



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-Public Board Opinion No. 2019-001¹**

March 4, 2019

**Re: Application of Charter Resign-to-Run Restriction to a City Employee
on Leave to Serve as a Full-Time Elected Union Officer**

Dear City Employee:

You have requested a non-public advisory opinion about whether you are required to resign as a City employee to be a candidate for public elective office given that you are on an unpaid leave of absence to serve as a full-time elected union officer. As discussed below, the City Charter requires you to resign as a City employee to be a candidate.

I. Jurisdiction

The Philadelphia Home Rule Charter (“Charter”) grants the Board of Ethics jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters, including the Charter political activity restrictions. Charter § 4-1100. The Charter and The Philadelphia Code (“Code”) authorize the Board of Ethics 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. *See id.*; Code § 20-606(1)(d); Board Reg. 4 ¶ 4.1(a). Board Regulation 4 describes the procedures related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board of Ethics. Board Reg. 4 ¶¶ 4.0, 4.26. The Board may address past conduct in an advisory opinion to provide guidance about corrective action or future action that represents part of a continuing course of conduct that began prior to the advice request. Board Reg. 4 ¶ 4.3.

¹ On March 21, 2019, the Board denied the requestor's March 12, 2019 request for reconsideration of this Opinion.

II. Facts Provided by Requestor

You are currently a City employee on an unpaid leave of absence to serve as a full-time elected officer of a union that represents some City employees and private sector employees. You were elected to this position for a set term. You provided background information about your City employment history and your current union position, which includes duties related to a political committee. Other details that were provided are redacted here.

III. Question Presented & Brief Answer

Is a City employee on an unpaid leave of absence to serve as a full-time elected officer of a union that represents some City employees and private sector employees required to resign as a City employee in order to be a candidate for public elective office?

Yes, the Charter Subsection 10-107(5) resign-to-run restriction requires a City employee who is on an unpaid leave of absence to serve as a full-time elected officer of a union that represents some City employees and private sector employees to resign from City employment prior to being a candidate for public elective office. See Charter § 10-107(5) (“No 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 he shall have first resigned from his then office or employment.”).

IV. Discussion

Under Charter Section 10-107, City employees are subject to various restrictions on their political activity. *See* Charter § 10-107. In the context of your inquiry, the relevant provision found at Charter Subsection 10-107(5), which is often referred to as the resign-to-run restriction, states: “No 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 he shall have first resigned from his then office or employment.” Charter § 10-107(5). Charter Subsection 10-107(5) contains a single narrow exception for City elected officials running for re-election to the City elective office they currently hold. *See id.* Under the resign-to-run restriction, candidacy in all other circumstances is incompatible with an individual maintaining status as a City employee.

The Law Department has long advised that a City employee who is on an unpaid leave of absence to serve as an elected officer of a municipal union is still a City employee subject to the Home Rule Charter. *See* May 10, 1971 Sol. Op. 325 (opining that City employees on leave of absence to serve as full-time officers of a union representing City employees are subject to Charter political activity restrictions and stating that “any person on leave of absence from the City, whether with or without pay, still remains an employee of the City and is subject to all of the provisions of the Home Rule Charter.”);

see also July 3, 2007 Sol. Op. 07-25 (affirming the conclusion of May 10, 1971 Sol. Op. 325 that City employees on leave of absence to serve as union officers are subject to the Charter provisions applicable to City employees); Apr. 23, 1996 Sol. Op. 96-11 (same). In reaching this conclusion, the Law Department has noted that City employees on unpaid leaves of absence to serve as union officials continue to enjoy certain benefits and privileges of City employment. *See id.*

The Board has not previously addressed the specific question presented by your request. Notably, the political activity regulation that the Board promulgated in 2011 does not address or interpret the Charter Subsection 10-107(5) resign-to-run restriction. *See* Board Reg. 8 ¶ 8.0. Board Regulation 8 only interprets the requirements and prohibitions of the Charter Subsection 10-107(3) restriction on political fundraising and the Charter Subsection 10-107(4) restriction on involvement in the affairs of a political campaign, political party, or partisan political group as applied to appointed City officers and employees. *See id.*

Regulation 8 exempts a City employee from the restrictions of Charter Subsections 10-107(3) and (4) if the employee is on unpaid leave to be a full-time elected officer or appointed staff representative of a City employee union. *See* Board Reg. 8 ¶ 8.1(h). The basis for this exemption is that such union officers and representatives are expected to engage in political activity on behalf of their unions and in furtherance of their duties to the union and its membership. By contrast, candidacy for public elective office is a personal endeavor undertaken as an individual in a private capacity, not a fulfillment of duties to the union and its membership.

For the reasons discussed above, the Board concludes that, like all other individuals who maintain City employee status and are not running for re-election, a City employee on an unpaid leave of absence to serve as a full-time elected officer or appointed staff representative of a City employee union is subject to the resign-to-run restriction. Accordingly, you are required to resign as a City employee to be a candidate. You should act expeditiously to come into compliance with this Opinion and Charter Subsection 10-107(5).

* * * * *

Thank you for your concern about compliance with the Charter political activity restrictions 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, this version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you, such as your name and the name of your union, is being made public. Please let Board Staff know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

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