

CITY OF READING
BOARD OF ETHICS
ADVISORY OPINION 2006-2

The Board of Ethics has received a request for an advisory opinion. The request is dated July 6, 2006, and is from Stephen P. Fuhs, City Council District No. 1.

The request is for an opinion on whether or not a conflict of interest exists with Mr. Dean Miller serving as Executive Director of the Reading Area Water Authority. The apparent basis for the potential conflict of interest concerns Miller Environmental, Inc., a business with which Mr. Miller is affiliated and which provides services to Reading Area Water Authority.

The relevant provisions of the Home Rule Charter and Code of Ethics which were reviewed were Section 1201 of the Home Rule Charter and Section 3 and Section 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 finds that the request of Mr. Fuhs, as a member of City Council, is an appropriate request for an advisory opinion.

I. FACTUAL BACKGROUND

Reading Area Water Authority entered into an agreement with Miller Environmental beginning March 1, 2003 for water meter reading services. There also appears to be another agreement with Miller Environmental, Inc. for contract management of the Authority's water filter plant. These agreements provide that Miller Environmental, Inc. will provide the services set forth in the agreements to Reading Area

Water Authority. Miller Environmental, Inc. is paid by Reading Area Water Authority for its services.

The former Executive Director of Reading Area Water Authority resigned on November 30, 2003. A statement of financial interest form for Mr. Miller for 2004 indicates that Mr. Miller held the position of Director of Operations with the Reading Area Water Authority during 2004. The statement of financial interest form for Mr. Miller for 2005 indicates that Mr. Miller held the position of Executive Director of Reading Area Water Authority during 2005.

For 2004 and 2005, Mr. Miller was paid by city check but he is not considered part of the city payroll. Reading Area Water Authority submits a bill to the city for his services.

For 2006, Mr. Miller is apparently considered as Executive Director of Reading Area Water Authority, and the payment arrangements are the same as set forth above.

The statement of financial interest forms submitted by Mr. Miller for 2004 and 2005 indicate that Mr. Miller has a financial interest in Miller Environmental, Inc., a legal entity and business for profit. According to the instructions that accompany the form, this means that Mr. Miller has an ownership interest in Miller Environmental, Inc. greater than five percent (5%).

II. ADVISORY OPINION

The first issue presented is whether Mr. Miller is covered by the provisions of Section 1201 of the Home Rule Charter and Sections 3 and 6 of the Code of Ethics. Section 1201(a) provides that "No elected official, officer, or employee shall" engage in any of the enumerated types of activity specified in Section 1201(a). Therefore, for this

section to apply, the individual involved must be an elected official, officer, or employee of the City of Reading.

Section 3 of the Code of Ethics provides definitions for certain specified terms, including the definition of an "employee" and the definition of an "official". An employee is defined as any individual receiving salary or wages from the City of Reading. An official is defined as an elected or appointed paid or unpaid member of the government of the City of Reading.

The Board finds as follows.

Reading Area Water Authority is an authority of the City of Reading and is therefore to be considered part of the government of the City of Reading.

Mr. Miller is an employee and/or an official of the City of Reading.

Therefore, Mr. Miller is covered by the Home Rule Charter and the Code of Ethics.

The next issue to be determined is whether there is a violation of Section 1201(a) of the Home Rule Charter. Section 1201(a) provides that no 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." The Board finds that Mr. Miller, who functions as Executive Director of Reading Area Water Authority, and therefore would be the primary executive officer of Reading Area Water Authority, would be charged with responsibility of overseeing the contract between Reading Area Water Authority and Miller Environmental, Inc., a business in which Mr. Miller has a financial interest separate from that of the general public. Therefore, the Board finds that Section 1201(a) of the Home Rule Charter has been violated.

The next question is whether Section 6 of the Code of Ethics has been violated. Section 6(A)(1) provides that employees and officials of the City may not bid on or have a material interest in: "(a) The furnishing of any materials, supplies or services to be used in the work of the City."

Mr. Miller has a material financial interest in the furnishing, by Miller Environmental, Inc., of services to be used in the work of the City. Therefore, the Board finds that Section 6(A)(1) of the Code of Ethics has been violated.

The Board further finds that Sections 6(2)(a), (b), (c), (d), (f), and (g) may also be applicable. For instance, Section 6(2)(f) provides that no employee or official of the City may transact business in an official capacity with any business entity in which the official or employee is an officer, director, agent, member or owns a material interest.

CITY OF READING, BOARD OF ETHICS

By: 
Steven McCracken, Chairman

Date: 10/7/2006