



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public Board Opinion 2014-002**

September 17, 2014

Re: City Elected Official Soliciting a Political Contribution

Dear Elected Official:

You have requested a non-public advisory opinion about whether you are permitted to personally solicit a political contribution for your authorized political committee from an individual who is not a City officer or employee. Based on the facts you have provided, Philadelphia Home Rule Charter Subsection 10-107(3) does not prohibit you from engaging in this proposed solicitation.

I. Facts Provided

You have provided the following facts. You are considering asking Person A for a contribution to your authorized campaign political committee. You wish to ask Person A for a political contribution because Person A has expressed ongoing support for the work you are doing in office. You would solicit Person A to make a contribution either by asking on the telephone or in person.

Person A is a Philadelphia resident who is not a City officer or employee. You describe potential scenarios that are redacted here in which you could possibly be in a position to take action in your capacity as a City elected official that affects Person A. These scenarios would occur only if Person A decides to pursue certain opportunities that, as far as you know, Person A is not pursuing, and also if you take certain actions that you state there is only a small possibility you would take. You and Person A have

met and spoken several times, almost entirely about local politics and related subjects. You have contemplated working together on political projects as part of your private political work and not in connection to your government work as a City elected official. Also, Person A would be subject to your judgment as a City elected official in the same way as a large number of similarly-situated Philadelphians are.

II. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter (“Charter”) provisions and ordinances pertaining to ethical matters, including prohibited political activities. Charter §4-1100. The Charter and the Philadelphia Code (“Code”) authorize the Board to render advisory opinions concerning a City officer’s proposed future conduct. Charter §4-1100; Code §20-606(1)(d). Board of Ethics Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board. Board Regulation 4, ¶¶ 4.0, 4.26.

III. Discussion

You have inquired whether you may ask Person A for a political contribution to the political committee you have authorized to receive contributions on your behalf. Your question requires us to examine the application of the Charter’s political fundraising restriction to elected officials. The fundraising restriction, which is found at Charter Subsection 10-107(3), contains broad and sweeping language and reads in relevant part: “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.” Charter §10-107(3).¹

In interpreting this language, however, we must consider both the broader text of Charter Section 10-107 and the practical context in which the fundraising restriction is to be applied today. These two realities strongly counsel against a rigid reading of this

¹ The annotation to Charter Section 10-107 echoes this far-ranging language and underscores the restriction’s application to elected officials:

All City officers, elected or appointed, and all City employees, civil service or non-civil service, and all officers and all employees of governmental agencies compensated with City funds, such as County officers and employees, are prohibited from demanding, soliciting, collecting or receiving from any person assessments, subscriptions or contributions for political purposes.

language for elected officials and in favor of an interpretation that is narrower for them than the plain words may suggest.²

The fundraising restriction of Charter Subsection 10-107(3) is one of several political activity restrictions found in Charter Section 10-107. These restrictions distinguish elected officials from all other City officers and employees in two significant ways. First, the political campaign restriction found at Subsection 10-107(4) does not apply to elected officials. Subsection 10-107(4) prohibits only appointed City officers and employees from “tak[ing] any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.” Charter §10-107(4). This political campaign restriction furthers one objective underlying Charter Section 10-107, namely that City employment should be merit-based and free of political pressures. Charter §10-107 ann. (“Merit principles of government employment require the divorcement of politics from such employment.”). In contrast to appointed officers and employees, City elected officials are permitted to participate in political campaigns and to be members of national, state, and local committees of a political party and officers or members of partisan political clubs. *See* Charter §10-107(4). The application of Subsection 10-107(4)’s political campaign prohibition to appointed officers and employees but not to elected officers reflects a recognition that elected officials are necessarily participants in and products of political campaigns and political parties. *See* Charter §10-107 ann. (acknowledging that “[t]he prohibitions of this section are . . . subject to certain qualifications which political necessities require to be made at certain levels of employment and office-holding.”).

The second significant way in which Section 10-107 political activity restrictions distinguish elected officials is that Subsection 10-107(5) explicitly exempts elected officers running for re-election from the resign-to-run requirement. Charter §10-107(5) & §10-107 ann. In other words, Subsection 10-107(5) permits incumbents to seek re-election without resigning. All other City officers and employees must first resign City office or employment before being a candidate for any public office. *Id.* This accommodation permits elected City officials who choose to run for re-election to serve the public for the entirety of the terms of office to which they have been elected.

Since 1951, when the Charter and these political activity restrictions were adopted, changes in the management and operations of political campaigns have led to increased personal involvement by candidates in political fundraising.³ Indeed, candidate

² In 1993, the City Solicitor advised that elected officials may be associated with campaigns that solicit and collect contributions notwithstanding Charter §10-107(3)’s language restricting “indirectly” or “be[ing] in any manner concerned in” political fundraising. Solicitor Opinion No. 93-6.

