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Philadelphia Board of Ethics
Nonpublic Advice of Counsel GC-2012-512

September 20, 2012

Re: Political Activity / Authorized Political Committee

A City employee requested nonpublic advice regarding the Charter's restrictions on political activity. The employee advised that she was formerly a candidate for elected non-City office. The requestor advised that at the time of her candidacy, she had two different supporters serving as the Treasurer and Chairperson for her Campaign Committee ("the committee"). Following her loss in that race, the Committee had an outstanding campaign debt to a vendor. The requestor advised as to the following:

> Following the campaign, I amended the personnel of the committee, appointing myself as the Chairperson and [another person] as the Treasurer. The committee is no longer an active committee in the context that it has ceased raising funds and there are no candidates or initiatives for which the committee exists to support. However, due to the outstanding debt, the committee cannot be closed, and therefore the officers of the committee must continue to file financial reports and/or statements on an annual basis.
>
> Due to the restrictions on fundraising as a City employee, I am not able to raise the necessary funds to retire this debt. Furthermore, the vendor is unwilling to relieve the committee of this debt, and the committee has no legal recourse that could require the vendor to do so. Lastly, both the vendor and I would prefer to have these debts remain outstanding so that if the committee became an active committee again in the future, these debts could one day be settled.

> Please provide some guidance as to whether or not these circumstances are in conflict with any portions of Regulation 8, and if so, appropriate remedial actions. If there are any conflicts, one possible solution that has been suggested to me would be to officially reclassify the committee as an Exploratory Committee.

We advised the requestor that, as an appointed City employee, she is subject to the restrictions on political activity stated in Section 10-107 of the Home Rule Charter. Subsections 10-107(3) and (4) restrict political activity and political fund-raising. As to appointed employees, subsections (3) and (4) are interpreted by Board of Ethics Regulation No. 8, which became effective March 28, 2011. Since the requestor neither asked about political activity other than fund-raising nor provided any facts that indicate that she would be involved in any political activity other than being the named Chairperson of a registered political committee that is not currently active, this Advice will not address subsection 10-107(4). However, the requestor should be aware that the provision does apply to her, as an appointed City employee.

We have been asked about the fund-raising restriction, which is stated in Charter subsection 10-107(3). That subsection provides, in relevant part, as follows:

> (3) No officer or employee of the City and no officer or employee of any governmental agency whose compensation is paid from the City Treasury shall, from any person, and no officer or member of a committee of any political party or club shall, from any civil service employee, directly or indirectly demand, solicit, collect or receive, or be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever.

Regulation No. 8 interprets this provision, in part, in Subpart D, in particular Paragraphs 8.6 and 8.7, which provide as follows:

> **8.6** An appointed officer or employee shall not authorize a political committee to collect, receive, or solicit contributions intended for a political purpose on his or her behalf.
>
> **8.7** An appointed officer or employee shall not permit, authorize, or direct others to collect, receive, or solicit contributions intended for a political purpose for the appointed officer or employee's benefit or on behalf of the appointed officer or employee.

Even though the requestor advised that the committee has ceased raising funds, it appears from the facts provided that the committee still exists as a registered political committee of which the requestor is the Chairperson, and which is still officially authorized by her to raise funds. In order to avoid any suggestion that the requestor has authorized the committee to solicit or receive contributions on her behalf, it is recommended that she de-authorize the committee. It may also be advisable to change the name of the committee.[1] It was recommended that the requestor take this remedial action as soon as practicable.

Otherwise, if the requestor de-authorizes, the fact that the committee continues to owe a debt to a vendor in itself raises no issues under Charter Section 10-107.

Conclusion

Based on the facts that were provided to us, the requestor was advised that Charter Section 10-107(3), as interpreted by Board of Ethics Regulation No. 8, would prohibit her from being in any manner concerned in demanding, soliciting, collecting or receiving any political contribution, including any contribution to the political committee named in the request. Although the requestor was not a City employee when she first authorized the committee to receive political contributions, the continuing authorization now that she is an appointed City employee raises issues under Paragraphs 8.6 and 8.7 of Regulation No. 4. Accordingly, the requestor was advised to take the remedial action discussed above.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, the advice provided herein is predicated on the facts that have been provided to us. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct, except to the extent that past conduct may be addressed in order to provide advice requiring remedial action going forward.[2] Although previous opinions of this office that interpret statutes are guidance as 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

[1] The precise mechanism for making such changes is outside the scope of the request, and comes under the aegis of the State Election Code, as to which we have no jurisdiction to provide advice. The requestor was advised that, if she has questions about the Pennsylvania Election Code, she should contact either the Bureau of Commissions, Elections and Legislation of the Secretary of State or the City Commissioners. *See* Advice of Counsel GC-2011-511 at 3.

[2] *See* Board of Ethics Regulation No. 4, Paragraph 4.1(e).

issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the requestor may be concerned about, she is encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

Since the requestor requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we will be required to make public this revised version, edited to conceal the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

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