

CITY OF READING

BOARD OF ETHICS

ADVISORY OPINION 2006-3

The City of Reading, Board of Ethics has received a request for an advisory opinion from Michelle R. Mayfield, Legal Specialist. There are two specific requests.

The first question presented is whether a retired City employee, who is receiving a pension from the City, may serve on a City board, commission or authority.

The second question is whether a retired Berks Area Reading Transportation Authority ("BARTA") employee, who receives a pension from BARTA may serve as a member of the Board of Directors of BARTA. This recent appointee to BARTA's Board of Directors also has served as local union president of one of the unions that represents BARTA employees.

The Board of Ethics will deal with these questions in order.

A. MAY A RETIRED CITY EMPLOYEE, WHO IS DRAWING A CITY PENSION, SERVE ON A CITY BOARD, COMMISSION OR AUTHORITY?

1. Analysis under Home Rule Charter.

The first consideration is whether or not there is anything in the Home Rule Charter which would prevent the appointment of a retired City employee, who receives a pension from the City, from serving on a City board, commission or authority.

The Board of Ethics generally limits its jurisdiction on such questions to the provisions of Article XII of the Home Rule Charter. Section 1201(a) applies to elected officials, officers or employees. It is the opinion of the Board of Ethics that a member of

a City board, commission or authority would be an officer for purposes of Section 1201(a) of the Home Rule Charter.

Section 1201(a) of the Charter defines five types of activity which constitute conflicts of interest. There is nothing in the language of Section 1201(a) which would prohibit the appointment of a retired City employee, whether receiving a pension or not, from serving on a City board, commission or authority. Section 1201(a) would clearly prohibit a member of any City board, commission or authority from engaging in any of the specified activities which constitute conflicts of interest. A retired City employee who is serving on a City board, commission or authority would be prohibited from engaging in the activities specified as conflicts of interest. Otherwise, however, there is nothing which would clearly prohibit the appointment of a City employee, whether receiving a pension or not, from serving on a City board, commission or authority.

2. Analysis under the Code of Ethics.

The next consideration is whether or not there is anything in the Code of Ethics which would prohibit the appointment of a retired City employee, who is receiving a pension, from serving on a City board, commission or authority.

Section 3 of the Code of Ethics contains definitions. Section 3(L) defines an official as any elected or appointed paid or unpaid member of the government of the City of Reading. It is the position of the Board of Ethics that a member of a City board, commission or authority is an official, as defined in the Code of Ethics, and the Code of Ethics would apply to that individual.

Section 6 of the Code of Ethics contains a list of prohibited behaviors. Any member of any City board, commission or authority would be constrained by the

prohibited behaviors set forth in Section 6 of the Code of Ethics. There is nothing, however, in Section 6 which would specifically prohibit a retired City employee, who is receiving a pension, from serving on any City board, commission or authority. Therefore, it is the opinion of the Board of Ethics that appointment of a retired City employee, who is receiving a pension, to a City board, commission or authority, in and of itself, would not constitute a violation of the Code of Ethics.

B. MAY A RETIRED BARTA EMPLOYEE, WHO RECEIVES A PENSION, BE APPOINTED TO A POSITION ON THE BARTA BOARD OF DIRECTORS?

1. Analysis under the Home Rule Charter.

As stated above, the provisions of Article XII of the Home Rule Charter would apply, in the opinion of the Board of Ethics, to a member of the Board of Directors of BARTA.

Also, as stated above, there is nothing in the provisions of Section 1201(a) which would directly prohibit the appointment of a retired BARTA employee, who is receiving a pension from BARTA, to a position on the BARTA Board of Directors. Obviously, any member of the BARTA Board of Directors would be constrained by the specified conflicts of interest prohibitions set forth in Section 1201(a). Although there would be no general conflict of interest which would prohibit appointment of the retired BARTA employee to the position of Director on the BARTA Board of Directors, the fact that the retired employee is receiving a pension from BARTA would, under Section 1201(a)(i) prohibit such individual from acting 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 and therefore it would be advised that this individual abstain from voting on any matters regarding pension benefits for retired BARTA employees.

With regard to the question of whether the individual's past service as local union president of one of the unions that represents BARTA employees, it is the opinion of the Board of Ethics that no general conflict of interest is created by such fact. However, to the extent that past service as a member of a local union or past service as president of a local union, on specific or individual issues which would come before the Ethics Board of Directors, and which implicate any of the specified prohibitions in Section 1201(a), such individual should abstain from voting or decision making on such questions or issues. For instance, Section 1201(a)(iv) provides that an officer should not use confidential information for personal gain. To the extent that an individual on the BARTA Board of Directors possesses confidential information, such information should not be shared with anyone, including the union, for purposes of personal gain.

2. Analysis under the Code of Ethics.

As stated above, Section 3 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. Therefore, it is the opinion of the Board of Ethics that a member of the Board of Directors of BARTA would be considered an official as defined by Section 3(L) of the Code of Ethics.

Section 6 of the Code of Ethics itemizes the prohibited behaviors which constrain officials of the City of Reading. It is the opinion of the Board of Ethics that the mere fact of appointment to and service on the BARTA Board of Directors of a retired BARTA

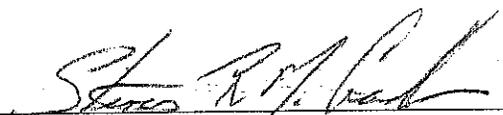
employee who receives a pension from BARTA does not violate any of the prohibited behaviors in Section 6 of the Code of Ethics.

However, as with other employees and officials of the City, any member of the BARTA Board of Directors, including a retired employee of BARTA who receives a pension from BARTA, is constrained by the prohibited behaviors set forth in Section 6 and must not act in any way which contravenes any of the prohibited behaviors. For instance, officials of the City may not use or attempt to use their official position to secure special privileges for themselves or others. A retired employee of BARTA who is serving on the BARTA Board of Directors who would vote on pension matters may be deemed to be using an official position to secure special privileges for themselves or others and therefore abstention from voting on any matters regarding pension benefits would be advisable. Furthermore, voting on any matters involving labor matters, to the extent to which such participation would violate any of the prohibited behavior set forth in Section 6 of the Code of Ethics, would be ill advised and should be avoided.

Respectfully Submitted,

CITY OF READING, BOARD OF ETHICS

By:

  
Steven McCracken, Chairman

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