

CITY OF PHILADELPHIA

BOARD OF ETHICS
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Evan Meyer
General Counsel

**Philadelphia Board of Ethics
Advice of Counsel GC-2012-505**

May 7, 2012

Hon. Dennis M. O'Brien, Councilman-at-large
c/o Matthew G. Braden, Chief of Staff
Room 582 City Hall
Philadelphia, PA 19107

Re: Solicitation for Charitable Organization

Dear Councilman O'Brien:

You have requested an advisory opinion as to whether the ethics laws would permit you to send a solicitation letter to businesses in and serving the Northeast section of the city, soliciting sponsors for a race to benefit youth sports organizations. Your office has provided a copy of a draft of the proposed letter which invites the recipient to join you "in sponsoring the 9th Annual Northeast Philly 5 Mile Run / 2 Mile Walk."

Many City officers and employees serve the public, not only in their public positions, but also by supporting private charitable organizations, serving on the boards of charitable nonprofits, raising money for charitable purposes, and assisting with charitable fund-raising events. There is no general requirement that City officers or employees avoid all other financial interests while serving the City, provided that

outside work is not performed on the City's time or using City materials or equipment, and conflicts of interest are avoided. In that regard, the Philadelphia Home Rule Charter, the Philadelphia Code, and the Commonwealth's Ethics Act specify certain conduct which is prohibited for a City officer or employee. This advisory will discuss the restrictions of each of those three bodies of law in the following paragraphs, in addition to disclosure and disqualification requirements.

Home Rule Charter

Section 10-100 of the Charter prohibits Councilmembers from benefiting from, or having a direct or indirect interest in, certain City contracts, even if they had no official connection with the contract. The facts that you have provided indicate no City contract involved, nor any personal financial interest by you. Based on these facts, there is no issue under the Charter.

Philadelphia Code Representation Provision

The Philadelphia Ethics Code imposes certain restrictions on City officers or employees representing others. Code Section 20-602(1) would prohibit a City officer or employee from engaging in outside employment (even if unpaid) that involved representing another person, directly or indirectly, as that person's agent or attorney in any transaction involving the City.

However, there is no indication in the facts that you have provided that you would be acting as the agent of any specific organization in soliciting donations or support for the race, nor that any transaction involving the City would be implicated.

Accordingly, there is no issue under Code Section 20-602.

Conflict of Interest Provision—Philadelphia Code

The Philadelphia Ethics Code, in Section 20-607, prohibits City officers and employees from having conflicts of interest that arise from either having a personal financial interest or being a member of a business or other entity that has a financial interest in their official decisions. Based on the facts that you have presented, there is no official action involved in sending the solicitation letter. (A decision to use Council letterhead to send the letter is not official action for this purpose.) Nor have you

advised that you are an officer or director of any of the organizations that would receive funds.

Accordingly there is no issue under Code Section 20-607.

State Ethics Act

The State Ethics Act, 65 Pa.C.S. §1101 *et seq.*, applies to you, as a “public official.” Although the Act differs from the City Code in some respects, for purposes of the facts and question you have presented, the analysis is similar.¹ The facts you provide do not appear to identify a conflict of interest under the Act.

For specific guidance on the State Ethics Act, you should seek either a confidential or a non-confidential advisory opinion issued by the State Ethics Commission, which would provide you a complete defense in any enforcement proceeding initiated by the Commission and is evidence of good faith conduct in any other civil or criminal proceeding, provided you disclose truthfully all the material facts and acted in reliance on the Advice. *See* 65 Pa.C.S. §1107 (10), (11). The State Act would also provide you protection from certain penalties if you seek and rely on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

A request for advice from the State Ethics Commission should be directed to:

State Ethics Commission
Attention: Legal Division
Room 309 Finance Building
P.O. Box 11470
Harrisburg, Pa 17108-1470

Conclusion

You have asked for advice on whether the ethics laws would permit you to send a solicitation letter to businesses in and serving the Northeast section of the city, soliciting sponsors for a race to benefit youth sports organizations. Thank you for your interest in ethics and for recognizing the importance of seeking advice before an issue arises. Based on the facts that you have provided, you are advised as to the following.

¹ The Act treats members of nonprofit organizations somewhat differently, which might present an issue if you were an officer of, or compensated by, one of the nonprofits receiving funds, but the facts that you presented are otherwise.

May 7, 2012

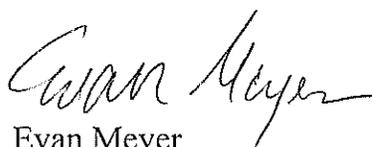
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Charter Section 10-100 and Philadelphia Code Section 20-602(1)(a) do not restrict this activity. The facts presented do not identify a conflict of interest under Code Section 20-607. Nor does there appear to be an issue under the State Ethics Act, but the State Ethics Commission is the entity with jurisdiction over the Act.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Advice has been predicated on the facts that were provided to the Board of Ethics. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Although previous opinions of this office 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, prior to acting. In that regard, to the extent that this Advice states general principles, and there are particular fact situations that you may be concerned about, you are encouraged to contact the Board for specific advice on the application of the ethics laws to those particular facts.

Since you have requested public advice from the Board of Ethics, we will make this letter public, as required by Code Section 20-606(1)(d)(iii).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Evan Meyer", written in a cursive style.

Evan Meyer
General Counsel

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