

PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 4
ADVISORY OPINIONS

SUBPART A. SCOPE; DEFINITIONS.

4.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, sets forth the procedure for seeking an Advisory Opinion from the Board of Ethics.

4.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

- a. Advisory Opinion.** A writing in which the Board provides guidance to a requestor explaining how the laws under the Board's jurisdiction apply to proposed future conduct based on facts provided by the requestor.
- b. Board.** The Board of Ethics.
- c. City.** City of Philadelphia.
- d. Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay.
- e. General Counsel.** The General Counsel of the Board and his or her designee.
- f. Officer.** An individual who is appointed or elected to any position in a City department, agency, office, board, or commission, whether paid or unpaid.
- g. Person.** A business, individual, political committee, government body, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.
- h. Requestor.** A person who requests an Advisory Opinion from the Board.

SUBPART B. WHAT AN ADVISORY OPINION CAN ADDRESS

4.2 Subject Matter. An Advisory Opinion provides guidance on how the laws within the jurisdiction of the Board apply to specific proposed future conduct. The laws within the jurisdiction of the Board are:

- a. Philadelphia Home Rule Charter Sections 10-100 (prohibiting City Council Members from having an interest in a City contract) 10-102 (prohibiting City officers and employees from having an interest in a City contract), 10-105 (prohibiting gratuities) and 10-107 (prohibiting City officers and employees from engaging in certain political activities);
- b. Philadelphia Code Chapter 20-600, which includes provisions for City officers and employees regarding conflicts of interest, gifts, representation of third parties in a City transaction, financial disclosure by certain City officers, and post-employment restrictions;
- c. Philadelphia Code Chapter 20-1000, which sets forth the City's campaign finance law;
- d. Philadelphia Code Chapter 20-1200, which sets forth the City's lobbying law;
- e. Philadelphia Code Section 17-1407(2), which prohibits persons from making material misstatements or omissions in disclosures filed pursuant to the non-competitively bid contract law (Code Chapter 17-1400); and
- f. Any other law which a City ordinance assigns to the Board.

4.3 Future conduct only. A requestor may only seek an Advisory Opinion for proposed future conduct or action, not for conduct or action that has already occurred. The Board, however, may address past conduct in order to provide guidance in an Advisory Opinion as to corrective action or future action that represents part of a continuing course of conduct that began prior to the request.

4.4 State Ethics Act. In an Advisory Opinion, the Board may provide guidance regarding the State Ethics Act. Unlike an opinion issued by the State Ethics Commission or a non-confidential opinion issued by the City Solicitor, guidance by the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a violation of the State Ethics Act.

SUBPART C. WHO MAY REQUEST AN ADVISORY OPINION

4.5 Any person who is subject to, or reasonably could be subject to, a law within the Board's jurisdiction may request an Advisory Opinion regarding his or her proposed future conduct.

4.6 Requests about subordinates. A supervisor or appointing authority may request an Advisory Opinion concerning the conduct of a subordinate officer or employee. When a

request is submitted by a supervisor or appointing authority of a City officer or employee, the supervisor or appointing authority is the requestor.

4.7 Requests from representatives. An authorized representative of a person, such as a deputy or attorney, may submit a request for an Advisory Opinion on behalf of the person. When a request is submitted by a representative, the represented person is the requestor, but the Board shall direct all correspondence to the representative.

SUBPART D. HOW TO REQUEST AN ADVISORY OPINION

4.8 To make a request for an Advisory Opinion, the requestor shall send the following information to the General Counsel by postal mail, fax, or email:

- a) The requestor's name, address, telephone number, and email address;
- b) A detailed description of the conduct contemplated by the requestor;
- c) The specific question or questions the requestor wants the Board to answer;
- d) A detailed description of all relevant facts and circumstances surrounding the request, including any documents related to or supporting the request;
- e) Whether the requestor wants a public or non-public Advisory Opinion. The difference between a public and non-public Advisory Opinion is explained in Subpart F;
- f) If the subject of the request is a candidate for City elective office, the request shall provide the name of the candidate's authorized political committee.

4.9 Requests by or concerning City officers or employees. In addition to the information required by Paragraph 4.8, if the request concerns a City officer or employee, the requestor shall provide:

- a) The name of the officer or employee;
- b) The name of the City department or agency the officer or employee serves; and
- c) A description of the officer or employee's job, including his or her title or position.

4.10 Requests from representatives. In addition to the information required by Paragraphs 4.8 and 4.9, if the request is submitted by a representative, he or she shall identify the represented requestor by name and shall state that the requestor has authorized him or her to make the request.

4.11 Signature. A request for an Advisory Opinion must be signed by either the requestor or the requestor's authorized representative. An email request that is sent from the requestor or a representative will be considered signed by the sender.

SUBPART E. EFFECT OF RELIANCE ON ADVISORY OPINION

4.12 A requestor whose conduct or action is the subject of an Advisory Opinion shall not be subject to penalties or sanctions under the laws within the jurisdiction of the Board if the requestor reasonably relies on the Advisory Opinion, unless he or she omitted or misstated material facts in his or her request.

4.13 State Ethics Act. Guidance by the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a violation of the State Ethics Act.

SUBPART F. PUBLIC AND NON-PUBLIC ADVISORY OPINIONS

4.14 A requestor shall choose whether he or she wants a public or non-public Advisory Opinion. When a requestor has requested a non-public Advisory Opinion, the Board shall redact the Opinion before making it public in order to conceal facts that are reasonably likely to identify the requestor or any involved City officer or employee.

