

**CITY OF READING**  
**BOARD OF ETHICS**  
**ADVISORY OPINION 2008-1**

The Board of Ethics has received a request for an advisory opinion. The request is dated July 10, 2008 and is from Vaughn E. Spencer, City Council President.

The request is for an opinion regarding (1) whether a potential conflict of interest exists with the City of Reading ("City") retaining the law firm of Stevens & Lee to provide independent counsel for the review and renegotiation of the Riverview Development Master Developer Agreement ("Agreement") while Stevens & Lee serves as the City's bond counsel on the same Agreement and (2) whether a potential conflict of interest exists in Mayor Thomas McMahon appointing Stevens & Lee to serve as independent counsel in conducting the City's independent review of the Agreement. The apparent basis for the first potential conflict of interest concerns Stevens & Lee providing counsel to both the City and City Council regarding the tax increment financing ("TIF") portion of the Riverview Development Project while also serving in the role as independent counsel in the independent review and renegotiation of the Agreement. The apparent basis for the second potential conflict of interest concerns the financial campaign contributions by persons associated with Stevens & Lee to Mayor McMahon's mayoral campaign committee.

The relevant provisions of the Home Rule Charter and Code of Ethics which were reviewed were Sections 1201 and 1202 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 finds that the request of Mr. Spencer, as a member of City Council, is an appropriate request for an advisory opinion.

**I. FACTUAL BACKGROUND**

The Riverview Development is a \$2.8 billion project proposed by Giannasca Development Group, LLC (“Giannasca”) to construct a mixed use development on 80.4 acres of land located along the Schuylkill River in the City. An initial component to this project is the Agreement that would be entered into between the City and the Developer, Giannasca. Various City offices and employees have contributed to the review and construction of this Agreement on the City’s behalf.

As part of the proposal process, the City’s bond counsel, Attorney Peter Edelman, a Shareholder with Stevens & Lee, attended presentations and meetings with the Developer on behalf of the City regarding the TIF portion of the Riverview Project. Attorney Edelman also reviewed and edited the sections of the Agreement regarding TIF on behalf of the City. Other attorneys were involved in the review of the Agreement, including Attorney Keith Mooney of Barley Snyder, who represented the Reading Redevelopment Authority, as well as Attorney Jim Lillis of Kozloff Stoudt, representing the Reading Parking Authority.

The City Council requested an independent review and renegotiation of the Agreement along with legal advice sought from an independent counsel. Mayor McMahon acting on behalf of the City retained Stevens & Lee to provide the independent counsel for the review of the Agreement.

Based on this situation, Stevens & Lee would be providing review of the Agreement in two roles: first, as the City’s bond counsel and second, as the City’s independent review counsel.

From 2002 through 2007, the “McMahon for Mayor Committee” and “Friends of Tom McMahon” received political contributions from individuals associated with Stevens & Lee. Each campaign contribution was provided in accordance with the filing requirements of the Commonwealth of Pennsylvania Department of State Bureau of Commissions, Elections, and is identified on the Department’s Campaign Finance Report for each reporting period. Each donation identifies the donor, address, date and amount of each donation and is in accordance with the applicable campaign finance rules and regulations for each reporting period.

## **II. ADVISORY OPINION**

The first issue presented is whether Attorney Edelman and Stevens & Lee are under the jurisdiction of the provisions of Sections 1201 and 1202 of the Home Rule Charter and Sections 3 and 6 of the Code of Ethics. Section 1201(a) provides that “[n]o elected official, officer or employee shall” engage in the enumerated types of activity as specified in Section 1201(1). Therefore, for Section 1201(1) to apply, the individual involved must be an elected official, officer or employee of the City of Reading.

Section 1202 (1) (A) prohibits persons from making any “false statement, certificate, mark, rating or report in regard to any test, certification, or appointment” or in any manner “commit or attempt to commit any fraud preventing impartial execution of such provisions, rules, and regulations.” This provision does not apply to potential conflicts of interest and therefore, is inapplicable to this request.

Section 1202 (1) (B) prohibits any person seeking appointment or promotion to a City position or appointive City administrative office to give, render or pay any item, money or service in connection with a proposed appointment or promotion. Therefore, for Section 1202

(1) (B) to apply, the individual involved must seek appointment or promotion to a City position or administrative office.

Section 1202 (1) (C) states, “[n]o elected City official shall” engage in willful solicitation or contribution for a political party or political purpose in conjunction with any City election. Therefore, for Section 1202(1)(C) to apply the party in question must be an elected City official.

Section 3 of the Code of Ethics provides definitions for certain specified terms, including the definition of a “conflict of interest,” the definition of an “employee,” and the definition of an “official”. A “conflict of interest” is defined 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 or a business of any type with which he/she or a member of his/her immediate family has a material interest.”

An “employee” is defined as “any individual receiving salary or wages from the City of Reading”. An “official” is defined as “any elected or appointed paid or unpaid member of the government of the City of Reading.”

As set forth in the definition of a “conflict of interest” in Section 3, the specific “situation(s) or potential situation(s)” set forth in Section 6(A) that identify prohibited conflicts of interest apply only to City employees and officials.

