



CITY OF PHILADELPHIA

BOARD OF ETHICS
One Parkway Building
1515 Arch Street
18th Floor
Philadelphia, PA 19102
(215) 686 – 9450 (t)
(215) 686 – 9453 (f)

**Philadelphia Board of Ethics
General Counsel Opinion No. 2017-506**

November 6, 2017

Stephanie Waters
Digital Director
Office of the Mayor
City Hall, Room 215
Philadelphia, PA 19107
stephanie.waters@phila.gov

**Re: Application of Political Activity Restrictions to Use of
Private Social Media Accounts in a Personal Capacity**

Dear Ms. Waters:

You have requested a public advisory opinion regarding the application of the Philadelphia Home Rule Charter political activity restrictions to five general uses of social media in your personal capacity, while off duty, and using private social media accounts. As previously conveyed to you by this Office, the political activity restrictions would prohibit only the two types of proposed social media use that involve linking to content created by a candidate.

I. Jurisdiction

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter (“Charter”) provisions and ordinances pertaining to ethical matters, including the political activity restrictions of Charter Section 10-107. Charter § 4-1100. The Charter and The Philadelphia Code (“Code”) authorize the Board to render advisory opinions concerning a City officer’s or employee’s proposed future conduct. Charter § 4-1100; Code § 20-606(1)(d). Board of Ethics Regulation 4 describes the procedures

related to seeking an advisory opinion and for requesting reconsideration of an advisory opinion issued by the Board's General Counsel. Board Reg. 4 ¶¶ 4.0, 4.24.

II. Facts Provided by Requestor

You are the Digital Director for the City of Philadelphia. In your personal capacity, while off duty, and not using City resources, you frequently use social media. As such, you have questions about the application of the Charter political activity restrictions in the context of your personal social media use.

III. Discussion

You have asked whether five general types of personal social media use are permissible. This Opinion addresses the political activity restrictions as applied only to these social media uses in a personal capacity, while off duty, and using private social media accounts. In contrast to General Counsel Opinion 2017-505, which was also issued to you, this Opinion does not address the political activity restrictions as applied to social media use as part of City work, while on duty, or using City resources. Moreover, this Opinion only addresses whether these types of social media use are permissible under the political activity restrictions and does not otherwise comment on their advisability.

A. Overview of Charter Political Activity Restrictions as Applied to a City Employee in a Personal Capacity

Under Charter Section 10-107, appointed City employees are subject to various restrictions on their political activity. *See* Charter § 10-107. Board Regulation 8 interprets the requirements and prohibitions of Philadelphia Home Rule Charter Subsections 10-107(3) and (4) as applied to appointed City officers and employees. Board Reg. 8 ¶ 8.0.

Charter Subsection 10-107(3) prohibits appointed City employees from directly or indirectly, or being in any manner concerned in, demanding, soliciting, collecting or receiving contributions intended for a political purpose.¹ *See* Charter § 10-107(3); Board Reg. 8 Subpart D. For example, regardless of whether social media is utilized, a City employee is prohibited from collecting contributions to a political committee, selling tickets to a political party fundraiser, or sharing an invitation to a candidate's fundraiser. *See* Board Reg. 8 Subparts D, F Ex. 4.

¹ The term "contribution intended for a political purpose" includes any money or thing of value received by a political committee, political party, partisan political group, or candidate's campaign. *See* Board Reg. 8 ¶ 8.1(f).

Charter Subsection 10-107(4) provides in relevant part: “No appointed officer or employee of the City shall . . . 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.” Charter § 10-107(4). This provision prohibits an appointed City employee² from taking any part in the management or affairs of any political party, political campaign, or partisan political group.³ Board Reg. 8 ¶ 8.11. This includes a prohibition on any political activity – defined as activity directed toward the success or failure of a political party, candidate, or partisan political group – that is performed in concert or coordination with a political party, candidate, or partisan political group. *See* Board Reg. 8 ¶¶ 8.1(n), 8.11.

B. Political Activity Permitted If Certain Restrictions Are Observed

Provided that certain restrictions are observed, a City employee is permitted in a personal capacity to engage in political activity and in political expression, which is expression related to a political party, candidate, or partisan political group. *See* Board Reg. 8 ¶¶ 8.1(m), 8.14. Namely, political activity and political expression are permissible while a City employee is off duty, not in a City-owned or leased property, and not using a City title, position,⁴ uniform, or resources as long as the City employee: (1) does not act in concert or coordination with a political party, candidate, or partisan political group; and (2) does not engage in activities that in any manner involve the solicitation or collection of contributions intended for a political purpose. *See* Board Reg. 8 ¶¶ 8.3-8.5, 8.14. In the context of using social media to engage in political activity or political expression while off duty and not using City time or resources, the political activity restrictions require that an appointed City employee: (1) does not use his or her title or status as a City employee; (2) does not engage in activity that involves the solicitation or receipt of contributions intended for a political purpose; and (3) does not include in posts anything that was created by, or links to information created by, a political party, candidate, or partisan political group.⁵ *See* Board Reg. 8 Subpart H.

² This Opinion does not address the application of Charter Subsection 10-107(4) to City Council employees. *See* Board Reg. 8 Subpart K.

³ A “partisan political group” is 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. Board Reg. 8 ¶ 8.1(l).

⁴ Use of City position includes requesting, directing, or suggesting that a subordinate employee participate in political activity, and such behavior is prohibited. *See* Board Reg. 8 ¶ 8.4(c).

