

2011 Index of Advices of Counsel

Advice No.	Date Issued	Brief Description	Key Words
			Citations
GC-2011-501	2/16/11	The City's Police Advisory Commission asked whether there is an impermissible conflict of interest for the Commission's Executive Director arising out of the fact that his brother is the head of the Police Department's Internal Affairs Division. Advised that if the Commission investigates a complaint concerning the conduct of the Executive Director's brother, then the Executive Director would have a conflict, and he must disclose the financial interest of his brother and disqualify himself from participating in that matter. Otherwise, the Executive Director would not have a conflict with respect to matters that do not involve his brother's conduct.	<p>CONFLICT OF INTEREST; POLICE ADVISORY COMMISSION; SIBLINGS; NO INHERENT CONFLICT OF INTEREST OR APPEARANCE OF IMPROPRIETY</p> <p>Code §20-607; 65 Pa. C.S. §1103(a)</p>
GC-2011-502 Non-public Advice	3/3/11	Advised an employee whose duties include technical line-level work that the State Ethics Commission would conclude she is not a "public employee" and therefore not subject to the State Ethics Act one-year post-employment restriction. If the restriction did apply, it would make difficult the employee's plan to work for a firm that has a City contract and to perform services for the City as an employee of the firm. Although the firm has a contract with the employee's current City department, City Code §20-603 would not prohibit her from doing any work under that contract if she becomes an employee of the firm, so long as her work did not involve adversarial assistance with her previous work for her City department. City Code §20-607(c) imposes a two-year prohibition on the employee acquiring a financial interest in official decisions she made while in City employ.	<p>POST-EMPLOYMENT RESTRICTIONS; FIRM WITH CITY CONTRACT; NOT A "PUBLIC EMPLOYEE"</p> <p>Code §§ 20-603(1), 20- 607(c); 65 Pa. C.S. §1103(g)</p>

GC-2011-503 Non-public Advice	3/23/11	Advised a City employee concerning a local company's invitation to become a member of an advisory board to the company for at least 2 years and for which he would receive an annual \$10,000 stipend, plus travel and hotel expenses. The stipend is compensation for services rendered and is not a gift. The employee would not be considered a "member" of the company for purposes of the conflict provision of Code §20-607(b). The State Ethics Commission might well conclude that the conflict of interest provision of the State Ethics Act would prohibit the employee from taking official action that affected the company during his service on the advisory board. It was unclear whether the State Ethics Commission would consider the annual stipend to be a prohibited honorarium.	CONFLICT OF INTEREST; PAID ADVISORY BOARD TO LOCAL COMPANY; NOT A "MEMBER" OF COMPANY; HONORARIUM
			Code §§20-604, 20-607; 65 Pa. C.S. §1103(a), (d)
GC-2011-504 Non-public Advice	4/6/11	Advised the treasurer of a political committee regarding the committee's plan to move its single checking account to a new bank. Because the committee had recurring bills set on automatic payment from its current account, the treasurer proposed switching the bulk of the committee's funds to a new bank, while leaving less than \$5,000 in the current account to cover the automatic payments and with an intention of transferring any remaining funds to the new account later. City Code §20-1003(1) prohibits this plan because a candidate committee may not have more than one checking account that receives contributions or makes expenditures. If the committee wishes to change banks, it must either close one account and open another, or if two accounts are to be open simultaneously only one of the accounts should receive contributions and make expenditures.	CAMPAIGN FINANCE; SINGLE CHECKING ACCOUNT RULE; CHANGING BANKS; TEMPORARY EXISTENCE OF MULTIPLE ACCOUNTS
			Code §20-1003(1); Regulation 1
GC-2011-505	6/17/11	Advised the Commerce Department's Chief Operating Officer and Deputy Commerce Director regarding his proposed service as an unpaid board member of a nonprofit organization, United Way of Southeastern Pennsylvania. There were no issues under the City Code's conflict of interest provisions, but under the State Ethics Act he should not take official action that causes United Way to receive a "private pecuniary benefit." If his official duties intersect with the financial interests of United Way, he should disclose this interest and disqualify himself from acting for the City.	CONFLICT OF INTEREST; UNPAID BOARD MEMBER OF NONPROFIT; COMMERCE DEPARTMENT; UNITED WAY
			Code §20-607; 65 Pa. C.S. §1103(a)

