



CITY OF PHILADELPHIA

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**GC-2008-525**

**Philadelphia Board of Ethics  
Nonpublic Advice of Counsel**

December 3, 2008

**Re: City Employee Representing Nonprofit before City**

A City department head requested nonpublic advice regarding a potential conflict concerning an employee in that department. The department head advised that the subject employee responds to inquiries from Councilmembers and other officials regarding the work of the department. We were also advised that in a previously held position the employee represented the City in certain adjudicatory matters.

The potential conflict arises from the proposed appearance of the subject employee as a representative of a nonprofit organization in a City transaction conducted by an official of the employee's department. The request also indicated that the subject employee may in the future plan to represent certain family members in similar City transactions.

The department was advised that the subject employee is prohibited from representing the nonprofit, and there may be certain restrictions, depending on the facts, on her ability to represent certain others. The ethics laws do not restrict the ability of the department to hear certain matters, based on whether there is an issue of whether a representative of a party may appear.

The requestor was advised that Section 20-606(1)(d)(ii) of The Philadelphia Code provides that: "Advisory opinions shall be issued only with respect to proposed future conduct or action by a City officer or employee." To the extent that the Board has

separate authority under the Charter, there is similar applicable language in the Board's Regulation No. 4, at paragraph 4.1(d):

(d) **Advice on future conduct only.** Except as provided in paragraph (e) below, the Board or its staff shall only issue advice to a City officer or employee or a supervisor of such City officer or employee, or to a candidate, candidate political committee, or political committee with respect to the proposed future conduct or action of the subject whose conduct is at issue.

Accordingly, to the extent that this inquiry relates to conduct that has already occurred, the department head was advised that advisory does not address past conduct. Since the requestor inquired as to the subject employee representing "others," a general summary of the ethics laws that apply is also provided.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this advice is predicated on the facts that have been provided. The Board of Ethics does not conduct an independent inquiry into the facts. Although previous opinions of this office or the Law Department that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation. In that regard, to the extent that this Advice states general principles, and there are particular fact situations that the requestor may be concerned about, the requestor was encouraged to contact the Board of Ethics for specific advice on the application of the ethics laws to those particular facts.

### **Philadelphia Code—Prohibited Representation**

Section 20-602 ("Representation by City Officers, Employees and Members of Council") prohibits certain representation by City employees. Subsection 20-602(1)(a) provides:

(1) (a) No member of the Council nor other City officer or employee shall assist another person by representing him directly or indirectly as his agent or attorney, whether or not for compensation, in any transaction involving

the City. This Section shall not apply to any assistance rendered by any member of Council or other City officer or employee in the course of or incident to his official duties, or to any person who holds any City office or position who is not compensated for his service by the City. Subject to Section 20-602(4).

Unlike conflict of interest provisions, this provision is an absolute ban, and may not be avoided by disclosure and disqualification. Nevertheless, there are some exceptions, as stated in subsection 20-602(4):

(4) A member of the Council or any other City officer or employee may act, with or without compensation, on his own behalf or as agent or attorney for, or otherwise aiding or assisting, his parents, spouse, child, brother, sister or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally as a member of Council, City officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility.

Applying these provisions to the query, the department head was advised as follows: Based on the facts provided, it appears that the subject employee proposes to act as the agent for a nonprofit, a party before the City in a certain matter. None of the exceptions in subsections (1) or (4) appear to apply. Accordingly, the requestor was advised that such representation is prohibited.

As noted in paragraph 4.1(d) of Board of Ethics Regulation No. 4, quoted above, advice may be provided, not only to the employee whose conduct is at issue, but also to that employee's supervisor, on request. As the Commissioner of the department in which the subject employee is employed, the requestor was advised that he/she may wish to review the substance of this advisory with the subject employee. Nevertheless, the Public Integrity Laws cited in this advisory restrict only the conduct of the subject employee. Although it has often been stated that the City has a policy of not proceeding with a transaction where it is aware that one of the parties would be violating the law by participating, there is no affirmative obligation on the City, as a governmental entity, to do so. Accordingly, although the department head may direct that no officer in that department should consider a matter in which the subject employee is representing a party in violation of this advisory, this is not required.

**Representation of others**

If, in the future, the subject employee should seek to represent others, such as family members, in official actions in his/her department, Section 20-602(1)(a) would also apply. In the case of family members, however, reference should be made to subsection 20-602(4). The subject employee may represent a parent, spouse, child, or sibling, provided that the matter in which he/she is appearing is neither:

- a) one in which he/she participated previously as a City; or
- b) one which is currently the subject of his/her official responsibility.

**Conclusion**

Based on the facts provided, the requestor was advised as to the following:

1. The subject employee is prohibited from appearing before an official in his/her department as the representative of a nonprofit in an official City matter. This prohibition is personal to the subject employee and imposes no legal obligation upon the City.
2. The subject employee may represent a parent, spouse, child, or sibling, before his/her department in a future matter, provided that the matter in which he/she is appearing is neither one in which he/she participated previously as a City employee, nor one which is currently the subject of his/her official responsibility.

Since nonpublic advice was requested, we are making public this revised version, edited to conceal the identity of the requestor, as required by Philadelphia Code Section 20-606(1)(d)(iii).

Evan Meyer  
General Counsel

cc: Richard Glazer, Esq., Chair  
J. Shane Creamer, Jr., Esq., Executive Director