



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Nonpublic Board Opinion 2012-005¹

November 20, 2012

Jill Garfinkle Weitz, Esq.
General Counsel and Vice President for Human Relations
Community College of Philadelphia
1700 Spring Garden Street
Philadelphia, PA 19130-3991

Re: Lobbying / Public Entity as Principal

Dear Ms Weitz:

You have requested, on behalf of Community College of Philadelphia (“the College” or “CCP”), a nonpublic² advisory opinion as to whether the College, and employees working on behalf of the College, are required to comply with lobbying registration and reporting requirements set forth in Chapter 20-1200 (“Lobbying”) of the Philadelphia Code. You have confirmed that the College intends to use its employees, but not outside lobbyists or lobbying firms, to lobby the City. You argue that the College is a “local agency” for certain legal purposes, and that this status exempts the College from the requirements of Code Ch. 20-1200.

Summary of Conclusions

This Board finds that the College generally meets the definition of a principal, to the extent that it engages in lobbying the City and exceeds the expense thresholds.

¹ On November 21, 2012, the requestor approved the Board releasing, as public, this Opinion.

² See note 1.

However, the Board holds that to the extent that lobbying activities for the College are performed by that public entity itself or by its officials or employees in an official capacity, the College is an institution within the intent of City Council to exempt certain public entities from the registration and reporting requirements of Code Chapter 20-1200.

Summary of your request

In your request letter of September 24, 2012, you have provided the following information concerning the College's position:

The following provides a brief overview of the College's background. The College was created pursuant to the Pennsylvania Community College Act of 1963, 24 P.S. §§5201, et seq. Pursuant to the Act, community colleges must have a "local sponsor" in order to be created. The Pennsylvania Code, Section 35.3, defines a local sponsor as a "school district or municipality . . . which participate[s] or propose [s] to participate in the establishment and operation of a Community College." The City of Philadelphia is the College's local sponsor, and thus, the City participates in the College's operation pursuant to Pennsylvania law. Indeed, the City is a principal source of the College's funding.

You have also explained that the College is treated as a "local agency" for certain legal purposes, including for "tax liability and government immunity." You have further stated:

Given that the City is a principal funding source for the College, that the College is considered to be a "local agency" for many legal purposes, and that the City is the College's local sponsor under the Community College Act and thus the City participates in its operations, the College believes that its activities (as well as the activities on its behalf by College employees) do not fall within the lobbying registration and reporting requirements of the Philadelphia Code.

Analysis

You have explained that you believe the College is a "local agency," and as such, should not be subject to the registration and reporting requirements under the Lobbying

Code. However, even if the Board were to accept that premise, that does not end the inquiry. The question would then become whether a “local agency” is exempt from registration and reporting under the Lobbying Code. You cite no authority for such a proposition. Indeed, this Board recently held that City agencies can be principals under the Lobbying Code. Formal Opinion No. 2012-003. *See also* Code Section 20-1201(23).

Nevertheless, there is an issue as to whether Formal Opinion No. 2012-003 is distinguishable in this matter, since that Opinion held that the City Administration and PGW are principals subject to the Lobbying Code, because they employed outside lobbyists or lobbying firms—rather than internal employees—to do their lobbying. In contrast, you advise that the College would employ only internal employees to lobby the City.

As we did in Formal Opinion No. 2012-003, we must look to the statute and the regulation to determine if any stated exceptions apply.

1. **Thresholds.** It is assumed, for purposes of this request, that there will be sufficient contacts with the City by CCP in a quarter that constitute lobbying such that there is no question that the applicable thresholds apply (i.e., the principal, CCP, incurs lobbying expenses exceeding \$2500 in the quarter). Moreover, for purposes of registration, we note that the College has already registered as a principal for calendar year 2012, so no further registration would be required.

2. **Official Capacity.** Assuming that the College is not exempt based on the threshold in Chapter 20-1200, the only remaining issue appears to be whether the exemption in Code Section 20-1204(7) for a City official or employee, acting in his or her official capacity, applies.³ In Formal Opinion No. 2012-003, we said that the question is whether this exemption applies only to individual governmental officers/employees, and not to government entities, particularly when the entity is acting as principal and employing outside lobbyists or lobbying firms. The Board concluded that, where the City government entity hires an outside lobbyist or lobbying firm, the exemption in Code Section 20-1207(7) does not apply. However, you have advised that the College plans to use only internal employees as lobbyists, rather than outside lobbyists or lobbying firms, when lobbying the City.

