



# CITY OF PHILADELPHIA

BOARD OF ETHICS  
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## Philadelphia Board of Ethics Non-Public<sup>1</sup> Board Opinion No. 2023-001

February 22, 2023

*Sent via email*

Adam C. Bonin, Esq.  
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**Re: Application of Charter Section 10-107(5) resign-to-run rule to an appointed and confirmed City Commissioner**

Dear Mr. Bonin:

You have requested a non-public advisory opinion on behalf of City Commissioner Seth Bluestein regarding whether the Charter’s resign-to-run rule requires him to resign if he wishes to run for re-election. As discussed in greater detail below, the resign-to-run rule has an exception for “an elected officer running for re-election.” This exception applies to Mr. Bluestein because, under the applicable Charter provisions, he filled the vacancy left by his predecessor’s resignation and fully holds the elected office of City Commissioner.

### **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](#). The Charter and the Ethics Code authorize the Board to render advisory opinions concerning a City officer’s or employee’s proposed future conduct. [Board Regulation No. 4](#) describes the procedures related to advisory opinions.

### **II. Background**

City Commissioner Al Schmidt announced his resignation in November 2021. In December 2021, Mayor Kenney appointed Seth Bluestein, then serving as Chief Deputy Commissioner, to fill the vacancy left by Commissioner Schmidt’s resignation. That appointment was transmitted to City Council on December 16, 2021.

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<sup>1</sup> The requestor originally requested a non-public Opinion, but subsequently authorized publication of this unredacted Opinion.

On January 20, 2022, Council President Clarke, through Councilmember Parker, introduced Resolution No. 220013, which states in relevant part “that the appointment of Seth Bluestein as a City Commissioner of the City of Philadelphia is hereby approved, to serve in the unexpired term of Al Schmidt until the first Monday in January, 2024.” Resolution No. 220013 was approved by a 15-1 vote of Council on February 3, 2022.

When a City Commissioner runs for re-election, they are temporarily removed from their duties on the Board of Elections and replaced by an appointee of the President Judge of the Court of Common Pleas. *See* [25 P.S. § 2641\(c\)](#). Mr. Bluestein is considering running for re-election, which would require his participation in the May 2023 municipal primary election. He has not yet publicly declared his candidacy or filed nomination papers.

### **III. Relevant law and its application**

Philadelphia Home Rule Charter [Section 10-107\(5\)](#) provides that “[n]o officer or employee of the City, except elected officers running for re-election, shall be a candidate for nomination or election to any public office unless the officer or employee shall have first resigned from the officer's or employee's then office or employment.” The Board has noted that this rule “contains a single narrow exception for City elected officials running for re-election to the City elective office they currently hold.” [Board Op. 2019-001](#) at 2.

This is consistent with the Pennsylvania Supreme Court’s interpretation of the exception as applying only to someone seeking election to public office who currently holds that same public office in full capacity, rather than in an acting capacity. *See Mayer v Hemphill*, 190 A.2d 444, 453-54 (1963). Thus, if Mr. Bluestein holds the office of City Commissioner, he is not subject to Charter § 10-107(5) if he seeks re-election as a City Commissioner.

To evaluate the capacity in which a City official serves for purposes of Charter Section 10-107(5), we look to the Charter and Code provisions governing vacancies in that particular office. City Code [Section 2-112\(1\)](#) provides, among other things, that “[v]acancies in the office of City Commissioner shall be filled by appointment of the Mayor with the approval of the Council for the unexpired term of the member causing the vacancy.”

Mr. Bluestein was clearly appointed by the Mayor and that appointment was approved by a vote of City Council. Indeed, the Law Department has advised Mr. Bluestein that the actions of the Mayor and Council filled the vacancy left by Mr. Schmidt’s resignation, and that Mr. Bluestein fully holds the office of City Commissioner. Because Mr. Bluestein holds the elected office of City Commissioner, he is not required under Charter Section 10-107(5) to resign to run for re-election to that office.<sup>2</sup>

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<sup>2</sup> This result is consistent with the Board’s position in recent litigation in which the Acting Controller sought a ruling that Charter Section 10-107(5) would not require her to resign to run for Controller. The Board (and other City defendants) argued that the Acting Controller was not an “elected officer running for re-election.” Rather, the Acting Controller was the deputy designated by the Mayor pursuant to Charter [Section 3-701](#) to perform the duties of the Controller until a permanent Controller was either elected or appointed by Council. Under the terms of the Charter and consistent with the decision in

**IV. Conclusion**

The Charter requires any City officer or employee running for public office to resign unless they are running for re-election to the elected office they already hold. Mr. Bluestein fully holds the elected office of City Commissioner because he was appointed by the Mayor and that appointment was approved by City Council as required by applicable City law. As such, he is not required by Charter Section 10-107(5) to resign if he wishes to run for re-election to the position of City Commissioner.

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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 Ethics Code, a version of the Opinion that has been redacted to conceal facts that are reasonably likely to identify you is being made public. If you have any questions, please contact General Counsel staff.

BY THE PHILADELPHIA BOARD OF ETHICS

*/s/ Michael H. Reed, Esq.*

Michael H. Reed, Esq., Chair  
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*Hemphill*, the Acting Controller did not hold the elected office of Controller and therefore was not an elected official running for re-election. The court agreed with defendants’ arguments.