CITY OF PHILADELPHIA

BOARD OF ETHICS
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RESOLUTION of the CITY of PHILADELPHIA
BOARD of ETHICS
September 17, 2014

Declaring that the Board of Ethics seeks to comply with the decision of the United States Court of Appeals for the Third Circuit in *Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia et al*., Case No. 13-1516, 2014 WL 4056694 (3d Cir. Aug. 18, 2014).

WHEREAS, the Board of Ethics notes the following points of relevant fact:

1. Philadelphia Home Rule Charter ("Charter") Section 4-1100 provides that: "The Board of Ethics shall administer and enforce all provisions of this Charter and ordinances pertaining to ethical matters, which for purposes of this Chapter shall include . . . prohibited political activities . . . ."

2. Charter Subsection 10-107(3) states in relevant part: "No officer or member of the Philadelphia Police [ ] Department shall pay or give any money or valuable thing or make any subscription or contribution, whether voluntary or involuntary, for any political purpose whatever."

3. In 2011, the Board of Ethics promulgated Regulation No. 8 (Political Activity) to interpret "the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3)&(4) as applied to appointed City officers and employees." Board Regulation No. 8 ¶ 8.0.

4. Regulation No. 8 at Paragraph 8.8 states: "An appointed officer or employee, except for an appointed officer or employee of the Police Department, may make contributions intended for a political purpose." In Example 2 to Subpart D, Regulation No. 8 states: "An employee (but not an employee of the Police Department) may purchase tickets to a candidate's fundraiser event."

5. On May 18, 2011, Lodge No. 5 of the Fraternal Order of Police filed a lawsuit in federal court challenging the City's ban on political contributions by members of the Police Department. The City Law Department has represented the City and the Board in *Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.*

6. The case was assigned to the Honorable Juan R. Sanchez of the United States District Court for the Eastern District of Pennsylvania. On February 21, 2013, in response to the parties' cross motions for summary judgment, Judge Sanchez granted the Board's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban on contributions by members of the Police Department. The FOP subsequently appealed Judge Sanchez's ruling to the United States Court of Appeals for the Third Circuit ("Third Circuit").

7. On August 18, 2014, the Third Circuit issued an opinion holding that Charter Subsection 10-107(3) violates the First Amendment to the extent it prohibits members of the Philadelphia Police Department from making contributions to their union's political action committee, COPPAC. *Lodge No. 5 of the Fraternal Order of Police v. City of Philadelphia*, 2014 WL 4056694 at *1.

8. The Third Circuit limited its review and holding to the narrow question of whether Charter Subsection 10-107(3) may validly prohibit members of the Police Department from making contributions to political committees that are not affiliated with a candidate. *See id.* at *16 ("[T]his appeal does not involve officers' *direct* contributions to political candidates . . . .") (emphasis in original). The Court's Opinion reads as follows:

> This case presents a narrow question: whether the Charter ban and its implementing regulation, as applied to FOP Plaintiffs, violate the First Amendment. We do not consider the full sweep of activities potentially restricted by the ban – for instance, whether police officers may be prohibited from contributing directly to political candidates. Instead, we review whether the Charter ban, in the context of the other political activities permitted and prohibited by Regulation 8, may constitutionally bar Philadelphia police officers from making voluntary contributions to a political action committee.

Id. at *7-8. The Court elsewhere makes clear in the Opinion that its use of the phrase "contributions to a political action committee" in the preceding sentence means contributions to a political committee that is not affiliated with a candidate. *See id.* at *17 ("Here, the individual Appellants wish to contribute to COPPAC, a political action committee that serves as an intermediary between donors and candidates."); *id.* at *22 (describing the Charter ban as "preventing officers from contributing to a political action committee unaffiliated with any political candidate"); *id.* at *23 ("The ban prevents police officers from donating to a political action committee unaffiliated with any political candidate . . . .").

9. The Law Department has informed the Board that it has decided not to pursue reconsideration or an appeal of the Third Circuit's decision.

10. Charter Section 8-407 directs the Board to follow a specific, multi-step process for amending a regulation, including approving and posting at the City Records Department for 30 days a draft for public comment; providing a public hearing if requested; and

responding to hearing testimony through a hearing report. Because this Charter-mandated process may take a few months to complete, an amendment to Board Regulation 8 may take some months to become effective.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ETHICS OF THE CITY OF PHILADELPHIA THAT:

A. The Board seeks to comply with the August 18, 2014 decision of the Third Circuit in *Lodge No. 5 of the Fraternal Order of Police v. City of Philadelphia.*

B. The Board recognizes that the result of the Court's ruling is that members of the Police Department may make contributions to political committees that are not affiliated with a candidate, including COPPAC.

C. The Board directs Board Staff to begin working on a proposed amendment to Regulation No. 8 that reflects the holding and the concerns expressed in the Third Circuit's Opinion.

D. Pending an amendment to Regulation No. 8 taking effect, the Board directs Staff to add a note to the copy of Regulation No. 8 that is posted on the Board's website, stating that, pursuant to the August 18, 2014 decision of the Third Circuit in *Lodge No. 5 of the Fraternal Order of Police v. City of Philadelphia*, members of the Police Department may make contributions intended for a political purpose to political committees that are not affiliated with a candidate, including COPPAC.

E. The Board further directs Staff to post this Resolution on the Board's website and to provide a copy to the Fraternal Order of Police.

This Resolution shall take effect immediately.

By the Board: _____
Michael H. Reed, Esq.
Chair

Adopted by the Board: September 17, 2014