³ *See also* Regulation 9, Paragraph 9.24(G)

In Formal Opinion No. 2012-003, we noted that, in the Lobbying Chapter, the subsection on exemptions for government employees, City Code Section 20-1204(7), is closely modeled on Section 13A06(7)-(10) of the State Act (collapsing four exemptions into one), and that the State's regulations interpreting Section 13A06(7)-(10), at 51 Pa. Code Sect. 57.2(a)(7), after discussing lobbying by government officials/employees, include this sentence: "The governmental entity would be required to register or report as a principal if other lobbyists or lobbying firms would engage in lobbying on behalf of the governmental entity [and if the total expenditures would exceed the expenditures threshold]." (emphasis added). We further noted that this interpretation of the State's regulations codified two prior Opinions of the State Ethics Commission, Opinions 07-1001 and 07-1002. In Confidential Opinion 07-1001, the Commission applied the Act's definition of "principal" to a certain Commonwealth "Commission A" and held that, as a governmental entity, Commission A is a principal, but that under the exemption for certain entities or officials acting themselves in their official capacities, Commission A would only be required to register and report as a principal to the extent that other lobbying firms or lobbyists engaged in lobbying on behalf of Commission A.

Following similar reasoning, this Board held, in Formal Opinion No. 2012-003, that to the extent that the City Administration and PGW are represented by a lobbying firm or lobbyist before City Council, the exemption of Code Section 20-1204(7) does not apply, and would not exempt these governmental entities from being required to register as principals, under the Philadelphia Lobbying Code. That ruling did not reach the question of whether a governmental entity that is represented only by internal employees would be exempt from registration as a principal.

We now address that question as to the Community College of Philadelphia. State Ethics Commission Confidential Opinion 07-1001, in discussing the governmental officials exemptions, stated as follows:

Sections 1306-A(7)-(10) . . . and /section 1305-A(b)(8) . . . together establish the General Assembly's intent to exempt Commonwealth governmental entities . . . from the registration and reporting requirements of the Lobbying Disclosure Law to the extent their lobbying activities are performed by the governmental entities themselves or by such official/employees in an official capacity.

State Ethics Commission Confidential Opinion 07-1001 at 6. Applying the same reasoning to the similar provisions of the City's Lobbying Code, we conclude that Code Sections 20-1204(7) and 20-1203(5) together establish the intent of City Council to

exempt certain public entities⁴ from the registration and reporting requirements of Code Chapter 20-1200, to the extent their lobbying activities are performed by the public entities themselves or by their officials/employees in an official capacity. There is authority that a community college is “a public institution” and its employees “public employees.” See State Ethics Commission Opinion No. 80-025 (June 5, 1980)(citing *Rettig v. Board of County Commissioners*, 425 Pa. 274, 228 A.2d 747 (1967)).

Conclusion

Based upon all the facts presented in this matter, we conclude that, in consideration of the status of CCP as a “public institution” and its employees as “public employees,” CCP is an institution within the intent of City Council to exempt certain public entities from the registration and reporting requirements of Code Chapter 20-1200, to the extent their lobbying activities are performed by those public entities themselves or by their officials/employees in an official capacity. Accordingly, so long as the College uses only its own employees or officials to lobby the City, the College is exempt, and need not register as a principal, nor report its lobbying expenses, with the Philadelphia Lobbying Information System. Since CCP is the only community college in Philadelphia, this Opinion is limited in application to CCP, and may not be relied upon by any other agency as guidance on how the Lobbying Code may apply to that agency.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Opinion 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 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

⁴ Section 20-1204(7) provides as follows:

(7) A City official or employee who acts in an official capacity, as well as elected or appointed officials and employees of the following jurisdictions, when acting in an official capacity: the Commonwealth, political subdivisions thereof, other States or political subdivisions thereof, and the federal government.

Section 20-1203(5) provides as follows:

(5) A lobbying firm or a lobbyist not associated with a lobbying firm shall submit a report if the lobbying firm or lobbyist engaged in lobbying on behalf of any entity that is exempt under § 20-1204(7) relating to City officials acting in an official capacity.

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 opinion 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. For information on requesting reconsideration of an Advisory Opinion, see Regulation No. 4 at Subpart H.

Since you have requested nonpublic⁵ advice from the Board of Ethics, we will not make this letter public, but we will be required to make public a revised version, edited to conceal your identity, as mandated by Code Section 20-606(1)(d)(iii).

By the Board:

Richard Glazer, Esq., Chair
Michael H. Reed, Esq., Vice-Chair
Judge Phyllis W. Beck (Ret.), Member
Sanjuanita González, Esq., Member

[There is a vacancy on the Board, due to the resignation of William H. Brown III, Esq.]

⁵ See note 1.