³ *See, e.g.*, PETER MCCAFFERY, WHEN BOSSES RULED PHILADELPHIA 87-89 (1993) (describing that in the years preceding the Charter’s adoption the City’s political “machine” and its bosses, who were not City office holders, strictly controlled the logistics of elections, including amassing a war chest of contributions); COMMITTEE OF SEVENTY, THE CHARTER: A HISTORY 2 (1980) (“Controlling the elective

involvement in political fundraising has become an integral part of running for re-election as illustrated by the fact that candidates are now expected to authorize and maintain candidate political committees. *See* 25 P.S. §3243 (barring treasurers of political committees from receiving money on behalf of a candidate until the candidate gives written authorization) (P.L. 893, No. 171, § 2, eff. Jan. 1, 1979); Code §20-1001(3) (defining “candidate political committee” as the one committee used by a City candidate to receive all contributions and make all expenditures) (Bill No. 060629, eff. Nov. 16, 2006). Moreover, in the last dozen years, new City public integrity laws have imposed significant disclosure requirements and restrictions on candidates and other persons concerning political contributions and fundraising.⁴ Our interpretation of Charter Subsection 10-107(3) must be informed by these striking changes in the realities of political fundraising as well as the allowances for political activity and running for re-election that Charter Subsections 10-107(4) and 10-107(5) provide to elected officials.

Furthermore, the drafting and adoption of Charter Subsection 10-107(3) was informed by a history of City office and authority being misused to coerce political contributions from City employees and others.⁵ Indeed, the annotation to Charter Section 10-107 indicates that the Charter’s political activity restrictions are 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 §10-107 ann. Any interpretation of Charter Subsection 10-107(3) must take into account these underlying concerns about coercion of contributions and misuse of office.

For these reasons, we interpret Charter Subsection 10-107(3) to prohibit City elected officials from personally soliciting political contributions under circumstances where there is a risk of coercion or misuse of office. It would, for example, be an issue under the fundraising restriction for you to solicit political contributions from an appointed City officer or employee or from a person who is seeking action from you in

process from beginning to end, the Republican City Committee, bosses, and supporting businessmen determined who held elective city, county and judicial offices.”).

⁴ *See* Code Ch. 20-1000 (campaign finance ordinance imposing contribution limits and other requirements on candidates and other persons) (Bill No. 030562, eff. Jan. 1, 2004); Code Ch. 17-1400 (non-competitively bid contract ordinance requiring disclosure of political contributions by bidders, contractors, and persons seeking or receiving certain City financial assistance and requiring disclosure of City officers’ and employees’ solicitations for anything of value, including money, made to these parties) (Bill No. 040772-AA eff. Feb. 1, 2006); Charter §4-1100 (authorizing Board of Ethics to administer and enforce City provisions related to campaign finance matters) (approved by voters May 16, 2006, eff. June 5, 2006).

⁵ *See, e.g.*, WHEN BOSSES RULED PHILADELPHIA 88-89 (describing how political party bosses forced contributions from businesses seeking legislative action as a condition for such action and observing that political assessments were paid to the majority political party by 94 percent of City employees out of their City wages); THE CHARTER: A HISTORY 2 (describing political party control of high-level City officials, their offices, and the provision of basic governmental services, which led to a patronage army within City government that was forced to make political contributions).

your capacity as a City elected official.⁶ It would also be contrary to Charter Subsection 10-107(3) for you to solicit any political contributions on City-owned or leased property or while using City resources, including City-paid staff time. By way of further example, the fundraising restriction would prohibit any solicitation of a contribution in a manner that links the requested contribution to official action, such as by conditioning official action upon receipt of a contribution or by promising to appoint the donor to a City position. The facts you have presented related to Person A would not involve circumstances such as these that present a risk of coercion or misuse of office. Accordingly, under these facts you are permitted under Charter Subsection 10-107(3) to ask Person A for a political contribution to your authorized political committee.

V. Conclusion

Thank you for being concerned about compliance with the City political activity restrictions and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts that you have provided as stated here. If you have questions about scenarios that vary from these facts, you should ask for specific advice on the application of the law to those particular facts. 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 Regulation 4, ¶4.12.

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

BY THE PHILADELPHIA BOARD OF ETHICS⁷

Michael H. Reed, Esq., Chair
Judge Phyllis W. Beck, (Ret.), Vice-Chair
Brian J. McCormick, Jr., Esq., Member
Father C. Kevin Gillespie, Member

⁶ The facts you have provided describe potential scenarios in which you could possibly be in a position to take official action that affects Person A, but these facts do not indicate that Person A is seeking official action from you.

⁷ Board Member Sanjuanita González, Esq., did not participate in the approval of this Opinion.