



CITY OF PHILADELPHIA

BOARD OF ETHICS
PACKARD BUILDING
1441 Sansom Street
2nd Floor
Philadelphia, PA 19102-3026
(215) 686 – 9450
FAX 686 – 9453

Evan Meyer
General Counsel

Philadelphia Board of Ethics Nonpublic Advice of Counsel GC-2010-512

September 2, 2010

Re: Charter Section 10-102 / Sale of Books to School District

A City employee requested a nonpublic advisory on the following question as stated in her email message:

I am a City employee, I am also a publisher and children's author. My non public question is: Can I become a contractor with the City for the purpose of selling my children's books to them.

Upon a request for follow-up information, the requestor advised that her reference to “contracting with the City” meant that she would propose to sell books, as publisher and author, not to an operating department or board or commission of the City, but to the Philadelphia School District. This is an important distinction; as will be discussed below, “the City” does not necessarily include the School District. As the requestor apparently surmised, the only provision of the Public Integrity Laws that

may apply to her stated facts is the Charter restriction on City employees having an interest in certain City contracts, Charter Section 10-102.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this advice is predicated on the facts that have been provided to us. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Although previous opinions of this Board that interpret statutes are guidance to how this Board will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the requestor may be concerned about, the requestor was encouraged to contact the Board of Ethics for specific advice on the application of the ethics laws to those particular facts.

Charter Section 10-102 Analysis

The City Solicitor has previously addressed the School District as a “distinct political subdivision” and the application of Charter Section 10-102 to a member of the Board of Education seeking a City contract:

Section 10-102 of the Charter prohibits City employees or compensated officials from benefiting from, or having a direct or indirect interest in, a City service contract. However, a member of the Board of Education is not a City official or employee. As you point out in your request, the School District of Philadelphia is a distinct political subdivision. The degree to which Section 10-102 applies to the Board of Education is answered by reference to Section 12-502(c) of the Charter. Section 12-502(c) provides that, except for certain enumerated sections (§10-102 is not so listed), the Philadelphia Home Rule Charter applies in all other respects “so far as pertinent” to the Board of Education and the School District. The Law Department has not, to my knowledge, had occasion to formally opine on either the reach of the emphasized phrase in general or the degree to which Section 10-102 in particular applies to the School District and the Board.

However, if Section 10-102 applied to the School District it would clearly then prohibit School District employees from having an interest in contracts paid out of the Treasury of the School District.

Opinion No. 97-13, *1997-1999 City Solicitor's Opinions* at 54 (emphasis in the original).

The requestor's case, as presented in the facts provided, is the reverse: a City employee with a possible interest in a School District contract. Nevertheless, the same principle applies: even if Charter Section 10-102 applies to School District contracts, it would only prohibit such contracts to School District employees, not employees of an operating department of the City of Philadelphia. Accordingly, Charter Section 10-102 would not prohibit the requestor, as an employee of the City, from selling books to the School District of Philadelphia.

However, it is not clear what the view of the School District is. In Opinion No. 93-15, the City Solicitor, in discussing whether the School District may hire City employees as substitute teachers, opined that Charter Section 8-301 would not prohibit such employment, but added:

However, I must raise an additional issue. The School District is itself subject to various provisions of the Charter. *See* Charter, §12-502(c). I believe the School District has ruled in certain cases that under the Charter, the School District could not contract with City employees.

Opinion No. 93-15, *1992-1993 City Solicitor's Opinions* at 304-05. Accordingly, the requestor was advised that she would be well advised to consult with the General Counsel of the School District for the position of the School District.

Conclusion

The requestor was advised that, based on the facts that she provided, Charter Section 10-102 would not prohibit her from selling books to the School District. We were provided no facts that raise any issues under any other provisions of the Public Integrity Laws applicable to the requestor as a City employee. Specifically not addressed in this Advice are any statutes, rules, or policies applicable solely to the

School District of Philadelphia. Any such provisions would be interpreted by the General Counsel for the School District.

If the requestor has any additional facts to provide, we will be happy to consider if they change any of the conclusions in this opinion. Since the requestor requested nonpublic advice from the Board of Ethics, we will not make this letter public, but we will be required to make public a revised version, edited to conceal the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director