities Act. Board members of a duly created municipal authority fulfill the functions of their position subject to, among other things, the instrument which creates the authority, the Municipality Authorities Act, and whatever internal bylaws, rules, regulations or policies enacted by the authority itself.

The Code of Ethics does contain definitional sections which do provide guidance for the answer to the aforesaid jurisdictional question. Section 3, Subsection V of the Code of Ethics defines the term "Official" as being "Any elected or appointed paid or unpaid member of the government of the City of Reading, including without limitation members of any City boards, authorities and commissions." Mr. Lloyd, as a Board member of RAWA, appointed by the City, clearly falls within this definition.

Furthermore, it is clear, when taken as a whole, that the Code of Ethics applies to RAWA Board members, as well as others. This includes the section of the Code of Ethics which deals with prohibited behaviors.

Thus, the Board is satisfied, for purposes of rendering this Advisory Opinion, that Mr. Lloyd, as a Board Member of RAWA, is subject to the jurisdiction of the Board of Ethics.

Mr. Lloyd, as a City employee, is also clearly subject, in this capacity, to the jurisdiction of the Board of Ethics. The Code of Ethics, in Section 3, Subsection O, defines "Employee" as "Any individual receiving salary or wages from the City of Reading." Furthermore, taken as a whole, Mr. Lloyd, as an employee of the City, is clearly subject to the Code of Ethics and the jurisdiction of the Board of Ethics.

V. ADVISORY OPINION

A. IS MR. LLOYD, AS AN EMPLOYEE OF THE CITY OF READING, PROHIBITED FROM BEING APPOINTED TO, OR SERVING, AS A MEMBER OF THE BOARD OF RAWA?

The simple answer to this question is no. The Board finds nothing in the City Charter or the Code of Ethics that would prohibit Mr. Lloyd from being appointed to, or serving as, a Board member of RAWA.

Article XII of the City of Reading Home Rule Charter contains no per se disqualification of Mr. Lloyd being appointed to, or serving, as a Board member of RAWA. Section G of the Code of Ethics entitled "Prohibited Behaviors" also contains nothing to support per se disqualification of Mr. Lloyd from serving as a member of the Board of RAWA.

The Board would also note that Section 8 of the Code of Ethics gives it the authority to render Advisory Opinions "concerning matters of governmental ethics", "questions as to ethical conduct", "conflicts of interest". This language in Section 8 suggests that the Board, when rendering Advisory Opinions, also may offer Advisory Opinions on certain matters of ethics beyond the confines of the City Charter and Code of

Ethics. In this regard, the Board has considered the provisions of both the Municipalities Authorities Act, 53 Pa. C.S.A. § 5001 et seq., and the Public Official and Employee Ethics Act, 65 Pa. C.S.A. §1101 et seq. ("Ethics Act"). The Board has found nothing in the provisions of either of these legislative enactments which would prohibit Mr. Lloyd from being appointed to, or serving as, a Board member of RAWA.

B. AS A BOARD MEMBER OF RAWA, WHAT ETHICAL CONSTRAINTS ARE IMPOSED ON MR. LLOYD?

The request for Advisory Opinion, with supporting materials, states that "Mr. Lloyd voted on matters that would involve benefit for the City, including matters relating to the extension of the water lease and negotiations relating to the water lease." Thus, for purposes of this Advisory Opinion, the Board of Ethics assumes that Mr. Lloyd has voted, and will continue to vote, on matters that come before the Board of RAWA and that there will be consequences to his votes for both RAWA and third parties such as the City.

When Mr. Lloyd votes on matters in his capacity as a member of the Board of RAWA, he is constrained in so voting by the City Charter, Code of Ethics, and Public Official and Employee Ethics Act and he must be mindful of the constraints placed on him by these enactments.

The City Charter, in Article XII, contains certain restrictions. Mr. Lloyd should adhere to these restrictions.

The Code of Ethics, in Section 6, contains a comprehensive list of prohibited behaviors, too numerous to set forth at length in this Opinion. Mr. Lloyd is constrained by all of these provisions.

The Ethics Act likewise contains a lengthy list of restricted activities, again too lengthy to list in this Opinion. See 65 Pa. C.S. §1103. Mr. Lloyd is constrained by all of these provisions.

C. AS A CITY EMPLOYEE, WHAT ETHICAL CONSTRAINTS ARE IMPOSED ON MR. LLOYD?

As a City employee, Mr. Lloyd is subject to the same constraints imposed on him by the City Charter and Code of Ethics.

As a City employee, subject to the definition of "Public Employee" found in the Ethics Act, 65 Pa. C.S.A. §1102, Mr. Lloyd is also constrained.

Vigilant reference to these limitations on his activities as a City employee should be made by Mr. Lloyd.

VI. CONCLUSION

It has been written that man cannot serve two masters. Perhaps it is concern for adherence to that maxim which is implicit in the request for Advisory Opinion, since according to the request for Advisory Opinion, "Council asked him to resign due to the potential for conflicts of interest to arise", although it was also noted that "RAWA's Board is often asked to vote on matters that may benefit the City financially."

There is no question that Mr. Lloyd owes obligations to RAWA, on which Board he serves, and to the City, from which he draws a paycheck. Faithfully fulfilling these dual obligations may often be difficult. As mentioned previously in this Opinion, Mr. Lloyd must be extremely vigilant, as normally should any Authority Board member or City employee, so as not to run afoul of the strict ethical constraints imposed by the Charter, Code of Ethics or Ethics

Act. Certainly Mr. Lloyd is advised to stay well clear of any action, no matter which master he is serving at the time, of any and all of these ethical provisions.

The broader issue of whether Mr. Lloyd should attempt to serve both masters, even while steering clear of any ethical minefields imposed by the aforesaid Charter, Code of Ethics, and Ethics Act, is one that falls outside the provisions of the jurisdiction of this Board. This Opinion makes clear what the Board believes strictly applies to Mr. Lloyd as a Board member and City employee. Outside of these jurisdictional limits, whether Mr. Lloyd should continue to serve both masters is a question to which this Board can provide no specific guidance, other than reminding all concerned that the ability to fully and faithfully serve the proper interests of two masters is difficult and fraught with potential peril.

CITY OF READING, BOARD OF ETHICS

By:  _____
Jeffrey Darlington, Chairman

Adopted: July 2, 2014