



## CITY OF PHILADELPHIA

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

### **Philadelphia Board of Ethics General Counsel Opinion No. 2019-504**

September 16, 2019

*Via email and hand delivery*

Ellen Mattleman Kaplan  
Chief Integrity Officer  
215 City Hall  
Philadelphia, PA 19107  
Ellen.Kaplan@phila.gov

**Re: Application of Political Activity Restrictions to Executive Branch Employees  
Temporarily Assigned to the Office of City Commissioners**

Dear Ms. Kaplan,

You have asked whether City employees of the Executive Branch – consistent with the City’s political activity rules – can be detailed in their official capacities to the Office of the City Commissioners on Tuesday, November 5, 2019 to assist the Commissioners in administering the elections occurring that day. As discussed below, in my view, Charter Section 10-107 would not prohibit employees of the Executive Branch from performing these duties.

#### **I. Background**

The Office of the City Commissioners is the City agency responsible for administering elections in Philadelphia. Philadelphia has over 800 polling places and each election in Philadelphia requires the support of hundreds of individuals.

You have explained that, because of the installation of new voting machines, the Commissioners Office anticipates that it will be shorthanded for the upcoming November general election. In order to ensure that the election proceeds with minimal disruption, the Mayor has offered to detail a substantial number of employees of the Executive Branch to the Commissioners Office for election day. These detailed employees would serve as “rovers,” helping to identify issues at polling places.

The specific responsibilities these detailed employees would perform would include:

- Courtesy checks to make sure polling places are open and the machines are working;
- Emergency support in opening the polling places if machines are not set up on time;
- Reporting of late-opening or non-functioning polling places/machines to the City Commissioners HQ; and
- Emergency support in closing the polling places so the police can pick up the results, if not being done properly.

Notably, these duties would be the same as those typically performed by employees of the Commissioners Office. As with the Commissioners' employees, the detailed employees would be on duty and would be permitted to go inside polling places on Election Day in order to carry out their official responsibilities. They would receive the same training as employees of the Commissioners Office.

## **II. Relevant Law**

The Board of Ethics has jurisdiction to administer and enforce all Philadelphia Home Rule Charter provisions and ordinances pertaining to ethical matters, including the political activity restrictions found at Home Rule Charter Section 10-107. The Charter and the Philadelphia Code authorize the Board to render advisory opinions concerning a City officer's or employee's proposed future conduct. A supervisor or appointing authority may request an Advisory Opinion concerning the conduct of a subordinate officer or employee.

Appointed officers and employees of the Executive Branch are subject to Charter Section 10-107(4) and the Board's Regulation No. 8. As explained in Subpart B of Regulation No. 8, such officers and employees are prohibited from engaging in political activity while on duty, using City resources, or in any City-owned or City-leased building. City employees are also prohibited from using their position, authority, influence, title, or status as a City employee for any political purpose. *See* Reg. 8, Subpart C. Regulation No. 8 defines political activity as "an activity directed toward the success or failure of a political party, candidate, or partisan political group."

## **III. Discussion**

Based on the facts you provided, it does not appear that the activity that the detailed Executive Branch employees would perform as part of their duties on election day would be directed toward the success or failure of a particular political party, candidate, or partisan political group. Rather, they would be assisting the Commissioners Office in ensuring that polling places are open and available to voters. As such they would not be engaging in political activity and their activities would not be prohibited by Charter Section 10-107(4).

Even if the activities of the detailed employees have some incidental impact on the success or failure of a political party, candidate, or partisan political group, the Board has previously held that if an employee of the Commissioners Office is fulfilling the legally mandated duties of the office, such activity is not prohibited by Charter Section 10-107(4). *See* Board Opinion 2012-002. Since, in this case, the detailed employees would be acting as employees of the Commissioners Office, the same would be true for them. That said, as with any employee of the Commissioners Office, the detailed employees must take care to ensure that they are strictly non-partisan, meaning that they do not favor any political party or candidate.

#### **IV. Conclusion**

As explained above, it is my view that the Home Rule Charter's political activity restrictions would not prohibit employees of the Executive Branch from being detailed to the Office of the City Commissioners on election day in order to assist the Office in carrying out its legally mandated duties.

Thank you for your concern about compliance with the City ethics laws and for seeking advice. Advisory opinions are fact-specific, and this Opinion is predicated on the facts you have provided as stated here. 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.

Since you requested a public opinion, this Opinion will be made public, including by posting on the Board's website. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

*s/Michael Cooke*

Michael J. Cooke, Esq.  
Acting General Counsel

cc: Michael H. Reed, Esq., Chair  
J. Shane Creamer, Esq., Executive Director