⁵ While it is the general rule that a City employee may not post anything that was created by, or that links to information created by, a political party, candidate, or partisan political group, a City employee is permitted to: (1) become a “friend” or “fan” of, or “like” the page of a political party, candidate, or partisan political group; and (2) “follow” the Twitter account of a political party, candidate, or partisan political group. Board Reg. 8 ¶¶ 8.19(c), (d); *see also id.* ¶¶ 8.14, 8.17, 8.18(c).

C. Five Questions

The five questions you posed regarding personal social media use are discussed below. Since the questions presented are general, the responses provide general guidance and make certain assumptions as indicated.

1. Sharing or Posting Content Created by a Former Candidate

Question Presented: In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to share or link to content created by a former candidate? For example, are you permitted to post a tweet that includes the Twitter handle of a former candidate? Are you permitted to retweet a tweet of a former candidate, such as an incumbent elected official?

Answer: The Charter political activity restrictions do not prohibit you from sharing or posting content created by a former candidate, including an incumbent elected official. The political activity restrictions prohibit a City employee from including in social media posts anything created by, or links to information created by, a candidate. Board Reg. 8 ¶¶ 8.18(c), 8.19(b)(iii). A candidate is an individual who files nomination petitions or papers for public elective office or who publicly announces his or her candidacy for public elective office. Board Reg. 8 ¶ 8.1(d). A former candidate is no longer a candidate. Rather, a former candidate is an individual who was once a candidate for public elective office and who has either won a general election or lost a primary or general election. *See* Board Reg. 1 ¶ 1.1(o).

Use of a private social media account to share or link to content created by an individual who is a former candidate would only be prohibited if the use otherwise transgressed the political activity restrictions described in Section III.B., such as by including political fundraising content or content created by a candidate, political party, political committee, or other partisan political group. For instance, given that political committees are partisan political groups, linking or otherwise distributing content created by a political committee, including the political committee of a former candidate, would be prohibited.

2. “Liking” or Otherwise “Reacting” to Content Created by a Candidate

Question Presented: In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to “like” or otherwise “react” – “love,” “haha,” “wow,” “sad,” or “angry” – to content created by a candidate on Facebook, Twitter, or Instagram?

Answer: The Charter political activity restrictions do not prohibit you from using personal social media accounts to “like” or otherwise “react” to content created by a

candidate while you are off duty and not using City resources. Under Board Regulation 8, a City employee is permitted to “like” the page of a political party, candidate, or partisan political group. Board Reg. 8 ¶ 8.19(c). By extension, a City employee may “like” or otherwise “react” to a post of a candidate on Facebook, Twitter, or Instagram. This affirmative response assumes that the restrictions identified in Section III.B. are observed.

3. Using Hashtags

Question Presented: In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to use a hashtag on social media that is identified with a particular candidate, political party, or partisan political group? Does it matter if the hashtag was originally authored by or is currently used by a candidate, political party, or partisan political group?

Answer: The Charter political activity restrictions do not prohibit you from using a hashtag on personal social media accounts while off duty and not using City resources, even if that hashtag is identified with, authored by, or currently used by a candidate, political party, or partisan political group. This is because use of a hashtag – a word or phrase immediately preceded by the # symbol – in a social media post merely causes a post to be indexed by the social network to a page that aggregates all other posts containing that same hashtag, regardless of whether the authors of the posts include candidates, political parties, or partisan political groups. This affirmative response assumes that the restrictions identified in Section III.B. are observed.

4. Sharing or Retweeting Content Created by a Candidate

Question Presented: In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to share on Facebook or retweet on Twitter content that was created by a candidate?

Answer: The Charter political activity restrictions would prohibit you from retweeting or sharing on Facebook content created by a candidate while off duty and using personal social media accounts. These uses would involve posting social media content created by a candidate and would therefore contravene the prohibition in Board Regulation 8 on an appointed City employee posting content that was created by a candidate. *See* Board Reg. 8 ¶ 8.19(b)(iii).

5. Posting a Tweet that Includes the Twitter Handle of a Candidate or Tagging a Candidate in a Facebook Post

Question Presented: In your personal capacity, while off duty, and using personal social media accounts, is it permissible for you to: (1) post a tweet that includes the Twitter handle of a candidate; or (2) tag a candidate in a Facebook post?

Answer: The Charter political activity restrictions would prohibit you while off duty and using personal social media accounts from posting a tweet that includes the Twitter handle of a candidate or from tagging a candidate in a Facebook post such that links would be created to the candidate's Twitter account or Facebook page. Such linking would contravene the prohibition in Board Regulation 8 on an appointed City employee making social media posts that link to content created by a candidate. *See* Board Reg. 8 ¶ 8.19(b)(iii). Note, however, that you may post a tweet or create a Facebook post that refers to a candidate or uses a candidate's name if links are not created to the candidate's Twitter account or Facebook page and if the restrictions identified in Section III.B. are otherwise observed.

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Thank you for your concern about compliance with the Charter political activity restrictions and for seeking advice. This Opinion addresses the general social media uses about which you asked and, given the absence of details about specific proposed uses, assumes where indicated that the restrictions identified in Section III.B. are observed. Advice on the application of the political activity restrictions is fact specific. Therefore, if you have questions about specific proposed social media uses that vary from the general scenarios and assumptions presented here, you should ask for advice on the application of the political activity restrictions to those particular uses. You are entitled to act in reasonable reliance on this Opinion and not be subject to penalties under the laws within the Board's jurisdiction, unless you have omitted or misstated material facts in your request. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since you have requested a public opinion from the Board of Ethics, we will make this Opinion public as required by Code Section 20-606(1)(d)(iii) and Board Regulation 4, Paragraph 4.22. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS



Maya Nayak
General Counsel

cc: Michael H. Reed, Esq., Chair