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ICA for the City of Harrisburg
Board Members

RE: **Opinion of Counsel; Financial Conflicts**

Dear Board Members,

I wanted to bring your attention to the provisions of Act 124 of 2018, now codified as 53 P.S. § 42101, et seq. (“the Act”), that relate to financial conflicts of interest. As you are aware, you have individually been appointed by a specific member of the House, the Senate, or the Governor. Further, as a qualification to serve you must be either a resident of the City of Harrisburg (“Assisted City”) or have your primary places of business or employment in the Assisted City. *Id.* at § 42202(3). As general guidance the Public Official and Employee Ethics Act¹ (“Ethics Act”) proscribes public officials from having improper influence, accepting improper influence, or engaging in contracts that have a value at \$500 or more. The Act specifically provides as follows:

(3) No member of the board or employee of the authority may:

(i) directly or indirectly be a party to or be interested in any *contract or agreement* with the authority or with the assisted city; or

(ii) use his office or employment or any confidential information received through his office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Id. at § 42202(g)(3); (emphasis added).

A municipal contract is an exercise of the corporate authority or powers of a municipal entity, such as the Assisted City. Therefore, it requires a majority vote of the governing body to enter into any contract or agreement. Such contracts are generally awarded only after competitive bidding, however, there are exceptions. For instance, competitive bidding is not applicable to real property simply because a municipal entity must be able to negotiate freely and fairly and to do so by a bidding process would negate this opportunity. Therefore, contracts or agreements entered into by the Assisted City are

¹ 65 Pa.C.S.A. § 1101; See § 1103 relating to “restricted activities.”

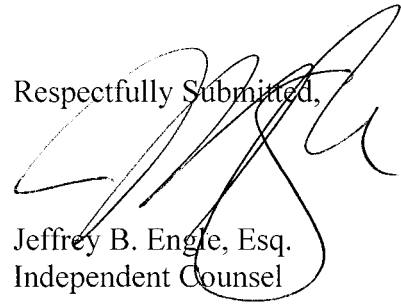


relatively small in scope as compared to other exercises of its powers, such as police powers, legislative authority and regulatory authority.

Accordingly, I would caution members that engaging in a contract or agreement with the Assisted City that would require a vote and approval of the governing body or Council and ratification by the Mayor *may* not be appropriate. However, other engagements with the Assisted City under its many other powers and duties would *not* be *inappropriate*. To be clear, as predicated on your involvement on this Board, you are a City resident or have a vested business interest in the successes of the City. Engaging in ordinary and necessary processes with City Government relative to police powers or regulatory powers is not a conflict of interest. As an example, the application for a business license, building permit or a zoning permit falls within the tranche of what I would refer to as a “police” or “regulatory” power of the Assisted City. It is only practicable and necessary that any Board Member may have to do so during their tenure as a Member on the Board. Further, my opinion is that this is precisely why you were appointed in the first place. You have an interest in the Assisted City. *See* 53 P.S. at § 42202(3), *supra*. Such application may require that you sign or accept the Assisted City’s guidance, declaration or regulations. This does not meet the definition in either the Act or the Ethics Act as a contract or an agreement that would be violative of your duties as a Board Member.

Please be guided accordingly.

Respectfully Submitted,



Jeffrey B. Engle, Esq.
Independent Counsel

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Mesh LLC, Attn: Jeffrey Stonehill