



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2020-001

January 15, 2020

Re: Application of Home Rule Charter Section 10-107(3) to Elected Official

Dear Attorney:

You have asked, on behalf of a client, for a non-public opinion regarding the application of Philadelphia Home Rule Charter Section 10-107(3). Your client, a City elected official, has been invited to join an advisory board of a federal PAC which seeks to raise funds for candidates for federal office aligned with the elected official's interests. In particular, you ask:

- (1) Would it violate the Charter or any other applicable City regulation to serve on the PAC's advisory board?
- (2) Would it violate the Charter or any other applicable City regulation to raise funds for the PAC? Are there any classes of persons from whom the elected official cannot raise funds for these efforts, such as an appointed City officer or employee or from a person who is seeking official action from the elected official?
- (3) Would it violate the Charter or any other applicable City regulation to take part in decisions regarding the PAC's priorities and its decisions on how to allocate funds?
- (4) Would it violate the Charter or any other applicable City regulation to raise funds from the PAC's board members and supporters for the elected official's own candidate committee?

I. Jurisdiction

Philadelphia Home Rule Charter Section 4-1100 grants the Board jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters, including the political activity restrictions found in Charter Section 10-107. Charter Section 4-1100 and Philadelphia Code Section 20-606 authorize the Board to render advisory opinions explaining the application of laws under the Board's jurisdiction concerning a requestor's proposed future conduct. Board Regulation No. 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board.

II. Discussion

Home Rule Charter Section 10-107 sets forth a number of restrictions and limitations on the political activity of City officers and employees. These rules were intended to ensure that City government serves the public interest rather than the interests of political parties or factions.¹ To this end, Section 10-107(3) provides:

No officer or employee of the City . . . shall [] from any person . . . 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.

The Board last considered the application of Section 10-107(3) to elected officials in Board Opinion 2014-002, which was issued to an elected official who asked whether it would be permissible to personally solicit political contributions for that official's authorized political committee. In answering that question, we examined the Charter's allowances for elected officials to run for re-election and engage in political activity that is prohibited for other City employees and noted the significant changes to the nature of running for office that have occurred since 1951. We also considered that Section 10-107 was intended to ensure that government and government employment in particular "will not serve as a means for political tribute to maintain political parties and regimes." Charter Section 10-107 ann. 1. In balancing these interests, we concluded that a City elected official may solicit contributions for their authorized political committee so long as they do not do so under circumstances where there is a risk of coercion or misuse of office, such as soliciting political contributions from an appointed City officer or employee or from a person who is seeking official action from the elected official. Board Opinion 2014-002 at 4-5.

¹ See e.g. The Committee of Seventy, *The Charter: A History* (1980), available at <https://seventy.org/uploads/files/127709242549666483-1980-charter-history.pdf> (last visited Dec. 6, 2019).

You ask whether your client may solicit contributions not for their own committee, but for a federal political committee that supports candidates for federal electoral office. It seems to us that the concerns identified in Board Opinion 2014-002 are less pronounced when an elected official asks for contributions that will benefit non-City candidates than when the official asks for contributions to support their own candidacy. Accordingly, so long as your client does not solicit contributions under circumstances where there is a risk of coercion or misuse of office, as described above, Section 10-107(3) would not prevent the activity you have proposed.

With regard to your specific questions, based on the facts you provided and with respect to laws within the Board's jurisdiction, including Charter Section 10-107(3):

- (1) Would it violate the Charter or any other applicable City regulation to serve on the PAC's advisory board?

Answer: Your client would not be prohibited from serving on the advisory board of a federal political committee that would spend money to support candidates for federal office.

- (2) Would it violate the Charter or any other applicable City regulation to raise funds for the PAC? Are there any classes of persons from whom the elected official cannot raise funds for these efforts, such as an appointed City officer or employee or from a person who is seeking official action from the elected official?

Answer: Your client may solicit contributions for a federal political committee that intends to spend money to support candidates for federal office so long as such solicitations do not occur under circumstances where there is a risk of coercion or misuse of office, such as soliciting political contributions from an appointed City officer or employee or from a person who is seeking official action from the elected official.

- (3) Would it violate the Charter or any other applicable City regulation to take part in decisions regarding the PAC's priorities and its decisions on how to allocate funds?

Answer: Your client would not be prohibited from taking part in decisions regarding the PAC's priorities and its decisions on how to allocate funds.

- (4) Would it violate the Charter or any other applicable City regulation to raise funds from the PAC's board members and supporters for the elected official's own candidate committee?

Answer: Assuming that the PAC's board members and supporters are not appointed City officers or employees or persons seeking official action from the elected official, your client may solicit contributions from such board members and supporters for their own candidate committee.

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Thank you for your concern about compliance with the City's Ethics Code and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided. Requestors of advisory opinions are entitled to act in reasonable reliance on opinions issued to them and not be subject to penalties under the laws within the Board's jurisdiction, unless they have omitted or misstated material facts in their requests. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since you requested a non-public opinion, the original Opinion will not be made public. As required by the City Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you or your client is being made public. Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS²

/s/Michael H. Reed

Michael H. Reed, Esq., Chair
Sanjuanita González, Esq., Member
Brian J. McCormick, Jr., Esq., Member
JoAnne A. Epps, Esq., Member

cc: J. Shane Creamer, Jr., Esq., Executive Director
Michael J. Cooke, Esq., General Counsel

² Board Member Judge Phyllis W. Beck, (Ret.), participated in consideration of this Opinion, but she was not present for the approval vote.