The Board finds as follows: Attorney Peter Edelman and Stevens & Lee are neither seeking appointment to a city position or administrative office nor are they elected City officials or City employees as defined in the Code of Ethics and the City Home Rule Charter. Therefore, Attorney Edelman and Stevens & Lee are not under the authority of the applicable provisions relating to conflicts of interest within the City Home Rule Charter and Code of Ethics. The

Board of Ethics lacks appropriate jurisdiction to investigate either Attorney Edelman or Stevens & Lee for potential conflicts of interest.

The next issue to be determined is whether there is a potential conflict of interest involving political contributions to political committees affiliated with Mayor Thomas McMahon by persons associated with Stevens & Lee and whether that creates a conflict of interest in Mayor McMahon's decision to select Stevens & Lee as independent counsel for the City in review of the Agreement.

Section 1201 of the Home Rule Charter prohibits the use of public office for private gain. Section 1201 (1) (B) prohibits an elected official to "[a]ccept gifts and other things of value in return for a favorable decision or a vote." In all cases, gifts received must be publicly recorded and submitted to the City Clerk specifying the date received, the name and address of the donor, and the value of the gift. The City Home Rule Charter does not offer a unique definition of "gift."

Section 6 (B) of the Code of Ethics cites Section 1201 (1) and its language prohibiting a City official or employee from accepting gifts. Section 6 (B) defines "gift" as "any gratuity, benefit, or any other thing of value which is accepted by...a City employee, elected or appointed officials or by another on their behalf" and includes,

"by way of illustration and without limitation to, the following: (1) Preferential rate or terms on a debt, loan, goods or services...; (2) Transportation, lodging, parking; (3) Food or beverage, other than that consumed at a single sitting or event; and (4) Membership dues."

In February 2008, City Council and Mayor McMahon approved a package of City Ordinances known as the "Integrity in Government" ordinances to be amended to the City's Codified Ordinances at Chapter 1 ("Administration and Government"), Section H ("Department

Organization”), Exhibit A (“Purchasing Procedures”), Sections 8.1 through 8.8, and Sections 9.9, 10.9 and 11.9. These ordinances prohibit the awarding of public contracts in the City to certain campaign contributors, as well as, prohibit candidates for elected office in the City from accepting certain political contributions.

Section 1201(3) of the City Home Rule Charter established and enabled the Board of Ethics, stating, “[t]he Mayor, with approval of City Council, shall establish an independent Board of Ethics consisting of five City residents holding terms of 3 years to administer and enforce the conflict of interest provision, this section of this Charter and the prohibition sections of this Charter.” This language limits the jurisdiction of the Board of Ethics to enforcement of the “Conflict of Interest” provision set forth in Section 1201 and the “Prohibitions” provision set forth in Section 1202 of the City Home Rule Charter.

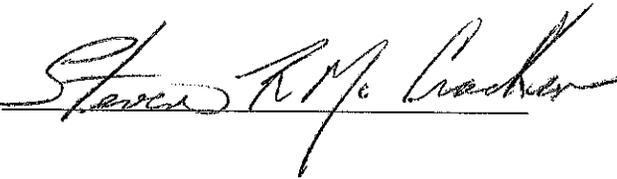
The Board finds as follows: First, the receipt of political campaign contributions does not meet the definition or enumerated examples of a “gift” as set forth in Section 6 (B) of the Code of Ethics. Political campaign contributions are permissible and fundamental characteristics of the City’s system of politics and government. Donations to a candidate or elected official are closely regulated by Federal, State and County-wide regulations with specific reporting requirements and limitations on the amounts and types of donations allowed. It is not the responsibility of the Board of Ethics to verify or enforce the specific federal or statewide campaign finance regulations; however, based upon review of the Campaign Finance Reports provided to the Board from Council President Spencer, donations to political committees associated with Mayor McMahon from identified associates of Stevens & Lee do not exceed the permissible amounts allowed nor violate any of the specific reporting requirements.

Second, with regard to the “Integrity in Government” ordinances, the Board of Ethics does not have the authority to issue opinions or enforce the City Codified Ordinances not included or incorporated by reference in Sections 1201 and 1202 of the Home Rule Charter and the Code of Ethics, as set forth in the limiting language of Section 1201 (3) of the City Home Rule Charter. The scope of the Board of Ethics’ jurisdiction is limited to enforcement of the “Conflicts of Interest” and “Prohibition” ordinances in the City Home Rule Charter, as well as, the Code of Ethics. The Board of Ethics cannot interpret or enforce city ordinances that fall beyond these specified regulations.

Third, based upon review of the information provided to the Board of Ethics by City Council President Spencer, there is no indication that any of the political contributions made by persons associated with Stevens & Lee were in any way, shape or form donated in exchange for a favorable decision or vote by Mayor McMahon. Without evidence showing any correlation between the donations and Mayor McMahon’s selection of Stevens & Lee as independent counsel, there can be no inference made beyond mere speculation, that one was made in exchange for the other.

Based upon the Board of Ethics review of campaign contributions from persons associated with Stevens & Lee to political campaign committees affiliated with Mayor McMahan, the Board fails to find any political contributions or activity that would constitute a breach of any of the provisions set forth in the Code of Ethics or Sections 1201 and 1202.

CITY OF READING, BOARD OF ETHICS

By: 

Date: 8/26/2008