



City of Scranton

Ethics Board

340 N. Washington Avenue

Scranton, PA 18503

Board Chairman: Matthew Meyer

Solicitor: John M. Hart, III, Esq.

March 15, 2021
Via Electronic Mail

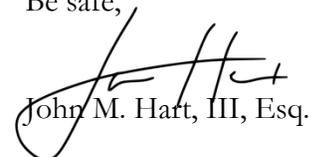
Joseph A. O'Brien, Esq.
Solicitor for the Mayor's Office
jaob@oprlaw.com

RE: Advisory Opinion 21-003 (Solicitor Conflict of Interest)

Dear Atty. O'Brien:

Enclosed is a signed copy of Advisory Opinion 2021-003 addressing the question you presented to the Scranton Ethics Board.

Be safe,



John M. Hart, III, Esq.

Enclosure

CITY OF SCRANTON – BOARD OF ETHICS
ADVISORY OPINION 21-003 (Solicitor Conflict of Interest)

I. INTRODUCTION

The Board of Ethics (“Board”) received an e-mail dated March 4, 2021 from Joseph A. O’Brien, Esquire, requesting an Advisory Opinion as to whether or not a private law firm can continue to represent the City of Scranton with on-going cases that are already in litigation after Mr. O’Brien, a partner of that firm, who now has no material interest in said firm, has subsequently accepted an appointment as solicitor for the City of Scranton, and has agreed to be screened by his firm to ensure no proceeds from the firm’s representation of the City go directly to Mr. O’Brien.

II. AUTHORITY

Section 8 of the City of Scranton Code of Ethics provides that the Board may render advisory opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and application of ethical standards set forth in the Code of Ethics. The Board hereby decides, by the publication of this Advisory Opinion, that the request for advisory opinion is proper and that the request for an advisory opinion on the matters set forth within Attorney O’Brien’s correspondence is within the scope of Section 8 of the Code of Ethics.

III. FACTS

Per the March 4, 2021 correspondence from Attorney O’Brien, currently the City Solicitor for the Mayor’s office, the Board was asked whether or not Oliver, Price & Rhodes (hereinafter “OPR”) may continue to represent the City in cases that they had previously been assigned prior to Mr. O’Brien accepting the appointment as Solicitor for the City in October 2020. Mr. O’Brien is a partner at OPR, a law firm that was litigation defense. The City has, and continues to pay OPR, the rate of \$95.00 per hour for said services. Most, if not all, of the matters assigned to OPR were the defense of civil rights actions in the United States District Court. The work was performed by Attorney Michael J. O’Brien, (Joseph A. O’Brien’s son, who now practices in Philadelphia, PA) and Attorney Jenna Kraycer Tuzze.

Upon appointment as Solicitor for the City, Atty. O’Brien established the policy that there would be no new cases assigned to OPR while he served in the Solicitor’s Office and OPR has received no new assignments since that time. OPR did, however, continue to do the work that it had previously been assigned, as those select cases were well into the litigation process. Atty. O’Brien deemed it not prudent to find successor counsel as the pending matters dealt with intricate civil rights issues that counsel became familiar with over the course of representation.

IV. ADVISORY OPINION

Attorney O’Brien is to be commended for requesting this advisory opinion from the Board of Ethics, by fully remaining in accordance with the Code of Ethics, particularly section 6-15(B) which states in pertinent part, “Each official or employee of the City of Scranton must be constantly on guard against conflicts of interest.”

The first issue presented is whether Attorney O'Brien is subject to the provisions of Section 6-20 of the Code of Ethics. Section 6-20 addresses prohibitive behavior not to be conducted by every city employees and officials. Section 6-17 of the Code defines an employee as "Any individual receiving full-time salary or wages and benefits from the City of Scranton." Section 6-17 defines an official as "Any elected or appointed paid or unpaid member of the government of the City of Scranton, including without limitation members of any City boards, authorities, and commissions."

Attorney Joseph A. O'Brien is currently the appointed Solicitor for the Mayor's Office. Attorney O'Brien's position as solicitor for the Mayor is by appointment. As such, Attorney O'Brien would be considered an employee and/or official and is subject to the Code.

The next issue to be determined is whether or not OPR may continue to conduct their work on the pending litigation in which they represent the City, while a partner, Atty. O'Brien is a currently appointed Solicitor for the Mayor's Office.

Section 6-20(A)(1) of the Ethics Code enumerates actions that employees and officials of the City may not bid or have a material interest.

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 as part of Mr. O'Brien's function as a solicitor for the City, he would be required to act in his official capacity on these pending legal matters in conjunction with the privately retained firm, OPR. Mr. O'Brien is a partner of OPR and typically would have a financial interest clearly separate from that of the general public. However, Mr. O'Brien has informed the Board that as per a newly enacted policy, OPR would not be seeking any new work from the City. The pending cases in which OPR currently represents the City had commenced prior to Mr. O'Brien's appointment as solicitor.

Moreover, in an effort to prevent any potential conflict of interest, OPR has established a policy whereby any fees that come in from the City after Atty. O'Brien's appointment as Solicitor are segregated and paid to the other members of the firm and not to Atty. Joseph A. O'Brien. Provided Atty. O'Brien adheres to this policy and engages in screening to prevent any fees paid for legal services performed by OPR being received by Atty. O'Brien, the Board finds no immediate conflict.

While Atty. O'Brien states that he no longer has a material interest in OPR, the Board finds that OPR would be precluded from receiving any future work for the City while Atty. O'Brien remained as Solicitor for the City, a policy that OPR and Atty. O'Brien had already anticipated and enacted.

It is the opinion of the Board of Ethics that OPR can continue out their representation of the City on the pending legal matters but are precluded from being assigned any future work with the City so long as a partner of their firm holds the position as Solicitor for the City. The Board makes this determination because it is of the opinion that since OPR received the aforementioned assignments prior to Atty. O'Brien being appointed City Solicitor, the Code would not apply. Additionally, so long as Atty. O'Brien receives no monies from OPR's representation on the pending cases, no conflict will arise.

The Board would also like to commend both OPR and Attorney O'Brien for anticipating any conflict and taking appropriate measures in creating policies to avoid any conflict upon Attorney O'Brien's appointment with the City.

V. CONCLUSION

For the reasons set forth herein, it is the opinion of the Board of Ethics that there would be no issue for OPR to carry out their representation of the City with their previously assigned cases provided OPR ensures that Attorney O'Brien receives none of those fees. Additionally, OPR is precluded from accepting any new assignments from the City of Scranton so long as Attorney O'Brien holds an appointed position as Solicitor for the City.

CITY OF SCRANTON, BOARD OF ETHICS

By: 
ID 6AjmQn4woPfQXV6czRABAMZb
Matthew Meyer, Chairman

Adopted: _____, 2021

eSignature Details

Signer ID:	6AjmQn4woPfQXV6czRABAMZb
Signed by:	Matthew Meyer
Sent to email:	matthew.meyer@scranton.edu
IP Address:	174.49.134.207
Signed at:	Mar 16 2021, 10:55 am EDT