



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Board Opinion No. 2020-005

October 21, 2020

Sent via email

Sarah E. Stevenson
Chief Integrity Officer, City of Philadelphia
City Hall, Room 215
Philadelphia, PA 19107
Sarah.stevenson@phila.gov

Re: Application of Home Rule Charter to Election Day Activity of Appointed Officers and Employees of the Executive Branch

Dear Ms. Stevenson:

You have asked for guidance on behalf of appointed officers and employees of the Executive Branch as to whether the Home Rule Charter would permit such appointed officers and employees on Election Day to (a) serve as poll watchers; (b) participate in non-partisan election protection efforts; and (c) distribute partisan literature or engage in similar activities at or near a polling place.

As discussed in more detail below:

- a. An appointed officer or employee of the Executive Branch may not serve as a poll watcher appointed by a candidate or political party.
- b. An appointed officer or employee of the Executive Branch may participate in non-partisan election protection efforts so long as they are not organized, sponsored by, or conducted in coordination with a campaign, political party, or partisan political group.
- c. An appointed officer or employee of the Executive Branch other than an employee of the Police Department, may volunteer on a campaign supporting a candidate for non-local office and in doing so may distribute partisan literature or engage in similar activities near a polling place, to the extent permitted by the State Election Code.

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, including the political activity restrictions found in Home Rule Charter Section 10-107 and the City's Ethics Code (City Code Chapter 20-600). 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. A supervisor or appointing authority may request an Advisory Opinion concerning the conduct of a subordinate officer or employee. Board Regulation No. 4 describes the procedures related to advisory opinions, including for requesting reconsideration of an advisory opinion issued by the Board.

II. Relevant Law

Home Rule Charter Section 10-107(4) sets forth a number of restrictions and limitations on the political activity of City appointed 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 Charter Section 10-107(4) states:

No appointed officer or employee of the City, except for an employee of the Council, shall be a committee person, ward leader, delegate, or other officer of a political party, or an officer of a partisan political group, or take any part in the management or affairs of any political party, partisan political group or political campaign, with the following generally applicable exception.

(a) Such appointed officers and employees may participate in non-managerial volunteer activity in support of a candidate for any office, but not including for a state or local office for which Philadelphia electors cast ballots other than in a campaign for an office elected on a state-wide basis.

(b) The exception for participation in non-managerial volunteer activity in support of a candidate set forth in subsection (a) shall not apply to an employee of the Offices of the Sheriff, City Commissioners or District Attorney, or any officer or member of the Police Department, or any member or employee of the Board of Ethics.

(c) No appointed officer or employee of the City shall use a City title while engaged in any political activity.

(d) No officer or employee of the City shall engage in any political activity while on duty or utilize City resources for or while engaging in political activity.

(e) Nothing in this section prohibits an appointed officer or employee from expressing a political or other opinion as a private citizen or from exercising the right to vote.

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 Oct. 12, 2020).

Board [Regulation No. 8](#) provides a detailed interpretation of Charter Section 10-107(4) and at Paragraph 8.12 lists specific limitations on the ability of an appointed officer or employee of the Executive Branch to volunteer for a non-local campaign. Specifically, no appointed officer or employee may engage in political activity while on-duty, in uniform, on City property, or while using City resources or their City title. In addition, an appointed officer or employee of the Executive Branch may not participate in any tasks that involve the management, strategy, supervision, or direction of campaign work. Lastly, an appointed officer or employee of the Executive Branch may not seek or accept any compensation for their participation in a campaign. Paragraph 8.12 includes several examples of permissible activity by an appointed officer or employee of the Executive Branch.

III. Discussion

a. Poll Watchers

The State Election Code provides that a candidate or political party may appoint an individual as a poll watcher. *See* 25 PS 2687(a). A watcher must be registered as a member of the same party as the candidate or party that appoints them. Properly appointed poll watchers are among a very small group of people who are authorized to be in polling places during voting. A properly appointed watcher may challenge the qualifications of a voter on behalf of the party or candidate that appointed them. The challenge initiates a review by the judge of elections, who determines whether the challenge is brought in good faith and whether they can confirm that the voter is qualified to vote in the precinct. A properly appointed poll watcher also has special rights to inspect the voter rolls and to be present for the canvassing of the machines at the polling place.

