

CITY OF BIRMINGHAM
BOARD OF ETHICS ADVISORY OPINION
2003-04
FEBRUARY 3, 2004

ISSUE

Deputy Chief of Police Donald Studt has requested an advisory opinion regarding whether he, as a City employee, may run for political office on the non-partisan judicial ballot during non-compensated time. In addition to seeking this advisory opinion, the Deputy Chief has disclosed his potential candidacy to the Chief of Police, the City Manager and the City Attorney.

OPINION

The facts as presented do not constitute a violation of City of Birmingham Ordinance 1819. Deputy Chief of Police Donald Studt may campaign for the office of 48th District Court Judge on the non-partisan judicial ballot during non-duty time provided that he: (a) does not do any campaigning during working hours, (b) must not allow any campaign volunteers who are City employees to work on campaign related business during their work hours or on City facilities, (c) must not solicit services of any City employee to work on his campaign, (d) must not take or threaten any adverse job action to those City employees who choose not to be involved in his campaign, (e) must not use confidential information in his campaign, and (f) cannot create the impression that the City of Birmingham is sponsoring or expressing any opinion concerning the Deputy Chief's campaign.

ANALYSIS

The Ethic Ordinance clearly prohibits all City employees from using public office for private gain. Section 2-320 and 2-323 (I). Further the Ethics Ordinance requires all City employees to be non-partisan in all their official acts. Section 2-321. Clearly Deputy Chief Studt is a City Employee. Section 2-322(I). The Ethics Ordinance defines private gain as "any interest or benefit" a City employee receives. Section 2-322 (VII). A benefit need not be monetary to fall within the terms of the Ethics Ordinance. A City employee running for public office could receive one or more benefits during a campaign. It appears to this Board, that a City employee can be a candidate for public office and comply with the Ethics Ordinance if care is taken to avoid specific conflicts of interest.

The City of Birmingham Code of Ethics sets forth nine specific situations which constitute conflicts of interest listed in Section 2-324, only four of which potentially apply to a judicial campaign.

Section 2-324 A (III) prohibits the use of City personnel resources, property and funds for personal gain. While Deputy Chief Studt is on duty he may not participate in any campaign related activities nor may he permit any other City employees who work on his campaign to do so during their City work time. The Ethics Ordinance prohibits using City phones or other equipment (such as computers, fax or copying machines) for his campaign.

Section 2-324 A (IV) provides that it is a conflict of interest for a City employee to solicit any services which tend to influence the manner of performance of official duties. One of the Ethics Ordinance concerns is that requests or offers of assistance outside of the job may influence a variety of employment conditions, including job evaluation or promotion. It is incumbent upon Deputy Chief Studt to assure all City employees and the public that participation in his campaign is not required of any City employee and that whether a City employee

participates in his campaign or not is totally irrelevant to their present or future employment status with the City of Birmingham.

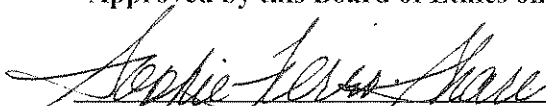
Section 2-324 A (V) prohibits the use of confidential information for personal gain. As a senior police officer, Deputy Chief Studt has access to confidential information. It would be unethical for him to use any confidential information to further his electoral campaign.

Section 2-324 A (VIII) states that a City employee may not use his official position to obtain advantages not available to all citizens. This section of the Ethics Ordinance prohibits any City employee who is a candidate for office from using City vehicles or other City property in campaign promotional material or appearing in uniform at any campaign event.

The list of do's and don'ts in this Opinion is not exhaustive. There may be situations that arise during a judicial campaign that are not addressed in this Opinion—or even that the Board or the candidate has not contemplated. The Ethics Ordinance challenges any City employee who is a candidate for judicial office, including Deputy Chief Studt, to constantly consult the Ethics Ordinance to assure continued compliance with the City's ethical standards throughout the entire campaign and requires him to disclose any conflict of interest to his supervisor (2-324 B). As with all other situations, ethical behavior requires constant awareness and vigilance.

This opinion reflects this Board's analysis of whether a City employee may run for judicial office consistent with the City's Ethics Ordinance. This Board has not considered any other questions, nor should the Board be understood to issue an opinion endorsing Deputy Chief Studt's candidacy or any particular position or action his campaign may take. This Board has not considered the appropriateness of Deputy Chief Studt's candidacy or the requirements his campaign must observe under any other authority, including how, if at all, the City's personnel policies or State regulations governing election laws may bear on any individual's candidacy.

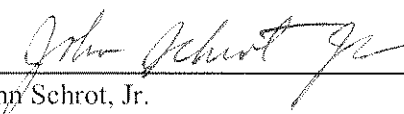
Approved by this Board of Ethics on the 3rd day of February, 2004.



Sophie Fierro-Share



James Robb



John Schrot, Jr.