



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Nonpublic Advice of Counsel GC-2012-510**

August 3, 2012

Re: Potential Conflict / Political Activities / Voter Protection Program

A City employee, who is also an attorney, requested a nonpublic advisory opinion as to the effect of the ethics laws on her volunteer service in a private capacity on Election Day 2012 (November 6, 2012) as a voter protection volunteer through the Committee of Seventy. The requestor advised that her office interacts with several other City agencies, including the City Commissioner's Office. We were provided a link to the website of the Committee of Seventy, describing the program. The description makes it clear that participants are unpaid volunteers.

City employees are not prohibited in general from serving as a volunteer for a nonprofit organization. However, in doing so, the Philadelphia Code (“Code”), the Philadelphia Home Rule Charter (“Charter”), and the State Ethics Act place certain restrictions on such service.

Benefiting from City Contracts

Charter Section 10-102 prohibits City employees from being “interested directly or indirectly” in certain City contracts. However, because the requestor would not be compensated as a volunteer participant in the voter protection program, she cannot be

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“interested” in any City contracts as a result. Therefore, there is no issue under this provision. *See* Nonpublic Advice of Counsel GC-2012-502 at page 2.

Representing Others in Transactions Involving the City

The Philadelphia Code imposes certain restrictions on City officers or employees representing others in transactions involving the City. Code Section 20-602(1)(a) provides:

No . . . 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 . . . City officer or employee in the course of or incident to his official duties. . . .

This provision applies even if the officer or employee is not compensated for such representation. Consequently, the requestor may not represent the Committee of Seventy or any voter as their “agent or attorney” in any transaction involving the City (such as a voting challenge to the City Commissioners or in which the City Commissioners Office is a party), unless such representation is in the course of or incident to her official duties as a City employee. This restriction applies to all such transactions, not just those involving the City Commissioners.

However, the phrase “as agent or attorney” is a significant limitation on the reach of this prohibition. Any City employee who is a member of the bar should be cautious to avoid representation as an attorney of any person in a transaction involving the City. Nevertheless, on review of the materials provided about the program, it appears that volunteers will mostly be answering questions, providing information, and reporting problems to the Committee of Seventy.

Provided that the requestor avoids representing any person as agent or attorney in a transaction involving the City, Section 20-602 would not prohibit her proposed volunteer service with the Voter Protection Program.

The Philadelphia Code’s Conflict of Interest Provision

The City Code prohibits City employees from having conflicts of interest that arise

from either having a personal financial interest in their official actions, or from being a member of certain entities that have a financial interest in their official actions.

As to a personal interest, Code Section 20-607(a) prohibits City employees from being “financially interested” in their official actions. Because she would not be compensated as a volunteer participant in the voter protection program, the requestor cannot be “financially interested” in any official City action by her that affects the Committee of Seventy or the program. Therefore, there is no issue under this provision. *See* Nonpublic Advice of Counsel GC-2009-501 at page 5 (Amended March 2, 2010).

As to an interest through another entity, Code Section 20-607(b) places certain restrictions on City employees who are members of a “partnership, firm, corporation or other business organization or professional association organized for profit” which have a financial interest in their official actions. However, because the Committee of Seventy is a nonprofit entity, there is no issue under this provision, since subsection 20-607(b) applies only to entities “organized for profit.” *See* Nonpublic Advice of Counsel GC-2010-505 at page 5.

Disclosure of Confidential Information

The Code also prohibits City employees from making available confidential City information they acquire in their employment with the City. Specifically, Code Section 20-609 provides:

No . . . City officer or employee . . . shall directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others.

Making available confidential City information to the Committee of Seventy or anyone else under the voter protection program could not advance the requestor’s personal “financial interest” because she is not compensated as a volunteer for the program. However, making available confidential City information to the Committee of Seventy for the purpose of advancing that entity’s “financial interest” would violate this provision. Therefore, the requestor may not reveal confidential City information to the Committee of Seventy in the course of assisting that organization.

Please note that this information is provided merely to be complete, not to suggest

that there appears to be any concern that this is an issue under the facts provided.