A watcher appointed by a candidate or party serves as an agent of their appointing candidate or party and takes independent action both to protect the interests of that candidate or party and to guard the integrity of the vote. *See Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa. 1979). In doing so, a watcher exercises discretion and can materially affect the interests of their appointing candidate or party. As such, we find that, for the purposes of the Charter, a duly appointed watcher takes part in the management of the campaign or party that appointed them. Accordingly, Charter Section 10-107(4) prohibits an appointed officer or employee of the Executive Branch from serving as a watcher appointed pursuant to the State Election Code.²

² While we need not, and therefore do not, address these questions in this opinion, it seems to us that, (a) in the case of a watcher appointed by a political party, the watcher is an officer of that party, and (b) a challenge brought by a poll watcher is a transaction involving the City and therefore Code § 20-602 would prohibit an officer or employee from representing a candidate or party in that transaction.

b. Non-partisan election protection efforts

As defined by Regulation No. 8, political activity is an activity “directed toward the success or failure of a political party, candidate, political campaign, or partisan political group.” We assume that when you ask about “non-partisan election protection efforts” you mean activities that would not be directed towards the success or failure of any candidate but would rather have the goal of ensuring that voters are able to cast their ballot regardless of which candidate they may choose to support. We find that such activities are not political activity for the purposes of the Charter and an appointed officer or employee of the Executive Branch may participate in such activities so long as they are not organized, sponsored by, or conducted in coordination with a campaign, political party, or partisan political group.³

c. General Campaign Activities

As explained in Paragraph 8.12 of Regulation No. 8, an appointed officer or employee of the Executive Branch who is not part of the Police Department may volunteer in support of a candidate who is not running for local elective office, so long as they (a) comply with the restrictions set forth in Subpart B of Regulation No. 8; (b) do not participate in any tasks that involve the management, strategy, supervision, or direction of campaign work; and (c) do not seek or accept any compensation for their participation.⁴

We note that campaigns use a number of terms for election day volunteers, such as poll monitor or poll worker. The name given to a volunteer however, is not especially helpful in determining whether a City employee may engage in a particular activity. The key question is, what will the City employee be doing? For example, an employee of the Executive Branch may (a) hand out campaign literature on behalf of a candidate for President of the United States; (b) participate in a get-out-the-vote effort organized by a candidate for a seat in the United States House of Representatives; or (c) volunteer to hand out campaign buttons on election days in support of a candidate for United States Senate.⁵

³ We note that the State Election Code imposes a number of restrictions on police officers, with the likely result that they would not be able to engage in these activities to the same extent as other appointed officers or employees of the Executive Branch.

⁴ As the Board’s General Counsel recently advised (<https://bit.ly/BOE2020-509>), the restrictions will apply more strictly if an employee of the Executive Branch is temporarily assigned to the City Commissioners, Sheriff’s Office, District Attorney’s Office, Police Department, or Board of Ethics.

⁵ In addition, the State Election Code prohibits government employees from serving as a member of a polling place election board, such as a Judge of Election or Minority Inspector. *See* 25 PS § 2672.

An appointed officer or employee of the Executive Branch may not, however, (a) hand out a sample ballot that includes a candidate for a State Senate seat based in Philadelphia; (b) supervise volunteers for a candidate; (c) accept a payment of \$100 from a ward committee for driving voters to the polls; (d) wear their City uniform while handing out campaign literature; or (e) reference their City position while promoting any candidate.

* * * * *

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 public opinion, a copy of this Opinion will be made public on the Board’s website and by other means. 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
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cc: J. Shane Creamer, Jr., Esq., Executive Director
Michael J. Cooke, Esq., General Counsel