GC-2011-506 Non-public Advice	7/18/11	Advised a former City employee regarding the application of post-employment restrictions to her independent consulting work. As a City employee, she had managed contracts between the City and certain non-profits, including invoice review and recommending contract approvals. Under Code §20-607(c), for two years after leaving the City she should not acquire a financial interest in action she took in her official capacity. This would include working for the non-profits whose contracts she had managed for the City if she would receive compensation from revenue derived from the contracts. Under Code §20-603(1), she may never assist another person in any “transaction involving the City” as to a particular issue about which she exercised discretion while working for the City. Under the State Ethics Act, for one year after leaving the City she may not represent anyone, including herself, before the governmental body with which she was associated (likely her former department), including by personally contracting with that body or having her name appear on documents submitted to it.	POST-EMPLOYMENT RESTRICTIONS; CONSULTING WORK; CONTRACTS
			Code §§ 20-603(1), 20-607(c); 65 Pa. C.S. §1103(g)
GC-2011-507	7/25/11	Advised Chief of Staff to the Managing Director because the company that employs his wife responded to a request for proposals (“RFP”) issued by Philly311, which reports to the Managing Director’s Office (“MDO”). The requestor had direct management responsibility for the administrative functions of the MDO, but he did not participate in the development of the RFP, will not review the responses, and will not manage the contract at issue. Advised there were no issues under the City Code’s conflict of interest provisions, but under the State Ethics Act he should not take official action that causes his wife’s employer to receive a “private pecuniary benefit.” This likely includes approving a contract between the City and the employer, in which case he should follow the disclosure and disqualification process.	CONFLICT OF INTEREST; SPOUSE’S EMPLOYER RESPONDS TO RFP; CONTRACTS
			Code §20-607; 65 Pa. C.S. §1103(a)
GC-2011-508 Non-public Advice	9/8/11	Provided post-employment advice to a City employee who was considering leaving City employment and applying for a position with a company that does business within the City. The employee held a technical position in an operating department and also had prior service in a different City department.	POST-EMPLOYMENT RESTRICTIONS; MULTIPLE CITY DEPARTMENTS
			Code §§ 20-603(1), 20-607(c); 65 Pa. C.S. §1103(g)

GC-2011-509	8/24/11	Advised a Divisional Deputy City Solicitor regarding post-employment restrictions that might apply to a potential post-City job as Deputy Policy Director for the Committee of Seventy. The State Ethics Act one-year post-employment restriction has limited application to attorneys. So long as he would be practicing law, the State post-employment rule would not apply. To the extent he would not be engaged in the practice of law, he may not for one year after leaving City employment represent anyone, including a new employer, before his former governmental body. Similarly, Code §20-603(1)'s post-employment representation rule would restrict him, only to the extent that he was not practicing law, from representing persons in transactions involving the City in which he had participated as a City employee. Under Code §20-607(c), for two years after leaving City employment, he should not acquire a financial interest in action he took in his official capacity.	POST-EMPLOYMENT RESTRICTIONS; ATTORNEY; COMMITTEE OF SEVENTY
			Code §§ 20-603(1), 20-607(c); 65 Pa. C.S. §1103(g)
GC-2011-510 Non-public Advice	9/28/11	Advised a City employee about the application of various ethics restrictions of the City Charter, City Ethics Code and State Ethics Act in light of her position as an officer of a nonprofit that she created. The representation restriction of Code §20-602(1) prohibits the employee from participating in a meeting with City officials to brainstorm about a project related to the nonprofit.	PROHIBITED REPRESENTATION; OFFICER OF NON-PROFIT; MEETING WITH CITY OFFICIALS
			Code §§20-602, 20-607, 20-608; Charter §10-102; 65 Pa. C.S. §1103(a)
GC-2011-511 Non-public Advice	10/7/11	Advised a City employee regarding whether his proposed activity exploring a possible run for public office would require him to resign his City position under the resign to run restriction of Charter §10-107(5). Under the Charter and the City's campaign finance law, the employee will not become a candidate until he either files nominating papers or publicly announces his candidacy. The employee proposed meeting with a group of less than 15 community members (without media) and sharing his qualifications, his thoughts on the community and its needs, and his willingness to consider a run for public office (without committing to run). This activity alone would not constitute a declaration of candidacy and would not require him to resign his City position.	POLITICAL ACTIVITY RESTRICTION; RESIGN TO RUN; PUBLIC ANNOUNCEMENT OF CANDIDACY
			Charter §10-107(5)

