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Use of City Letterhead for Letters of Reference

Charter Sections: 2604(b)(2)

Advisory Opinion No. 2013-2

The Board has received a number of requests for advice over the years about the use of City letterhead for reference letters and other letters in support of current or former City employees. For example, these questions arise when City employees are seeking new employment, admission to an educational institution, clearance from a co-op board, the adoption of a child, or leniency from a sentencing judge and turn to a fellow City employee for a letter in support of such a personal endeavor. These fellow City employees have in turn asked the Board whether they might write such letters on City letterhead. In order to summarize the Board's past responses to these requests for its advice and to set forth the standard by which such questions will be evaluated, the Board issues this Advisory Opinion.

Relevant Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in any “business, transaction or private employment,” or from having “any financial or other private interest, direct or indirect,” that is “in conflict with the proper discharge of his or her official duties.” Board Rules Section 1-13(b) provides that “it shall be a violation of City Charter § 2604(b)(2) for any public servant to use **City letterhead**, personnel, equipment, resources, or supplies for any non-City purpose.” (Emphasis added.)

Discussion

The Board, in promulgating Section 1-13(b) of its Rules, explicitly determined that the use of “City letterhead” for “any non-City purpose” would violate Chapter 68, the City’s conflicts of interest law. Thus, for example, in 2007 the Board found that the use of City letterhead for a reference letter for a colleague **did violate** Chapter 68 when it issued public warning letters to seventeen employees of the Department of Sanitation and one employee of the Department of Education, each of whom used City letterhead to write letters to the court in support of a Sanitation Superintendent who was scheduled for sentencing. The Board’s warning letters stated that this use of City letterhead was done without the knowledge or consent of the agency head in question and stated that this *personal* use of City letterhead violated Board Rules Section 1-13(b).¹

¹ See, e.g., *COIB v. Cala*, COIB Case No. 2007-187 (2007).

The Board, however, recognizes and has over the years informally advised that, where certain conditions are satisfied, City letterhead may be used for reference letters, including not only reference letters for potential employers, but also letters of recommendation for other personal pursuits of a current or former City employee, including, without limitation, a co-op board application, adoption of a child, and the other pursuits previously mentioned. More particularly, a City employee who is authorized, whether explicitly or implicitly, to speak for his or her City agency with respect to the performance and/or character of another City employee will be permitted to use City letterhead for a reference letter for that employee. In most cases, the authorized employee will be a superior of the employee on whose behalf the letter is being written. Such a superior, and any other employee explicitly authorized by agency leadership, will be writing on behalf of the City, not on behalf of himself or herself personally, and may thus use City letterhead for this *City* purpose.² The City purpose for such letters includes the City's interest in attracting to and retaining qualified people in City service,³ an end that is promoted by providing these customary letters of reference or recommendation from one's employer.

Thus, in the case of the Sanitation Superintendent facing sentencing, the Sanitation Commissioner could have, if he had so chosen, used City letterhead to write to the sentencing court in support of the Superintendent, because he was a superior of the Superintendent. In addition, any other superior of the Superintendent, such as the Deputy Commissioner with

² The corresponding federal regulation would similarly permit a federal executive branch employee "to provide a letter of recommendation for a former subordinate...using official stationery and...using his official title." See 5 C.F.R. Section 2635.702(b), Example 1.

³ Besides its interest in attracting and retaining employees, the City has a similar interest with respect to interns and others who volunteer for the City. City letterhead may thus be used by those responsible for supervising these interns and other volunteers to write reference letters for them.

authority over his work, could have used City letterhead to write to the court concerning the Superintendent's case.⁴ But the seventeen Sanitation employees who used City letterhead to write on the Superintendent's behalf violated Chapter 68 because none was the Superintendent's superior nor was otherwise authorized to speak for the Department of Sanitation concerning the Superintendent.

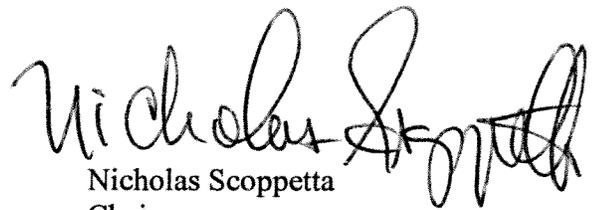
That said, provided that their letters did not otherwise suggest that they were writing with the authority of the Department of Sanitation, these seventeen fellow Sanitation employees could have written supportive letters on their *personal* stationery and without invoking the authority of their City positions.⁵ Thus, while City employees may not use City letterhead to write a reference letter for a peer, for a superior, or indeed for any current or former City employee unless the writer is or was the superior of that employee or is otherwise authorized by agency leadership to speak for his or her City agency with respect to such employee, City employees are permitted to send these types of recommendation or reference letters in their personal, non-City capacities using their personal stationery.

⁴ As the Board has historically observed, City agencies are permitted to impose restrictions on their employees in addition to those imposed by Chapter 68. An agency could therefore almost certainly forbid the use of agency letterhead for any reference letters except those written by the agency head. A supervisor who used City letterhead for a reference letter for a subordinate in the face of such an agency restriction could therefore face agency disciplinary action, but would not violate Chapter 68.

⁵ This means not only that a City employee, writing on his or her personal stationery, cannot say "I speak for my City agency," but also that he or she also cannot imply as much. In the Department of Sanitation case discussed herein, this means, for example, that an employee may not make such statements as "we at the Department of Sanitation have been regularly impressed by the Superintendent's hard work and dedication." On the other hand, an employee might have written that "as a colleague of the Superintendent at the Department of Sanitation I have come to know him well and view him as a man of great integrity."

Conclusion

It will violate the conflicts of interest law for a City employee to use City letterhead for a reference letter for a fellow City employee, unless the writer is the superior of that City employee or is otherwise authorized by that City agency's leadership to write with respect to that employee.



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