



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public Board Opinion No. 2021-003

March 17, 2021

**Re: Application of Ethics Rules to City Officer’s Unpaid Service on
Governmental Body**

Dear City Officer,

You have requested a non-public opinion advising you as to the extent to which the City’s Ethics Code will limit your ability to interact with City officials on behalf of a governmental body (“the Entity”) of which you are a board member.¹ As described in detail below, you are advised that Section 20-602 does not apply to interactions you may have with City officials on behalf of the Entity.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including the City’s Ethics Code (Philadelphia Code Chapter 20-600). [Home Rule Charter Section 4-1100](#) and Philadelphia Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer’s proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to seeking an advisory opinion and 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 on the application of the State Ethics Act. Our advice on the State Ethics Act, however, does not provide protection from possible enforcement by the State Ethics Commission. Guidance on the State Ethics Act that would provide such protection must come from either the Law Department or the State Ethics Commission.

¹ Prior to your appointment, Board staff advised you that your position on the board of the Entity will not give rise to a conflict of interest under either City or State law. See [Board Opinion 2016-002](#), pg. 16; [Opinion of the Commission, 01-005](#), pg. 7 (“The elements of a conflict of interest do not encompass a pecuniary benefit which flows solely to a governmental body rather than a business.”)

II. Background

You are a City officer and are a member of the board of the Entity, a governmental body that is separate from the City of Philadelphia. You have shared with Board Staff that you maintain a “wall” between your City office and the Entity in order to ensure that the business of the two does not become mixed.

III. Representation of the Entity in Transactions Involving the City

[Philadelphia Code Section 20-602\(1\)\(a\)](#) provides:

No member of the Council nor other City officer or employee shall assist another person by representing him directly or indirectly as his agent or attorney, whether or not for compensation, in any transaction involving the City. This Section shall not apply to any assistance rendered by any member of Council or other City officer or employee in the course of or incident to his official duties...

The Board has not previously considered the extent to which this provision would apply to an elected official who serves as an unpaid member of another government body, such as the Entity.² The representation restriction found at Section 20-602 was part of the original Ethics Code that City Council enacted in 1962 following a report by the Committee on Improvement in Municipal Standards and Practices, which Mayor Richardson Dilworth had empaneled in 1961. As explained in the report, and in testimony before City Council on the legislation, the purpose of Section 20-602 was to limit representation by City officers and employees “of the *private* interests of others” in transactions involving the City. Report of the Committee, pg. 8 (emphasis added); *see also* pg. 13-14.

Section 20-602(1)(a) states that a City officer shall not assist “another person” in a transaction involving the City. When Council enacted Section 20-602(1)(a), “person” was not a defined term in the Ethics Code. It was, however, defined in the Philadelphia Code’s general definitions section (found at [Code Section 1-103](#)) as:

An individual, partnership, corporation, or association, including those acting in a fiduciary or representative capacity whether appointed by a court or otherwise. Whenever used in any clause prescribing or imposing a penalty, the term "person" as applied to partnerships or associations shall include the partners or members thereof, and if applied to corporations, the officers thereof.

² In [Board Opinion 2016-002](#) we advised that “a Land Bank board member who is a board member or employee of a related agency may not represent that agency or organization as an agent or attorney in transactions involving the Land Bank, but under the Ethics Code, the Land Bank board member is generally permitted to take official action in matters that involve the related agency or organization.” Pg. 15-16. Because that question concerned an individual who was not employed by the City but was rather an employee or officer of a City-related agency, it is the opposite of the situation before us today and does not bear on the holding in this Opinion.

Notably, this definition does not include a term such as “government body.”

The definition of person in the Ethics Code (Philadelphia Code Chapter 20-600) was added in 1982 when the City Council amended the Ethics Code to add the financial disclosure requirements of Section 20-610. The Ethics Code defines the “person” as: “A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.”³ § 20-601(20). As with the definition in Section 1-103, the definition at Section 20-601(20) does not include a term such as “government body.”

