



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450 (t)
(215) 686 – 9453 (f)

Philadelphia Board of Ethics Non-Public Board Opinion No. 2020-004

June 29, 2020

Sent via email

Re: Application of Home Rule Charter to City Employee Who Applies for Appointment to Judicial Office

Dear Requestor:

You are a City employee. You have asked whether the City’s Home Rule Charter would require you to resign your position if you submit an application to the Governor for an appointment to fill a vacancy on the Court of Common Pleas. As discussed in more detail below, the Charter would not require you to resign from your City position if you submit such an application.

I. Jurisdiction

Philadelphia Home Rule Charter Section 4-1100 grants the Board of Ethics jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters. 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 City officer’s or employee’s proposed future conduct. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration of an advisory opinion issued by the Board.

Home Rule Charter Section 4-1100 also gives the Board “concurrent authority” with the Law Department to advise City officials on the application of State law. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance on the State Ethics Act that would provide such protection, you should contact either the State Ethics Commission or the Philadelphia City Solicitor.

II. Background

The Pennsylvania Office of General Counsel has issued an “Announcement of Judicial Vacancies”¹ regarding vacancies on the Courts of Common Pleas in Pennsylvania. This alert requests that individuals interested in filling one of these vacancies submit an application that will eventually be submitted to the Governor. Based on our research, once the application deadline has elapsed, the Governor will review all of the applications. Then, with advice and consent of the Pennsylvania State Senate, the Governor will appoint individuals from the pool of judicial applicants to serve as interim judicial officers to fill the vacant judicial positions. *See* 42 Pa. C.S. §3132(a).

You are a City of Philadelphia employee. You would like to submit an application for appointment to a vacancy on the Court of Common Pleas.

III. Submitting the Judicial Application

City officers and employees are subject to Charter Section 10-107(5), which provides that “[n]o officer or employee of the City, except elected officers running for re-election, shall be a candidate for nomination or election to any public office unless [they] shall have first resigned from [their] then office or employment.” Charter § 10-107(5). As described in the pertinent Charter annotation, this rule was “imposed because an officer or employee who is a candidate for elective office is in a position to influence unduly and to intimidate employees under his supervision and because he may neglect his official duties in the interest of his candidacy.” Charter § 10-107, Annotation 5.

If you were running as a candidate for an elected judicial position, Charter Section 10-107(5) would require you to resign your City position. We have not, however, previously addressed how the rule applies if an individual submits an application to fill a vacant judicial position, rather than running in an election for that position.

¹ For more information, *see* <https://www.ogc.pa.gov/About%20Us/Pages/JudicialVacancies.aspx?> (last visited 06/25/2020).

By its plain language, as described above, Charter Section 10-107(5) applies to one specific class of individuals: candidates for elective office. As such, we find that an individual who submits an application to the Governor to fill a vacant judicial position is not “a candidate for nomination or election” or “a candidate for elective office,” as contemplated by the Charter. Therefore, if you submit an application to fill a judicial vacancy via appointment by the Governor, Charter Section 10-107(5) would not compel you to resign from your City position.

We note that your City department may have its own rules and restrictions about applying for these types of judicial positions and we recommend that you check with your supervisor before filing the application. We also note that it is our understanding that Charter Section 8-301 would prohibit you from serving as both a City employee and a judicial officer of the Court of Common Pleas.

IV. Job-Search and Conflict of Interest Rules

Applying for a job creates a conflict of interest with regard to the prospective employer under both City and State conflicts of interest rules. *See* Board Op. 2019-003; SEC Advice of Counsel 11-514, State Ethics Comm’n (Mar. 18, 2011).

City Ethics Code

Section 20-607 of the Ethics Code prohibits a City officer or employee from taking official action when either (a) they have a personal financial interest in that action or (b) a business or other entity of which they are a member has a financial interest in that action. As provided by Code Section 20-608, if a City officer or employee has a conflict and has the ability to take official action that would financially impact the source of that conflict, the employee must disclose the conflict and disqualify themselves from any such official action.

The opportunity to be considered for a job carries a financial interest even if an employment relationship never materializes. A job application or other effort to solicit employment therefore creates a financial interest under the Ethics Code. Thus, a City officer or employee who applies for a non-City job has a conflict of interest under Section 20-607(a) with regard to a prospective employer. *See* Board Ops. 2019-003.

Your case is unusual in that, while your potential employer would be the Philadelphia Court of Common Pleas, the person making the hiring decision would be the Governor, as advised by the Governor’s Judicial Advisory Commission. Under these circumstances, we conclude that if you submit an application to fill a judicial vacancy, you will have a conflict of interest with regard to the Governor and the Governor’s Judicial Advisory Commission, not the Court of Common Pleas. As such, if you have an opportunity to take official action that would affect either the Governor or Governor’s

Judicial Advisory Commission, you must file a disclosure and disqualification letter, as required by Code Section 20-608.

While a job application creates a financial interest, as discussed above, it does not make someone a “member” of a firm such that it would create a conflict under Section 20-607(b). A conflict would arise under Section 20-607(b), however, if there is both a job offer and acceptance of the same. *See* Board Op. 2019-003. Accordingly, if you accept an appointment to the Court of Common Pleas, you will have a conflict with regard to the Court until you separate from the City. If you have an opportunity to take official action that would affect the Court, you would be required to file a disclosure and disqualification letter. A sample disclosure and disqualification letter is available on our website at: https://www.phila.gov/ethicsboard/PDF/FORM_D+D_sample_letter.pdf.

State Ethics Act

The General Counsel of the State Ethics Commission has advised that a conflict may arise under the State Ethics Act where a matter before a public employee² involves “a prospective employer with which you would be pursuing or would reasonably anticipate pursuing employment.” Advice of Counsel 11-514, State Ethics Comm’n (Mar. 18, 2011). For guidance on application of the State Ethics Act to your situation, you should contact either the State Ethics Commission or the City Solicitor.

V. City and State Post-Employment Rules

State Law One Year Post-Employment Restriction

The State Ethics Act prohibits public employees from representing any individual or organization before their former governmental body for compensation for one year after leaving government service. 65 Pa. C.S. §1103(g).

City Law Two Year Post-Employment Restriction

Philadelphia Code Section 20-607(c) prohibits a City officer or employee from becoming financially interested in official action taken “during his [or her] term of office or employment and until two (2) years have elapsed” since leaving City service. As such, for two years after you leave City employment, you must ensure that you do not obtain a financial benefit from any official action you took while working for the City. An example of this would be if, while working for the City, you participated in the approval of a City contract with a vendor. For two years after leaving City service, you could neither work on nor receive any funds from that contract.

² The State Ethics Act only applies to “public employees” and “public officials” as defined by the Act. *See* 65 Pa. C.S. §1102. Based on your job title, we presume you are indeed a “public employee” subject to the Act.

City Law Permanent Restriction

Philadelphia Code Section 20-603(1) permanently bans a former City officer or employee from assisting “another person, with or without compensation, in any transaction involving the City in which [the officer or employee] at any time participated during their City service or employment.” This rule would prohibit you from providing assistance to clients regarding any transactions with which you were personally involved while working for the City. For example, after leaving City service, you could not draft testimony or talking points for a client to present at a hearing on legislation you worked on while you were a City employee. This provision, however, would not prevent you from assisting clients on a matter with which you had no involvement when you worked for the City.

If you have any questions about the application of the post-employment rules to you, please contact General Counsel Staff.

* * * * *

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 is being made public. Please let General Counsel Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Michael H. Reed

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-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