



City of Scranton

Ethics Board

340 N. Washington Avenue

Scranton, PA 18503

Board Chairman: Matthew Meyer

Solicitor: John M. Hart, III, Esq.

June 3, 2021
Via Electronic Mail

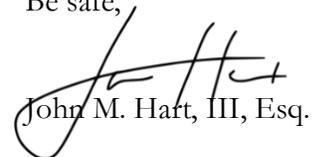
Joseph A. O'Brien, Esq.
Solicitor for the Mayor's Office
jaob@oprlaw.com

RE: Advisory Opinion 21-004 (Solicitor Conflict of Interest)

Dear Atty. O'Brien:

Enclosed is a signed copy of Advisory Opinion 21-004 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 21-004 (Solicitor Conflict of Interest)

I. INTRODUCTION

The Board of Ethics (“Board”) received an e-mail dated April 22, 2021 from Joseph A. O’Brien, Esquire, (“O’Brien”), requesting an Advisory Opinion as to whether or not Attorney O’Brien, as City Solicitor, may review invoices submitted by private law firms for payment by the City for services rendered when the private firm being reviewed is Oliver Price & Rhodes, a firm in which Attorney Joseph O’Brien is a partner.

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 April 22, 2021 correspondence from Attorney O’Brien, currently the City Solicitor for the Mayor’s office, the Board was asked whether or not O’Brien may review invoices that are submitted to the City for payment by Oliver, Price & Rhodes (hereinafter “OPR”) when O’Brien is a partner of OPR. As City Solicitor, O’Brien approves invoices from outside law firms before they are approved for payment. O’Brien states that his approval process involves “reviewing the invoice and determining whether the firm has been engaged for the services billed, whether the hourly rate is the agreed-on rate, whether the services were performed and whether the hours billed for are

reasonable.” O’Brien further states “I am able to make this determination because I work closely with the City’s outside counsel including OPR on cases assigned. I as City Solicitor am the responsible person to make sure that the invoices from outside counsel are reasonable and, in my opinion, the person best suited to evaluate their work.”

O’Brien was appointed as City Solicitor in October 2020. Prior to his appointment, O’Brien was and continues to be a partner at Oliver, Price & Rhodes. O’Brien has previously indicated to the Board of Ethics that while he is a partner at Oliver Price & Rhodes, he has no material interest in OPR nor does he receive any portion of the fees received at the firm.

IV. ADVISORY OPINION

Firstly, O’Brien is solicitor for the City of Scranton and as such is considered an employee and/or official of the City of Scranton. Therefore, O’Brien is subject to the Home Rule Charter and the Code of Ethics.

Section 6 of the Code of Ethics adopted January 28, 2019, by the City of Scranton, sets forth certain types of behaviors which are prohibited. Section 6A entitled “Conflicts of Interest” lists ten specific types of behavior which are prohibited such as using or attempting to use one’s official position to secure special privileges or exemptions for themselves or others. Section 6B provides that “no official or employee shall accept gifts and other things of value in return for a favorable decision or vote” and otherwise regulates the receipt of gifts by City officials or employees. Section 6C addresses the issue of nepotism. Section 6D deals with whistle blowing. Section 6E deals with the use of City property and personnel. Section 6F addresses political activities.

The Board of Ethics has reviewed O’Brien’s procedure of reviewing invoices submitted to the City for payment and has reviewed the applicable sections of the Code. It is the Board’s opinion that due to O’Brien’s history with OPR, as well as present association with the firm despite

O'Brien's claim to have no material interest with OPR, the *appearance* of a conflict exists. O'Brien admittedly states that his review process requires [him] to make a determination of reasonableness of an invoice submitted to the City. This process has the potential to lend itself to a level of discretion without objective oversight, particularly when dealing with OPR invoices. Since there is no statutory procedure set in place to review the invoices submitted to the City, O'Brien is not necessarily required to be the sole individual to review said invoices. It would be in the best interest of the City of Scranton for O'Brien to recuse himself from reviewing any invoices submitted by OPR. Doing otherwise would be in violation of the Code's requirement that employees and officials of the City not "transact any business in an official capacity with any other business entity of which the public officer or employee is an office, director, agent, member or owns a material interest." Code of Ethics, Section 6.A.2.f. While O'Brien maintains that he has no material interest in OPR, he is still affiliated with OPR as a partner, or at the least, a member. In order to avoid any potential conflict of interest, or the appearance of a conflict of interest, O'Brien would be advised to recuse himself from that particular transaction/occurrence and have another assistant solicitor, provided that they are independent of OPR, be charged with the task of reviewing the invoice(s).

As mentioned in previous Advisory Opinions, the Board would 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 certainly be an appearance of a conflict and also probably a conflict of interest for Atty. O'Brien to review OPR invoices submitted to the City for payment, given Atty. O'Brien's affiliation with OPR. It is advisable for an independent assistant solicitor review any and all invoices submitted to the City by OPR.

CITY OF SCRANTON, BOARD OF ETHICS

Matthew Meyer

By: ID GKessdsB8pkiV3sUYdnBs4Wb

Matthew Meyer, Chairman

Adopted: _____, 2021

eSignature Details

Signer ID:	GKessdsB8pkiV3sUYdnBs4Wb
Signed by:	Matthew Meyer
Sent to email:	matthew.meyer@scranton.edu
IP Address:	174.49.134.207
Signed at:	Jun 4 2021, 2:54 pm EDT