



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Response to Request for Reconsideration of
Non-Public Board Opinion No. 2019-001**

March 21, 2019

Re: Request for Reconsideration of Non-Public Board Opinion 2019-001

Dear Requestor:

On March 12, 2019, you asked the Board to reconsider Non-Public Board Opinion 2019-001, which the Board issued to you on March 4, 2019. The reasons you provided for seeking reconsideration, as stated in your written request, are attached as Exhibit A.

Under Board Regulation 4, a requestor of a previously issued Advisory Opinion may seek reconsideration of the Opinion if the requestor can demonstrate that: (1) a material error of law has been made; (2) a material error of fact has been made; or (3) a change in materially relevant facts or law has occurred since the requestor made the request for an Advisory Opinion. Board Reg. 4 ¶ 4.23.

The Board can respond to a request for reconsideration by denying the request or by issuing an amended Advisory Opinion that modifies the original Opinion. Board Reg. 4 ¶ 4.26. A request for reconsideration does not suspend or stay the original Opinion that the Board issued to the requestor. *See* Board Reg. 4 ¶ 4.27.

The request for reconsideration that you submitted identifies a number of reasons why you are asking the Board to reconsider Board Opinion 2019-001. Namely, the request asserts: (i) that the City has previously agreed that similarly situated employees could be candidates for public elective office; (ii) that the motivation for any full-time union officer running for public elective office is directly connected to the official's work on behalf of the union and its membership; (iii) that the definition of "employee" in Regulation 8, which interprets Charter Subsections 10-107(3) and (4), should encompass Charter Subsection 10-107(5); (iv) that your First Amendment rights may be infringed; (v) that no concerns exist in this situation regarding neglect of official City duties or the opportunity to intimidate or unduly influence City employees under supervision; and (vi)

that elected officers of private sector labor organizations are not required to resign from their union positions to run for public elective office even though those organizations interact with the City. *See* Exhibit A.

Your request for reconsideration does not demonstrate that the Board made a material error of law or fact in Board Opinion 2019-001 or that a change in materially relevant facts or law has occurred since you requested an Advisory Opinion. The Board therefore finds that the request fails to meet the standard for reconsideration set forth in Board Regulation 4. *See* Board Reg. 4 ¶ 4.23. Accordingly, the request for reconsideration of Board Opinion 2019-001 is denied, and the Board will not issue an amended Advisory Opinion.

The original Board response to your request for reconsideration will not be made public since Board Opinion 2019-001 is a non-public Advisory Opinion. A version of this response that has been 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 ETHICS

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

Exhibit A
March 12, 2019 Request for Reconsideration
of Non-Public Board Opinion 2019-001

The Requestor's reasons for seeking reconsideration are set forth below as stated in the Requestor's written request:

I am requesting reconsideration of this Board's nonpublic opinion pursuant to Board Regulation 4.26, for the following reasons:

- It is my understanding that in the past, the City has agreed, contrary to your conclusion, that individuals similarly situated could indeed be candidates for public elective office;
- The fundamental principles underlying Regulation 8 that provide for an exemption from the prohibitions set forth in Philadelphia Home Rule Charter (“Charter”) §10-107(3) and (4) are applicable to Charter §10-107(5). Contrary to your attempts to distinguish §§10-107(3) and (4) from §10-107(5), the motivation for any full-time union official running for public elective office is directly connected to the official’s work on behalf of the employing labor organization and its members.
- The City Home Rule Charter ANNOTATION of §10-107(5) Sources: A Model State Civil Service Law, Section 19; Act of June 25, 1919, P.L. 581, Article XIX, Section 23.

ANNOTATION

Officers and employees, except officers running for re-election, must resign before becoming candidates for nomination or election to public office. This requirement is 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.

All language in §10-107(3) and (4) from §10-107(5) reads the same as in the Home Rule Charter as well as in Regulation number eight (8). The updated regulation number 8 defines employees. Although the Board has not dealt with five directly defining employee should encompass §10-107(5). In addition, as a Union Representative, there is no direct influence unduly or intimidate employees under his/her supervision or the concern to neglect officials duties as I am on an unpaid leave of absence from the city of Philadelphia.

- Your opinion raises serious questions about the infringement upon my First Amendment rights.
- Full time elected officers of private sector labor organizations, which have an enormous interaction with the City and interests in City actions, administrator and regulation, are not required to resign their union positions to run. I would suggest that the distinction, given the engagement by other labor organizations with the City, is irrational and unfair.

I would also urge that this opinion stays pending further consideration of this request to get it right for all Union Representatives in the future.