



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics General Counsel Opinion No. 2020-509

September 25, 2020

Via email

Krystle M. Baker
Deputy Chief Integrity Officer
Office of the Mayor
City Hall, Room 225
Philadelphia, PA 19107
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**Re: Application of Political Activity Restrictions to Executive Branch Employees
Temporarily Assigned to the Office of City Commissioners**

Dear Ms. Baker,

You have asked how the Home Rule Charter's newly revised political activity restrictions will apply to employees of the Executive Branch who are temporarily assigned to the Office of the City Commissioners to assist with the November elections. As discussed below, any employee of the Executive Branch who is temporarily assigned to the City Commissioners will be subject to the political activity restrictions as they apply to an employee of the City Commissioners for the entirety of each calendar day of the assignment plus for the entirety of Election Day and each of the ten calendar days preceding Election Day through the end of the last calendar day on which all such temporarily assigned duties are completed. As such, during that time period, a temporarily assigned Executive Branch employee may not volunteer for a political campaign, political party, or partisan political group in support of any candidate for elective office. Outside of the restricted time periods, however, so long as the temporarily assigned employee complies with the relevant limitations set forth in Regulation No. 8, they may volunteer in support of a candidate for non-local office.

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 thousands of individuals. Due to the COVID pandemic and other factors, 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 temporarily assign a substantial number of employees of the Executive Branch to the Commissioners' Office.

You expect that these employees will engage in a wide variety of tasks on, before, and after Election Day, including collecting ballots, stuffing envelopes for absentee and mail-in ballots, organizing returned ballots, and packing personal protective equipment for distribution to polling places. 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.

II. Relevant Law and Discussion

The Board of Ethics is charged with administering and enforcing 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.

Home Rule Charter Section 10-107(4) limits the ability of City employees to engage in political activity. In June, Philadelphia voters approved an amendment to Charter Section 10-107(4) that loosened these restrictions such that employees of most Executive Branch agencies are now permitted to volunteer in support of candidates for non-local office. Employees of City agencies involved with election administration or public safety, however, are subject to more stringent political activity restrictions and are not permitted to volunteer in support of any candidate, whether local or non-local. The text of Charter Section 10-107(4) is available at this [link](#).

The Board recently updated Board Regulation No. 8 to provide detailed guidance on the revised political activity restrictions. You can find Regulation No. 8 on the Board's [website](#). As provided by Subpart B of the Regulation, all City 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. Regulation No. 8 defines political activity as "an activity directed toward the success or failure of a political party, candidate, or partisan political group."

As I advised in [General Counsel Opinion 2019-504](#), the Home Rule Charter does not preclude an Executive Branch employee from working for the City Commissioners on a temporary assignment, even if such work would have an incidental impact on the success or failure of a political party, candidate, or partisan political group. *See* Gen'l Counsel Op. 2019-504, pg. 2-3.

That said, as provided at Paragraph 8.8 of Regulation No. 8, unlike most Executive Branch employees, the employees of the City Commissioners, Board of Ethics, the District Attorney's Office, the Police Department, and the Sheriff's Office are prohibited from taking any part in any political campaign or engaging in political activity in coordination with a political party, political campaign, or partisan political group. Moreover, this restriction extends to any employee from another department who is temporarily assigned to one of those five offices. Specifically, temporarily assigned employees performing duties relating to the administration of an election, are precluded from taking any part in any political campaign or engaging in political activity in coordination with a political party, political campaign, or partisan political group for the entirety of each calendar day of the assignment plus for the entirety of Election Day and each of the ten calendar days preceding Election Day and through the end of the last calendar day on which all such temporarily assigned duties are completed.

So long as they are not on a temporary assignment to one of the five more restricted City offices and so long as they abide by the limitations of Subpart B of Regulation No. 8, an employee of the Executive Branch (excluding employees of the Police Department) may volunteer in support of a candidate who is not running for local elective office. *See* Regulation No. 8, Paragraph 8.12. The offices considered to be "local offices" for the purposes of these rules are listed at Paragraph 8.1(k) of the Regulation.

III. Conclusion

As explained above:

- i. The Home Rule Charter's political activity restrictions do not prohibit employees of the Executive Branch from being temporarily assigned to the Office of the City Commissioners on Election Day in order to assist that Office in carrying out its legally mandated duties.
- ii. For the entirety of each calendar day of the assignment plus for the entirety of Election Day, for each of the ten calendar days preceding Election Day, and through the end of the last calendar day on which all such temporarily assigned duties are completed, a temporarily assigned Executive Branch employee would be subject to the Charter's political activity restrictions to the same extent as an employee of the City Commissioners. As such, for that time period, the Executive Branch employee may not take any part in any political campaign or engage in political activity in coordination with a political party, political campaign, or partisan political group.

- iii. In order to be eligible for a temporary assignment to the City Commissioners that occurs on or after Election Day, an employee must not have taken any part in any political campaign or engaged in political activity in coordination with a political party, political campaign, or partisan political group on Election Day or on any of the ten days preceding the election.
- iv. Outside of the restricted time period, so long as the temporarily assigned employee complies with the relevant limitations set forth in Regulation No. 8, they may volunteer in support of a candidate for non-local office.

As an aid to explaining the rules described in this opinion, I have enclosed a quick reference guide that you may share with City employees.

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 J. Cooke

Michael J. Cooke
General Counsel

Encl.

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

Quick Reference Guide: Temporary Assignments for the 2020 General Election

This guide is a basic outline of how the City's political activity rules apply Executive Branch officers & employees on temporary assignment to the Office of the City Commissioners. For more details about the political activity rules, see bit.ly/2020Reg8.

Political activity is activity to support or oppose a candidate, campaign, political party, or partisan political group.

Political activity is **prohibited** if you are...

- X On duty
- X In uniform
- X In City offices
- X Using City resources
- X Using your City title or status

Political fundraising and political management are **always prohibited**, even if you are off duty.

As an employee of the Executive Branch,* you may volunteer in a non-management role in support of a candidate for **non-local office****.

A temporary assignment to the Commissioners, however, will **restrict** your ability to volunteer for a candidate, campaign, political party, or partisan political group during certain periods.

*Except employees & officers of the Police Department

**Local offices are listed in Regulation 8, Paragraph 8.2(k).

If you accept a temporary assignment related to the November 3 General Election, you may not volunteer for a candidate, campaign, political party, or partisan political group on:

1. Any calendar day[^] **before** October 24 on which you perform election-related duties
2. All calendar days from October 24 through November 3, **and**
3. If the assignment extends past November 3, all calendar days through the last day on which you perform election-related duties.

If you have engaged in campaign activity **on or after October 24**, you are **not eligible** for temporary assignment to perform duties related to the November 3 General Election.

[^]A calendar day runs from 12:00 a.m. to 11:59 p.m.

2020 General Election Campaign Activity Restriction Timeline