The Commonwealth's Conflict of Interest Provision

The State Ethics Act, 65 Pa.C.S. §1101 et seq., applies to some City employees, and generally to attorneys.¹ The Act prohibits public employees from “engag[ing] in conduct that constitutes a conflict of interest.” 65 Pa.C.S. § 1103(a). A “conflict of interest” is:

Use by a public official or public employee of the authority of his office or employment . . . for the private pecuniary benefit of himself . . . or a business with which he . . . is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee . . . with which he . . . is associated.

65 Pa.C.S. § 1102.

Under the Act, a public official may have a conflict of interest if he has a personal financial interest, or a “business” with which he is associated has a financial interest, in his official actions.

The State Ethics Commission has not, to our knowledge, found a financial interest where an official is not compensated by the outside entity, or otherwise financially benefits from the entity, and is not an officer or director of the entity. *See* State Ethics Commission Advice of Counsel No. 11-506.

For specific guidance on the State Ethics Act, including whether the Act applies to her, the requestor should seek either a confidential or a non-confidential advisory opinion

¹ The Act applies only if the individual is a “public employee,” which is defined in the Act to include: “Any individual employed by . . . a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with respect to (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.” 65 Pa.C.S. §1102. *See also* Regulations at 51 Pa. Code Section 11.1 (definition of “public employee” at (iv)(C)). However, we have not reviewed a job description. (As noted below, a definitive ruling, on which you could rely, should come from the State Ethics Commission.)

issued by the State Ethics Commission, which would provide her a complete defense in any enforcement proceeding initiated by the Commission and is evidence of good faith conduct in any other civil or criminal proceeding, provided the requestor disclose truthfully all the material facts and acts in reliance on the Advice. *See* 65 Pa.C.S. §1107 (10), (11). The State Act would also provide protection from certain penalties if the requestor seeks and relies on non-confidential advice from the City Solicitor. *See* 65 Pa.C.S. §1109(g).

A request for advice from the State Ethics Commission should be directed to

State Ethics Commission
Attention: Legal Division
Room 309 Finance Building
P.O. Box 11470
Harrisburg, Pa 17108-1470

Political Activity

As an appointed City employee, the requestor is subject to Charter Subsection 10-107(4) and the Board's Regulation 8, restricting political activity. The political activity restrictions that are most relevant to your request include a prohibition on City employees engaging in political activity while on duty, using City resources or in any City-owned or leased building. *See* Regulation 8, Subpart B. We were advised that the requestor is planning on taking leave on Election Day to participate in the voter protection program, so her participation, even if it could be considered to be "political activity," would not be on duty.

City employees are also prohibited from using their City position, authority, influence, title, or status as a City employee for any political purpose. *See* Regulation 8, Subpart C.

The meaning of "political activity" is critical to identifying prohibited behavior. Political activity is defined as activity that is directed toward the success or failure of a political party, candidate, or partisan political group.² Reg. 8, ¶8.1(n). Examples of political activity include organizing a campaign event, circulating nomination petitions, and

² A partisan political group is any club, committee or other organization that is affiliated with a political party or candidate or one whose primary purpose is to engage in political activity). Reg. 8, ¶8.1(l).

distributing political campaign literature that encourages voters to choose a certain candidate. Activity that merely involves contact with political parties, partisan political groups, candidates and campaigns does not necessarily satisfy this definition or amount to political activity. Although election matters may involve the interests of candidates and campaigns, nonpartisan activities such as voter registration drives are permissible to City employees. *See* Regulation 8, Subpart G.

The requestor was advised that the voter protection program of the Committee of Seventy is a nonpartisan program, and her volunteer participation in that program, as described in the materials presented, would not be partisan political activity, and thus would not be prohibited by Charter Section 10-107(4) as interpreted by Board Regulation 8.

Summary

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Advice is predicated on the facts that have been provided. 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 was 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, she was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

Based on the facts that were provided, we concluded that the City ethics laws, including those on political activity, do not restrict the requestor's volunteer service in a private capacity on Election Day 2012 (November 6, 2012) in the Committee of Seventy's Voter Protection Program, provided that she does not represent any person as agent or attorney in a transaction involving the City. The requestor was advised to consult the State Ethics Commission for any interpretation of the State Ethics Act.

Nonpublic Advice of Counsel GC-2012-5010

August 3, 2012

Page 7 of 7

Since the requestor requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we will be required to make public this 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