



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics  
Non-Public General Counsel Opinion No. 2019-501**

April 23, 2019

**Re: Government Official Exemption of City Lobbying Law as Applied to  
Charter School Employees**

Dear Attorney:

You represent the Board of a Philadelphia Charter School (the “Charter School”) in its request for a non-public advisory opinion regarding the registration and reporting requirements of the City Lobbying Law. As discussed below, if the Charter School spends more than \$2,500 on non-exempt lobbying activities in a quarter, it would be required to register as a principal and file expense reports with the Board. The Charter School’s expense reports, however, would not need to disclose its expenses for exempt lobbying activity, such as lobbying by its employees acting in their official capacities.

**I. Jurisdiction**

The Philadelphia Home Rule Charter (“Charter”) grants the Board of Ethics jurisdiction to administer and enforce all Charter provisions and ordinances pertaining to ethical matters, including the City Lobbying Law found at City Code Chapter 20-1200 and Board Regulation 9. Charter § 4-1100. The Charter and The Philadelphia Code (“Code”) authorize the Board of Ethics to render advisory opinions explaining the application of laws under the Board’s jurisdiction. *See* Charter § 4-1100; Code § 20-606(1)(d); Board Reg. 4 ¶ 4.1(a). An authorized representative of a person, such as an attorney, may submit a request for an advisory opinion on behalf of the person. Board Reg. 4 ¶ 4.7. Board 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 the Requestor**

In your request letter, you provided a brief description of the Charter School and its proposed behavior. The Charter School is a Pennsylvania non-profit corporation and currently operates under a charter it initially received and that was subsequently renewed under the Pennsylvania Charter School Law, 24 P.S. §§ 17-701-A *et. seq.* (“Charter School Law”). The Charter School’s Board is recognized as a “Board of Trustees” under the Charter School Law.

The Charter School plans to advocate for certain public policies. That advocacy will involve the Charter School communicating both directly and indirectly with officers and employees of the City of Philadelphia and the Philadelphia School District. Employees of the Charter School will conduct such communications as part of their official duties. The Charter School may also pay for non-employees, such as independent contractors, to assist with these communications.

## **III. Questions Presented and Brief Answers**

1. If all lobbying on the Charter School’s behalf is carried out solely by the Charter School employees acting in their official capacities, would the Charter School be required to register as a principal and file expense reports under the City Lobbying Law?

*No. Lobbying by the Charter School’s employees acting in their official capacities would be exempt from the registration and reporting requirements of the City Lobbying Law because employees of the Charter School are covered by the government official exemption.*

2. If the Charter School spends more than \$2,500 in a quarter for external lobbyists or lobbying firms to lobby on its behalf, would the Charter School be required to register as a principal and file expense reports?

*Yes. The Charter School would be required to register and file expense reports absent another applicable exemption because the government official exemption would not apply to external lobbyists or lobbying firms who lobby on the Charter School’s behalf.*

3. If the Charter School is required to register as a principal and file expense reports under the circumstances described in Question 2, would its expense reports be required to disclose expenses for the lobbying activities of the Charter School’s employees acting in their official capacities?

*No. The Charter School would only be required to disclose expenses related to its non-exempt lobbying activities and would not be required to disclose expenses for the lobbying activities of its employees acting in their official capacities.*

#### IV. Discussion

Under the City Lobbying Law, a principal is a person or entity who engages in lobbying on its own behalf or on whose behalf a lobbyist or a lobbying firm engages in lobbying. *See* Code § 20-1201(23); Board Reg. 9 ¶ 9.1(z). Based on the facts provided, the Charter School would be a principal because it will use its employees and may retain external lobbyists or lobbying firms to lobby on its behalf. The City Lobbying Law requires a principal to register with the Board during a calendar year if the principal spends more than \$2,500 on non-exempt lobbying activities in a quarter. *See* Code §§ 20-1202(1), 20-1204(6); Board Reg. 9 ¶¶ 9.2(a), (d). A registered principal is required to file quarterly expense reports or statements with the Board. *See* Code §20-1203(1), (7); Board Reg. 9 ¶ 9.9.