The Board considered the definition of “person” at Section 20-601(20) in [Opinion 2017-002](#), which addressed whether Section 20-610 requires a filer to disclose event tickets received from the City. The main holding of that opinion has been superseded by a recent amendment to Section 20-610,⁴ but in a footnote, the Board found that since the City is “a governmental organization and municipal corporation, the City of Philadelphia satisfies [the] definition” of person in the Ethics Code because the definition includes the terms “corporation” and “organization.” *See* fn. 4, pg. 3.

While the Entity is “a body corporate and politic” (as is the City) and is, in the generic sense, an organization, neither term, in its common usage, would typically be used to describe such a government body. Philadelphia Code Section 1-103(3) provides that any word “not specifically defined in the Code shall be construed according to its common usage.” In addition, as expressed in the canon of construction *noscitur a sociis*,⁵ “a word is known by the company it keeps” and, moreover, “words grouped in a list should be given related meaning.” *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961); *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990). The definition of person in the Ethics Code includes 14 different terms, none of which would commonly be understood to mean public or government entities.

³ The term “non-profit” was added to the definition in 2014.

⁴ Code § 20-610(2)(f) now explicitly states that a filer need not disclose tickets received from the City.

⁵ Literally translated as, “it is known by its fellows.”

Courts have frequently confronted the question of whether the term “corporation” in a statutory definition of “person” should be interpreted to cover a municipal corporation. *See* survey of cases in *City of Clinton, Ark. v. Pilgrim's Pride Corp.*, 653 F. Supp. 2d 669, 672-73 (N.D. Tex. 2009), *affd*, 632 F.3d 148 (5th Cir. 2010). The cases that find that a municipal corporation is covered by the term “corporation” typically concern “statutory definitions that clearly include governmental divisions or that contain broad language that lend themselves to the conclusion that a municipality was meant to be included in the term ‘person’.” *Id.* at 673.⁶ While not a municipal corporation, the same considerations seem to us relevant to determining whether the term “corporation” should be read to apply to a governmental “body corporate and politic.”

It is also instructive to consider the legislative history on this point. When the definition of person was added to the Ethics Code in 1982, it appears that the text for the definition was copied verbatim from the State Ethics Act. In 1984, the State Ethics Commission held that the State Ethics Act’s post-employment restriction did not prevent an individual from representing a new government employer before their former government body. *See* [Opinion of the Commission 84-019 \(Hagan\)](#). In 1989, the State legislature amended the definition of person in the State Ethics Act specifically to add the term “governmental body.” *See* H.B. 75 (1989), as amended & approved June 12, 1989, [Printer’s No. 2027, pgs. 8-9, ln. 29-1](#). In 1995, the Commission held that, because of the addition of the term “governmental body” to the definition of person, the State Ethics Act now prevents an individual from representing a new government employer before their former governmental body. *See* [Opinion of the Commission 95-007 \(Ledebur\)](#).

Based on the foregoing examination of the language of the ordinance, its legislative history, the relevant authorities, and how the comparable provision in the State Ethics Act has been construed, we find that the definition of person, as applied to Section 20-602, should not be read to include a governmental body such as the Entity. With that in mind, and considering the intent of Section 20-602, as expressed in the relevant legislative history, we hold that Section 20-602 does not apply to interactions you may have with City officials on behalf of the Entity.

⁶ In Pennsylvania, for example, the Commonwealth Court has held that the term “corporation” in the definition of “employer” in the Wage Payment and Collection Law should not be construed to cover municipal corporations. *See Philipsburg-Osceola Educ. Ass’n by Porter v. Philipsburg-Osceola School District*, 633 A.2d 220 (Pa. Commw. 1993); *Huffman v. Borough of Millvale*, 591 A.2d 1137, 1139 (Pa. Commw. 1991). *But see, Meyer v. Community College of Beaver County*, 30 A.3d 587 (2011) (distinguishing *Huffman* in finding that the definition of “person” in the Unfair Trade Practices and Consumer Protection Law covers local agencies because of the particular purposes of that Law and because the definition includes the term “any other legal entities”).

We note, however, that while Section 20-602 does not apply to you in this instance, you are, of course, constrained by your oath of office to act “with fidelity” to the City. *See Philadelphia Code § 20-102*. As a safeguard, we advise that you do not represent the Entity before your City department or in any matters that directly involve your City department.

IV. Conclusion

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. § 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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, please contact General Counsel staff.

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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