



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Evan Meyer
General Counsel

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 Advice of Counsel GC-2010-520

November 24, 2010

Joan Markman, Esq
Chief Integrity Officer
Office of the Mayor
Room 215, City Hall
Philadelphia, PA 19107

Re: Election Guide for Executive Branch Officials

Dear Ms. Markman:

You have requested public advice on a memo you propose to send to the Mayor's office staff, the Cabinet, and the Executive Team. The draft memo, which is attached, is captioned "2011 Philadelphia Elections Guide," and provides general guidance on activities that are likely permissible under the Charter's political activities restrictions and those that should be avoided. The memo, however, notes that it is not formal advice on which the recipients can rely and that any questions should be addressed to the Board of Ethics. You have asked us to review the attached memo and advise you as to any concerns we may have concerning its suggestions relating to the prevailing interpretations of Charter Section 10-107.

The Board of Ethics has publicly announced that its staff is preparing a

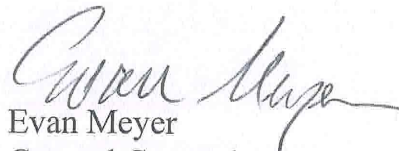
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proposed Regulation No. 8 ("Political Activity"), to provide additional interpretation of some aspects of Charter Section 10-107. Current plans are for the Board to consider approving the Regulation for public comment at its regular meeting on December 15, 2010. Although Regulation No. 8 is anticipated to provide some changes in the previous interpretations of parts of Charter Section 10-107, nothing in the attached memo should be rendered inaccurate by the adoption of Regulation No. 8. In any case, the attached memo notes that it is based on prior interpretations of the Charter provision.

In summary, you are advised that the attached memo presents no concerns under the interpretations to date of Charter Section 10-107.

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 public advice from the Board of Ethics, we will make this letter public as required by Code Section 20-606(1)(d)(iii).

Sincerely yours,


Evan Meyer
General Counsel

Attachment

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

*** 2011 PHILADELPHIA ELECTIONS GUIDE***

To: Mayor's office staff
Cabinet
Executive team

From: Joan Markman
Chief Integrity Officer

Date: November __, 2011

Recent media reports speculating about Mayor Nutter's re-election plans and prospective opponents suggest that the 2011 election season has begun. As you know, the City Charter restricts political activity of City officials and employees. The mayor remains committed to ensuring that administration officials, employees, and contractors don't mix campaign politics with the business of operating the City.

This is not to suggest, however, that the advent of election season should affect your plans to create, implement, and announce programs and actions that further the administration's policy initiatives and agenda. Nor should it affect your communications with the public, the press, and other elected officials or their staffs about the administration's policy and program successes, or your answers to questions about what's worked and what hasn't. In other words, don't stop talking about policy, plans, and performance, as you've been doing since January 2008.

I anticipate (either pessimistically or realistically) that some will attempt to say that in communicating about the administration's agenda, you're crossing the line from doing your jobs to promoting the mayor's anticipated candidacy in violation of the Charter's political activity prohibitions. It's impossible to anticipate every question or discussion topic, so this memo just gives general advice. But as long as you're discussing or answering questions about performance (e.g., the effectiveness of a program in particular or the administration in general, or whether the administration is doing a good job), and not promoting the mayor's candidacy (e.g., discussing or answering questions about the mayor's political intentions,

what effect a particular program or decision might have on his candidacy, or whether he should be re-elected), there should not be a problem.

If you receive questions from anyone – media, public, or elected officials -- concerning campaign matters (including questions about logistics concerning the mayor's appearances at political events) please refer those to Scott Freda of the Nutter for Mayor Political Committee.

Here are some additional guidelines for people in the mayor's office, based on Ethics Board interpretations of Section 10-107 to date:

Scheduling

The mayor's scheduler maintains a calendar accounting for all of the mayor's time. If the Political Committee wishes to schedule a campaign event for the mayor, Mr. Freda or someone from the Nutter for Mayor Political Committee may contact the mayor's scheduler to see about availability and to notify the scheduler about times that the mayor will not be available because of his attendance at a campaign-related meeting or event. The scheduler may contact the campaign regarding scheduling availability, as well. This is an essential part of the scheduler's job: to make sure that the mayor can get to where he needs to be, and has time for in-office meetings throughout the week so he can do the city's business. For the same reason, the scheduler can use city facilities (phone, e-mail, fax) to communicate with the campaign staff about scheduling matters. These communications are not political activity or promotion of his campaign.

Communications and press

The job of the mayor's communications and press staff is to communicate with the public, through the press and otherwise, about the mayor's agenda, goals, initiatives, policies, programs, and official actions. This includes promoting the administration's agenda, goals, initiatives, policies, programs, performance, and official actions, and responding to attacks on these. To that end, the press staff:

- publishes daily a schedule setting forth public events at which the mayor will appear;
- announces the mayor's press availability and press conferences;

- responds to requests for comments from the administration about City and other matters;
- drafts the mayor's speeches and remarks at public and private events at which he appears in his official capacity (that is, not events at which he appears as a candidate);
- responds to comments and reports about the administration's actions and performance.

Communications and press staff should not be engaging in partisan political activity that promotes the mayor's (or anyone's) candidacy. None of the activities above are political activity or promotion of the mayor's anticipated re-election campaign. However, I believe the communications and press staff are particularly susceptible to the claim that in communicating about the administration's agenda, you're crossing the line from doing your jobs to promoting the mayor's anticipated candidacy in violation of the Charter's political activity prohibitions. While it's impossible to anticipate every question or discussion topic, as long as you're discussing or answering questions about the administration's agenda, goals, initiatives, policies, programs, performance, and official actions (e.g., the effectiveness of a program in particular or the administration in general, or whether the administration is doing a good job), and not promoting his candidacy (e.g., discussing or answering questions about the mayor's political intentions or what effect a particular program or decision might have on his candidacy), there should not be a problem.

To keep mayor's office communications separate from campaign communications, please continue excluding from the mayor's office daily schedule any announcement of campaign events, meetings, or press conferences. Any announcement about the mayor's involvement in any campaign-related communications will be made by the Nutter for Mayor Political Committee, not by the mayor's office.

Security staff

Since the mayor is protected 24/7, both while conducting city business and going about his personal life, there's no reason to consider as prohibited political activity the resources required to provide security for any political events or meetings.

“Body” men [and women]

The business of the city continues even as the mayor attends to campaign-related business. When attending political or campaign-related events, the mayor needs someone with him to be intermediary for communications about official city business, particularly if those events are during the business day. These staffers’ attendance at political events is essential to their city jobs because they help the mayor carry out his official responsibilities, even at political venues, by serving as that necessary intermediary. Having these staffers accompany the mayor to political events is not political activity or promotion of his campaign, as long as the staffers’ role is limited to assisting with official City business.

This is general guidance, not advice on which you can legally rely. If something specific comes up, feel free to contact me or, for prospective advice that, if followed, offers protection from violating the City Charter, the Ethics Board. The Ethics Board may be contacted at 215-686-9450 or www.phila.gov/ethicsboard.