CITY OF BALTIMORE
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BOARD OF ETHICS
OF BALTIMORE CITY
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BALTIMORE CITY BOARD OF ETHICS
Ethics Opinion 14-001
(April 8, 2014)

In the course of resolving a recent complaint the Ethics Board was required to make a determination about the propriety of City employees providing references to, or on behalf of, contractors who have performed work for their agencies. The Board applied § 6-36 {"Prestige of office"} of the Ethics Code, which in relevant part reads "[a] public servant may not intentionally use the prestige of his or her office or position for his or her own private gain or that of another" to make its determination.

The Board found that the employee in question had acted for the gain of another in providing a reference letter that he knew would be used by the contractor to secure future work. It further found that, by using his City title and referring to the City in describing the work done by the contractor, the employee had intentionally used the prestige of his "office or position" in his effort to assist the contractor. Finally, the Board noted that because the employee was not specifically authorized or required to issue reference letters as part of his official duties, the letter was not issued in furtherance of the City's interests and was instead furthering a "private" agenda for purposes of § 6-36.

Applying this analysis, the Board held that when a City employee who is not authorized or required to issue a reference letter as part of his or her official duties nonetheless does issue a reference letter to a contractor using a City title or referring to work done for the City, a violation of § 6-36 has occurred.

Despite this holding, the Board recognizes that it may at times be in the City's interest to provide references to contractors. It is therefore appropriate for the Board to provide guidance about how these reference letters may be issued in accordance with the Ethics Code.

§ 6-36 is located in the part of the Ethics Code that deals with conflicts of interest. Broadly speaking, this entire portion of the Ethics Code is concerned with ensuring that City employees and officials do not impermissibly favor certain parties over others in their dealings with the City, and that everyone has access to the same opportunities regardless of personal connections to City employees or officials.

Seen in this context, it is clear why allowing individual employees to decide on their own whether or not to issue a reference letter with the weight of the City's prestige behind it, and to

decide what to say in any such letter, does not accord with the Ethics Code. Without a clear policy on reference letters, an employee's personal feelings about a contractor, or a contractor's luck in interacting with a more or less forthcoming contact person, can be decisive in determining how much assistance the City will provide in securing future work.

This concern can be alleviated if agencies develop official policies about reference letters for employees to follow. These policies also protect employees, since an employee acting in accordance with a formal policy under these circumstances would be furthering the City's stated interests rather than advancing a private agenda for purposes of § 6-36, and so would not be in violation of the Ethics Code.

Of course, a well designed policy can do more than just alleviate conflict on interest concerns about reference letters and immunize employees from one particular Ethics violation, it can virtually eliminate any Ethics concerns that could be raised by issuing a reference letter to a contractor. Such a well designed policy would include three main points:

1. It would designate particular employees at the agency or office level who would be responsible for issuing reference letters for contractors as part of their official duties;

2. It would provide guidance to these employees that reference letters should be as neutral as possible and simply state what work was done and whether or not the work was completed in accordance with the contractor's agreement with the City; and

3. It would include a method for communicating to contractors that letters confirming their satisfactory work are available as well as how they should go about requesting them.

Accordingly, it is the Opinion of the Ethics Board that, although when a City employee who is not authorized or required to issue a reference letter as part of his or her official duties nonetheless does issue a reference letter to a contractor using a City title or referring to work done for the City, a prestige of office violation under § 6-36 has occurred, a reference letter may be issued to a City contractor without violating the Ethics Code if it is issued in accordance with a clear agency policy that communicates the availability of reference letters to contractors and specifies both who may issue reference letters and what the letters should say.