GC-2011-512 Non-public Advice	11/30/11	Advised a City employee who was considering purchasing with a partner an existing business located in the city. The employee works for a City department that regulates such businesses, and she is responsible for the staff that takes City action in regulating such businesses. The employee may not take official action on any matter in which she or her business has a financial interest. In any such matter, the requestor must disclose her financial interest and disqualify herself from working on that matter for the City, as provided in Code §20-608. The employee may not represent any person as agent or attorney in any transaction involving the City, including her business and her partner. Her partner may represent the business, if the employee follows the disclosure and disqualification procedure. Under Code §20-609, the employee must not disclose confidential information she acquired in her City employment to any other person for the purpose of advancing her financial interest or that of her business or partner.	CONFLICT OF INTEREST; OWNER OF A BUSINESS; PROHIBITED REPRESENTATION; DISCLOSURE AND DISQUALIFICATION
			Code §§20-602, 20-607, 20-608, 20-609
GC-2011-513	12/8/11	Advised the Nutter for Mayor political committee regarding the solicitation and receipt of contributions to defray the expenses of an inaugural celebration. Funds raised by a former candidate to pay for inauguration expenses are post-candidacy contributions that are subject to the contribution limits. All post-candidacy contributions raised by a former candidate must be deposited into the checking account of the former candidate's authorized candidate political committee. Likewise, any inaugural expenditures (or other post-candidacy expenditures) must be made from the same checking account. A former candidate who prevails in the general election may accept post-candidacy contributions between the general election and the end of that calendar year and in each subsequent calendar year that follows the election year. Contributors may make post-candidacy contributions in the election year even if they previously made the maximum allowable contribution to the candidate that year prior to the general election.	CAMPAIGN FINANCE; POST-CANDIDACY CONTRIBUTIONS AND EXPENDITURES; INAUGURAL EXPENSES; CANDIDATE POLITICAL COMMITTEE; NUTTER FOR MAYOR
			Code §§20-1001(14), 20-1002(4),(5); 20-1003(1); Regulation 1

GC-2011-514 Non-public Advice	1/23/12	The same advice about post-candidacy contributions that was covered in Advice of Counsel GC-2011-513 was provided to a different candidate political committee. See the summary above.	CAMPAIGN FINANCE; POST-CANDIDACY CONTRIBUTIONS AND EXPENDITURES; INAUGURAL EXPENSES; CANDIDATE POLITICAL COMMITTEE
			Code §§20-1001(14), 20-1002(4),(5); 20-1003(1); Regulation 1
GC-2011-515 Non-public Advice	2/9/12	Advised a prospective City employee that Code §20-602 would prohibit his proposed outside employment representing clients in adjudicative proceedings involving a City agency represented by the Law Department. He is restricted from personally representing any person as agent or attorney in any transaction involving the City, whether or not his particular office is acting in the matter. The adjudicative proceedings would constitute “transactions involving the City” since the City is a party.	PROHIBITED REPRESENTATION; OUTSIDE EMPLOYMENT; TRANSACTION INVOLVING THE CITY; CITY AS A PARTY
			Code §20-602