



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Non-Public General Counsel Opinion No. 2024-501

January 31, 2024

Re: Application of City’s Political Activity Rules to Official Interactions with a Community Leader who Supported a Political Opponent

Dear City Official:

You requested a non-public opinion explaining how the City’s political activity rules apply to your office’s interactions with a community leader (“constituent”) who supported your opponent in the last election cycle. Specifically, you want to know whether your office can sever its working relationship with the constituent who allegedly engaged in improper conduct related to an election. As explained below, the City’s political activity rules do not require you to continue working with the constituent in this situation.

I. Jurisdiction

The Board of Ethics is charged with administering and enforcing all Philadelphia Home Rule Charter and City Code provisions pertaining to ethical matters, including political activity rules found in Article X of the Charter. *See* Charter § 4-1100. Home Rule Charter Section 4-1100 and Code Chapter 20-600 authorize the Board to render advisory opinions concerning a City officer’s proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to seeking an advisory opinion and for requesting reconsideration or appeal to the Board of an advisory opinion issued by me.

II. Background

You are an elected City official. Your office led an effort to open a public facility. As part of this effort, your office convened a group of community stakeholders who were selected, without regard to political affiliation, based on their commitment to the public facility and leadership experience in the surrounding neighborhood. One such stakeholder

was the constituent, a neighborhood leader and officer of a political party. Among other things, this constituent is an officer of the Advisory Council for the public facility.

The constituent became an outspoken supporter of your political opponent. Your office continued to work with the constituent leading up to the General Election to advocate for the public facility's opening. That working relationship was unaffected by the constituent's support for your opponent.

On Election Day, your campaign received information that your opponent's supporters were distributing fraudulent election materials. A member of your City staff received a copy of the allegedly fraudulent materials from the constituent at a City polling place. The District Attorney's office investigated and sought court intervention.

You believe that the constituent knowingly distributed fraudulent election materials, and that such behavior represents a serious lack of moral judgment. From your perspective, such actions have undermined the trust needed to continue working with the constituent as a community partner. As a result, your office plans to end the working relationship. You asked whether the City's political activity rules would prohibit or restrict you from ending your office's working relationship with the constituent.

III. Relevant Law

The City's political activity rules are found in [Section 10-107 of the Home Rule Charter](#) and [Board Regulation No. 8](#). The Charter's political activity rules were designed to prevent political parties or factions from having an undue influence on the City's operations. *See* Board Op. [2020-001](#) at 2, n.1 *citing* Committee of Seventy, "The Charter: A History" (1980). In general terms, the political activity rules of the Charter and Regulation No. 8 address political fundraising, civil service interference, resign-to-run, political management, involvement in political campaigns, and the use of City time, resources, titles, and position in political activity. While Board Regulation No. 8 does not apply to you as an elected officer of the City, it does apply to your City staff. *See* Board Reg. 8, ¶ 8.0.

IV. Discussion

While Regulation No. 8 does not apply to elected officials, its definition of political activity – any activity directed toward the success or failure of a political party, candidate, political campaign, or partisan political group – is instructive here. *See* Board Reg. 8, ¶ 8.1(n). The conduct you propose does not meet this definition because it is directed only at the constituent, who is not a candidate, party, campaign, or partisan political group. *See* Gen. Counsel Op. [2017-503](#) (opining that City employee’s participation at protest of incumbent U.S. Senator was not “political activity” because, in part, it did not involve a current candidate, campaign, or partisan political group). Nothing you propose is directed at the success or failure of your opponent, their campaign, or their party. As such, these actions cannot be considered “political activity.”

In addition, the Board has more generally interpreted Section 10-107 as prohibiting elected officials from engaging in permitted political activity in circumstances that risk coercion or misuse of office. *See* Board Op. 2020-001 at 2-3 (citing Board Op. [2014-002](#)). The circumstances here do not suggest either. Currently, there is no election for you to influence and no political activity to coerce. Your decision is based not on the constituent’s support for a particular candidate, but on the methods you believe were employed to that end. Ending your office’s working relationship with the constituent is directed at the trust and confidence of your staff in their community partners. The constituent can continue working with whatever community or political group they choose.

Ultimately, whether to work with, or continue working with, a particular individual or group in the course of your role as an elected official is well within your discretion.¹ To require a City office to work with an individual *because of their political affiliation*, regardless of qualifications, would allow political actors to have an outsized influence on City operations as compared to community leaders who choose to remain neutral in the electoral process. Such a result would be contrary to the purpose of the Charter’s political activity rules.

¹ Other laws, including the First Amendment, protect the rights of citizens to petition the government for redress. These provisions are outside of the Board’s jurisdiction, but it is my understanding that they may require your office to interact with the constituent in certain circumstances. I recommend that you consult with the Law Department to determine what other legal obligations apply.

Because your proposed actions do not constitute political activity and do not involve the risk of coercion or misuse of authority, it is my opinion that the Charter does not prohibit you from ending your office's working relationship with this constituent.

V. Conclusion

Based on the facts you provided, the Charter would not prohibit you from severing your office's working relationship with the constituent based on their alleged distribution of fraudulent election materials. The fact that the constituent supported your political opponent does not require you to continue this working relationship.

Thank you for your concern about compliance with the City's Ethics Code 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 that has been redacted to conceal facts that are reasonably likely to identify you is being made public. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

/s/ Jordana L. Greenwald

Jordana L. Greenwald
General Counsel

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