



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics  
Nonpublic Advice of Counsel GC-2012-507**

July 24, 2012

**Re: Appointed City Employee / Political Activity / Partisan Political Group**

The Board of Ethics received a request for nonpublic advice from an appointed City employee. He asked to be advised on three questions, all of which relate to his membership in a Philadelphia-based political organization (hereinafter referred to as “The Group”). The employee advised that he is a plaintiff in a class action lawsuit (hereinafter referred to as “the legal action”) in which the defendants include several other political organizations and officials of a particular political party. The employee has joined in a motion to amend the complaint to add The Group as a new plaintiff.<sup>1</sup> He has asked the following questions:

1. Does Regulation No. 8 or any other law or regulation prohibit the City employee from retaining his membership in The Group?
2. Would Regulation No. 8 or any other law or regulation prohibit the City employee from attending a meeting of The Group and participating in a discussion about the legal action?

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<sup>1</sup> The details and circumstances of the lawsuit are largely irrelevant to the advice requested from the Board of Ethics.

3. Would Regulation No. 8 or any other law or regulation prohibit the City employee from testifying in the legal action as a witness for The Group in order to establish the legal, associational standing of The Group?

As will be discussed below, an important issue for this Advice is whether The Group is a “partisan political group” as that term is used in Board of Ethics Regulation No. 8. The employee advised that The Group is a membership organization open to all registered voters in a particular political party in the City of Philadelphia. The employee also advised as follows:

The associational goals of The Group are to encourage and promote the use of transparent, democratic practices on the part of the Party and the City of Philadelphia.

The Group does not itself endorse any candidates. It does, however, list and disseminate the endorsements made by other progressive organizations.

The Group’s leadership structure is that it has a chair, a vice-chair, recorder and treasurer. While the City employee is a member of The Group, he does not hold any leadership position.

As an appointed City employee, the requestor is subject to the restrictions on political activity stated in Section 10-107 of the Home Rule Charter. Subsections 10-107(3) and (4) restrict political activity and political fund-raising. As to appointed employees, subsections (3) and (4) are interpreted by Board of Ethics Regulation No. 8, which became effective March 28, 2011. Since the employee has neither asked about political fund-raising nor provided any facts that indicate that he would be involved in political fund-raising, this Advice will not address subsection 10-107(3). However, the requestor should be aware that the provision does apply to him, as an appointed City employee.

Charter subsection 10-107(4) provides as follows:

(4) No appointed officer or employee of the City shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

Regulation No. 8 interprets this provision, in part, in Paragraphs 8.10 and 8.11, both of which use the term “partisan political group.” That term is defined in the Regulation in Paragraph 8.1(1) as follows: “Any committee, club, or other organization that is affiliated with a political party or candidate or whose primary purpose is to engage in political activity.” Based on the description of The Group, the requestor was advised that the organization is a partisan political group or partisan political club for purposes of Charter Section 10-107 and Regulation No. 8.

Paragraphs 8.10 and 8.11 include the following among prohibited political activity:

**8.10** An appointed officer or employee shall not be an officer of a partisan political group.

**8.11** An appointed officer or employee shall not take any part in the management or affairs of any political party, political campaign or partisan political group, which includes any political activity that is performed in concert or coordination with a political party, candidate, or partisan political group, such as:

- a. Circulating or initiating nomination petitions or papers for public elective office;
- b. Being a candidate for public elective office or political party office;
- c. Serving as a delegate to a political party convention;
- d. Participating in get-out-the-vote activities organized or sponsored by a political party, candidate, or partisan political group; or
- e. Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or partisan political group.

In contrast, Paragraphs 8.13 and 8.14, listing permissible activities, make it clear that mere membership in a partisan political group or mere attendance, as a spectator, at a political event are not prohibited by Charter Section 10-107(4).

The employee advised that he is not an officer of The Group. However, even as a member, the employee may not serve on a committee of The Group; may not engage in any activity that is performed in concert or coordination with a political party, candidate, or partisan political group; and may not use resources or materials provided by a political party, candidate, or partisan political group. Thus, whether any particular activity is permissible is dependent on the facts of that activity and the employee's involvement.

Applying the above concepts, I will address the requestor's specific questions.

*1. Does Regulation No. 8 or any other law or regulation prohibit the employee from retaining his membership in The Group?* Mere membership in a partisan political group or club is not prohibited by Charter Section 10-107, as interpreted by Regulation No. 8.

*2. Would Regulation No. 8 or any other law or regulation prohibit the employee from attending a meeting of The Group and participating in a discussion about the legal action?* As noted above, mere attendance as a spectator at a political meeting is not prohibited. However, participation by the City employee in a discussion of a matter that could determine the parties to a lawsuit in which The Group would become a plaintiff in lieu of the employee, and party officials would be defendants, is certainly involvement in the affairs of the partisan political group well beyond mere attendance at a meeting. The requestor was advised that such participation would be prohibited by Charter Section 10-107, as interpreted by Regulation No. 8.

*3. Would Regulation No. 8 or any other law or regulation prohibit the employee from testifying in the legal action as a witness for The Group in order to establish the legal, associational standing of The Group?* Assuming that a way can be found for the employee to appear in court on behalf of The Group without violating the advice in point no. 2 immediately above, the requestor was advised that giving the testimony described would not, in itself, constitute a violation of Charter Section 10-107, as interpreted by Regulation No. 8.

### **Conclusion**

Based on the facts provided, the appointed City employee was advised that he may permissibly be a member of The Group, may attend, purely as a spectator, meetings of that organization, and may testify on its behalf in court, as described in point no. 3 above. However, any further involvement in the management or affairs of the

organization, such as participating in a discussion at a meeting of the organization, would be prohibited by Charter Section 10-107, as interpreted by Regulation No. 8.

This Advice addresses only the questions presented to us. It is important to note that as a City employee, the requestor is still subject to the Public Integrity Laws, including Chapters 20-600, 20-1000, and 20-1200 of the Philadelphia Code and relevant provisions of Title X of the Home Rule Charter. In particular, if the City employee were to consider representing The Group in any transaction involving the City, or to taking official action as an appointed City employee affecting The Group, he would be well advised to seek advice from the Board of Ethics, prior to acting.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, the advice provided herein is predicated on the facts that have been provided to us. We do not conduct an independent inquiry into the facts. Further, we can only issue advice as to future conduct. Accordingly, this Advice does not address anything that may have occurred in the past. The requestor is advised that, although previous opinions of this office that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this Advice states general principles, and there are particular fact situations that the requestor may be concerned about, he was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

The requestor was advised that, if he has any additional facts to provide, we will be happy to consider if they change any of the conclusions in this Advice. Since nonpublic advice was requested 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 the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer  
General Counsel

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