



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics
Nonpublic Advice of Counsel GC-2012-511**

August 16, 2012

Re: Political Activities / Voter ID Law Rally

An employee of the Office of City Commissioners requested a nonpublic advisory opinion as to the effect of the ethics laws if he were to participate, as part of his duties and representing his City office, in a rally addressing the Pennsylvania Voter ID law.¹

This query raises issues only under the political activity restrictions of the Philadelphia Home Rule Charter.

Political Activity

As an appointed City employee, the requestor is subject to Charter Subsection 10-107(4) as interpreted by the Board's Regulation 8, restricting political activity. The political activity restrictions that are most relevant to this request include a prohibition on City employees engaging in political activity while on duty, while using City resources, or while in any City-owned or leased building. *See* Reg. 8, Subpart B. City employees are also

¹ Although the rally was advertised as opposing the law, the requestor advised that the purpose of his participation was "to talk about what we are doing to enhance the awareness of Voter ID in Philadelphia."

prohibited from using their City position, authority, influence, title, or status as a City employee for any political purpose.² *See* Reg. 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.³ Reg. 8, ¶8.1(n). Activity that involves contact with political parties, partisan political groups, candidates and campaigns does not necessarily satisfy this definition or amount to political activity. Notably, the responsibilities of the Office of the City Commissioners require interaction with candidates and campaigns since these groups compose not just a segment of the public, but also part of the community that the Office serves and regulates.

Political activity is prohibited on duty, and an employee is considered to be on duty: (i) during normal working hours, which for those with fixed work schedules includes the time between the start and end of the workday excluding a lunch break; (ii) when performing the duties of his or her City jobs or appointments; or (iii) when acting in his or her official capacity as a City appointed officer or employee. Reg. 8, ¶8.1(k). The requestor advised that, in attending and participating in the rally, he would be performing the duties of his City job in furtherance of the responsibilities of his City office. Therefore, all proposed activities would take place while he was on duty, and the activities must not constitute political activity to be permissible.⁴

City employees attending and participating in a non-partisan rally regarding a bill or law that impacts their agency is permissible in theory. The practical realities, however, of the unpredictable nature and potential trajectory of a rally about bills that have been described as “highly partisan in nature” create a grave risk that the rally could be partisan, that participation by City employees would be used for partisan political purposes, and that the political activity restrictions would be violated.

² “Political” means related to a political party, candidate, or partisan political group. Reg. 8, ¶8.1(m); *see also* Reg. 8, Subpart G (describing activity that is not political). Regulation 8 defines in Paragraph 8.1 other key terms that are used throughout this Advice.

³ 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). Regulation 8 defines in Paragraph 8.1 other key terms that are used throughout this Opinion.

⁴ As requested, this Advice analyzes the proposed activities in the context of whether they are permissible for the requestor in his official capacity, while on duty and while utilizing City resources. This Advice does not address whether employees can participate in these activities off duty in their personal capacities. Indeed, the analysis for behavior in a personal capacity is different, and some activities that are prohibited on duty would be permissible off duty. *See* Reg. 8, ¶8.14.

In general, campaigning for or against referendum questions, constitutional amendments, federal or state laws, or municipal ordinances is activity that is not political, so long as it does not involve coordination with political parties, candidates, or partisan political groups. Reg. 8, ¶8.17(a). To be non-political, a rally would have to be non-partisan, meaning party and candidate-neutral. To be non-partisan, neutrality is absolutely required but may be difficult to achieve. After all, the rally topic is highly partisan in nature, and rallies are often not neat, predictable affairs since their purpose is to generate excitement and inspire action. In addition, it appears that the subject rally will be a public event that includes participants who are not subject to the Charter's political activity restrictions.

Despite prior instruction from the planners to the contrary, speakers could veer from their scripts and make partisan statements or attendees could display partisan signs. Although the rally may have been planned as non-partisan, the planners would not have complete control over what happens during the rally. Partisan statements and displays, even if unplanned and off-script, could cause the rally to become partisan and involve political activity. In this scenario, the requestor could find himself attending a rally that turns out to be a partisan event at which political activity occurs. Nevertheless, it was our understanding that the requestor was not involved in planning the rally. Accordingly, he is not responsible for how the rally proceeds.

Partisan statements criticizing the political party that is perceived as being responsible for the law, or any political party, would constitute political activity and the use of authority for a political purpose. Therefore, the requestor was advised that he should avoid making, or being associated with, such statements, if they occur.

In summary, the requestor was advised, that provided that he is reasonably assured that this rally is intended to be non-partisan and his participation would not involve coordination with political parties, candidates, or partisan political groups, Section 10-107(4) as interpreted by Regulation 8 would not prohibit his participation in the rally as part of his official duties for the City. However, should it become apparent that the rally is veering off into partisan waters, he should take steps to limit his participation as much as possible from that point forward.

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, he 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, the requestor was advised that Charter Section 10-107(4), as interpreted by Board of Ethics Regulation 8, does not prohibit his participation in the Voter ID rally, but he should avoid making, or being associated with, partisan political statements or activity.

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