The City Lobbying Law contains exemptions from the registration and reporting requirements for certain persons and activities. Code § 20-1204; *see also* Board Reg. 9, Subpart D. The exemption applicable to your request is the government official exemption, which applies to a government officer or employee acting in an official capacity, including employees of political subdivisions of the Commonwealth of Pennsylvania. *See* Board Reg. 9 ¶ 9.19(d); Code § 20-1204(7) (identifying exemption in relevant part as applying to “appointed officials and employees of the following jurisdictions, when acting in an official capacity: the Commonwealth [and] political subdivisions thereof . . .”). The Board has previously concluded that this exemption applies to a charter school’s employees. *See* November 16, 2016 Settlement Agreement between Mastery Charter High School and Board of Ethics (“2016 Mastery Settlement”) ¶ J. The Board’s conclusion is consistent with the State Ethics Commission’s determination that a charter school is a “political subdivision” for purposes of the State Ethics Act. *See* State Ethics Commission Opinion 04-002 at 9-11 (advising that a charter school is a political subdivision because it is an independent public school organized by a school district through the granting of a charter under the Charter School Law).

A principal’s expenses for exempt lobbying activities, including activities covered by the government official exemption, are excluded when calculating whether the principal’s lobbying expenses exceed the \$2,500 per quarter registration and reporting threshold. Board Reg. 9 ¶ 9.2(d). The Charter School’s expenses for lobbying by its employees acting in their official capacities therefore do not count toward the \$2,500 per quarter threshold. The Board has previously addressed this point, stating in the context of a settlement agreement with a charter school that “time spent on lobbying by paid employees of [the charter school] does not count toward the City Lobbying Law’s registration and reporting thresholds.” *See* 2016 Mastery Settlement ¶ J.

As a result, if the Charter School pursues its lobbying efforts solely through its employees acting in their official capacities, the Charter School would not be required to register as a principal or file expense reports with the Board because all lobbying activities on its behalf would fall within the government official exemption. *See* Board Opinion 2012-005 at 5 (concluding that all of a government entity’s lobbying activities are exempt and it need not register as a principal or file expense reports if all lobbying on its behalf is conducted by the government entity’s employees and officials acting in their official capacities).

If, however, the Charter School engages external lobbyists or lobbying firms to lobby on its behalf, the activities of such individuals and entities would not be covered by the government official exemption. *See* Board Opinion 2012-005 at 4 (“[T]o the extent that [governmental entities] are represented by a lobbying firm or [external] lobbyist . . . , the [government official] exemption of Code Section 20-1204(7) does not apply . . . .”) (citing Board Opinion 2012-003). Unless another exemption is applicable, the Charter School’s expenses for external lobbyists or lobbying firms would count toward the \$2,500 per quarter registration and reporting threshold.

Accordingly, if the Charter School spends in excess of \$2,500 on external lobbyists or lobbying firms in a quarter, it would generally be required to register as a principal and file expense reports with the Board. In this circumstance, the Charter School would only be required to report expenses related to its non-exempt lobbying activities. *See* Board Reg. 9 ¶ 9.9. The Charter School’s expenses for lobbying activities that fall within the exemptions listed in Subpart D of Board Regulation 9, including the government official exemption, would not need to be disclosed on the Charter School’s lobbying expense reports. *Id.* For example, if in a given quarter the Charter School spends \$3,500 on an outside lobbyist and \$2,000 on lobbying by its employees, the Charter School would only be required to disclose the \$3,500 in external lobbyist expenses on its expense report for that quarter because the remaining \$2,000 would fall within the government official exemption. *See* Board Reg. 9, Example for ¶ 9.19(a).

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Thank you for your concern about compliance with the City Lobbying Law and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided. Requestors of advisory opinions are entitled to act in reasonable reliance on opinions issued to them and not be subject to penalties under the laws within the Board's jurisdiction, unless they have omitted or misstated material facts in their requests. Code § 20-606(1)(d)(ii); Board Reg. 4 ¶ 4.12.

Since you requested a non-public opinion, the original Opinion will not be made public. As required by the City Code, this version of the Opinion, which has been redacted to conceal facts that are reasonably likely to identify the requestor, is being made public. 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