4.15 A requestor may make a non-public Advisory Opinion public at any time. If a requestor decides to make a non-public Advisory Opinion public, the Board may make public the un-redacted version of the Opinion if the requestor so authorizes.

4.16 The Board and Board Staff will keep confidential all communications and documents related to a request for a non-public Advisory Opinion.

SUBPART G. REVIEW BY GENERAL COUNSEL OF REQUEST FOR ADVISORY OPINION

4.17 Initial review. Upon receipt of a request for an Advisory Opinion, the General Counsel shall determine whether the requestor has provided all the information necessary for the Board to issue an Opinion. If necessary, the General Counsel shall ask the requestor to provide any missing information. Until the requestor has provided all necessary information, the request is not complete and the Board will not issue an Advisory Opinion.

4.18 Advisory Opinion by General Counsel. The General Counsel may respond to the requestor on behalf of the Board by issuing an Advisory Opinion if the request concerns an issue that has been determined by a) an Advisory Opinion issued by the Board, b) the Home Rule Charter, Philadelphia Code, or a Board Regulation, or c) a court opinion interpreting the Home Rule Charter, Philadelphia Code, or a Board Regulation. If the issue has not been determined by one of the foregoing, the Board shall issue the Advisory Opinion. The General Counsel shall copy the Board Chair on any Advisory Opinion he or she issues.

4.19 Advisory Opinion by Board. An Advisory Opinion issued by the Board shall be approved by a majority vote of Board members present and voting. The Board may issue an Advisory Opinion that supersedes a previous Opinion issued by the Board or City Solicitor.

4.20 Withdrawal of request for Advisory Opinion. A requestor may withdraw a request for an Advisory Opinion prior to the Opinion being sent to the requestor.

4.21 Time of response. If an Advisory Opinion or response to a request for reconsideration or an appeal is likely to be issued more than 35 days after a request is complete, the General Counsel shall contact the requestor and tell him or her approximately when the Opinion will be issued.

4.22 Publication. The Board shall make all Advisory Opinions public and shall post them on its website. When a requestor has requested a non-public Advisory Opinion, the Board shall redact the Opinion before making it public in order to conceal facts that are reasonably likely to identify the requestor or any involved City officer or employee. If a requestor decides to make a non-public Advisory Opinion public, the Board may disclose the non-redacted version of the Opinion if the requestor so authorizes.

SUBPART H. RECONSIDERATION; APPEAL

4.23 Standard for Reconsideration or Appeal. A requestor may seek reconsideration or appeal of an Advisory Opinion if the requestor can demonstrate that 1) a material error of law has been made; 2) a material error of fact has been made; or 3) a change in materially relevant facts or law has occurred since the requestor made his or her request for an Advisory Opinion.

4.24 Reconsideration of an Advisory Opinion issued by the General Counsel. A requestor may ask the General Counsel to reconsider an Advisory Opinion issued by the General Counsel to the requestor. A request for reconsideration shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The General Counsel, after consultation with the Board Chair or Vice Chair, shall respond by either denying the request for reconsideration or by issuing an amended Advisory Opinion that modifies the original Opinion. An amended Advisory Opinion shall supersede and replace the original Opinion issued by the General Counsel.

4.25 Appeal of an Advisory Opinion issued by the General Counsel. A requestor may appeal the General Counsel's response to a request for reconsideration. A requestor may not submit an appeal to the Board unless he or she has first sought reconsideration by the General Counsel. An appeal shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The Board shall respond to the appeal by issuing an Advisory Opinion. An Advisory Opinion issued by the Board in response to an appeal shall supersede and replace the Opinion issued by the General Counsel.

4.26 Reconsideration of an Advisory Opinion issued by the Board. A requestor may ask the Board to reconsider an Advisory Opinion issued by the Board to the requestor. A request for reconsideration shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The Board shall respond by either denying the request for reconsideration or by issuing an amended Advisory Opinion that modifies the

original Opinion. An amended Advisory Opinion shall supersede and replace the original Opinion issued by the Board. An amended Advisory Opinion issued by the Board shall be final and the requestor may not seek further reconsideration or review.

4.27 Effect of Request for Reconsideration or Appeal. A request for reconsideration or appeal does not suspend an Opinion.

4.28 The Board and the General Counsel may, on their own initiative, amend a previously issued Advisory Opinion after giving reasonable notice to the requestor that they are reconsidering the Advisory Opinion. An amended Advisory Opinion shall apply only to future conduct or action of the requestor. An amended Advisory Opinion shall supersede and replace the original Opinion.

SUBPART I. INFORMAL GENERAL GUIDANCE

4.29 The Board and its staff may provide informal general guidance as a way to educate and inform persons who are subject to the laws within the jurisdiction of the Board. Such general guidance may be provided in the form of trainings, newsletters, advisory alerts, telephone calls, conversations, e-mails, or correspondence. Such informal general guidance is not an Advisory Opinion and may not be relied upon by any person as protection against any penalties or sanctions for a violation of a law within the jurisdiction of the Board.

Initially adopted by Board April 16, 2008
Public Hearing held May 30, 2008
Finally adopted by Board, with modifications July 23, 2008
Effective August 4, 2008
,

Proposed amendments throughout approved for public comment by the Board on October 17, 2012
Effective November 20, 2012

Proposed amendments approved for public comment by the Board on February 20, 2013
Effective March 27, 2013