



## CITY OF PHILADELPHIA

BOARD OF ETHICS  
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**The Board's Regulation 8 (Political Activity), effective March 28, 2011, represents the Board's interpretation of Charter Section 10-107, and supersedes this advisory opinion to the extent that it is inconsistent with the regulation.**

### Philadelphia Board of Ethics Nonpublic Advice of Counsel GC-2009-508<sup>1</sup>

June 29, 2009

Hon. Michael A. Nutter, Mayor  
215 City Hall  
Philadelphia, PA 19107

#### **Re: Application of Political Activity Restrictions to Members of the Commission on Parks & Recreation**

Dear Mayor Nutter:

As you know, on October 12, 2007, the Board of Ethics issued Opinion No. 2007-004, regarding the applicability of the political restrictions<sup>2</sup> in the Charter (Charter 10-107) to four City boards associated with L & I, and on December 18, 2007, the Board issued Opinion No. 2007-006, applying the same restrictions to the other 77 boards and commissions of which we were aware.

You have asked for nonpublic advice on whether these restrictions apply to the members of the Commission on Parks and Recreation, created by Charter amendment since the above Opinions, and to take effect July 1, 2009.

<sup>1</sup> This Advice of Counsel, originally Nonpublic, is being made public by agreement of the Mayor.

<sup>2</sup> That is, the substantive provisions that apply only to "City officers," those stated in subsections (3), (4), and (5) of Section 10-107.



In keeping with the analysis of Opinion No. 2007-006 (which incorporated the policy of Opinion No. 2007-004), you are advised that this determination must be based on the powers and responsibilities of the body in question, and in particular whether the body exercises significant powers of government. *See* Opinion No. 2007-006 at page 2.

In this regard, the primary consideration for a Charter-created board or commission is the powers and duties assigned to that body in the Charter. Section 5-601 of the Charter spells out the powers and duties of the Commission on Parks and Recreation. In addition, reference to Charter Sections 5-600 (relating to functions of the Department of Parks and Recreation) and A-200(8) (relating to the schedule for merging the powers of the Fairmount Park Commission and the Recreation Commission) is instructive.

As of this writing, before the Commission has been formally appointed and entered upon its existence, and based solely upon the description of powers and duties in the Charter, you are advised that it appears that the Commission's function of "adopt[ing] standards and guidelines" is an essentially advisory function and does not rise to the level of the exercise of significant powers of government. It is noted that Charter Section 5-601 provides that City officials, including the Parks and Recreation Commissioner, "shall give substantial weight to the standards and guidelines adopted by the Commission." As a result, in the future additional facts concerning the actual interrelationship between the Department and the Commission, as it develops, may require a re-evaluation of this conclusion.

In summary, you are advised that members of the Commission on Parks and Recreation are not subject to Section 10-107 of the Home Rule Charter, and need not abide by the political activity restrictions of Section 10-107(4), the restrictions on political fund-raising in Section 10-107(3), and the requirement to resign if announcing a run for elected office, as provided in Section 10-107(5).<sup>3</sup>

If you have any additional facts to provide, we will be happy to consider if they change any of the conclusions in this opinion. Since you have requested nonpublic advice from the Board of Ethics, we will not make this letter public, but we will be required to make public a revised version, edited to conceal your identity, as required by Code Section 20-606(1)(d)(iii).

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<sup>3</sup> Subsections (1) and (2) of Section 10-107 apply to any person, not just City officers and employees.

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Sincerely yours,

Evan Meyer  
General Counsel

cc: Richard Glazer, Esq., Chair  
J. Shane Creamer, Jr., Esq., Executive Director