



## CITY OF PHILADELPHIA

BOARD OF ETHICS  
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### **Philadelphia Board of Ethics General Counsel Opinion No. 2022-504**

September 21, 2022

*Sent via email*

Cheryl Bettigole, MD, MPH  
Health Commissioner  
Philadelphia Department of Public Health  
1101 Market St., 13th Floor  
Philadelphia, PA 19107  
Cheryl.Bettigole@phila.gov

***Re: Whether an employee of the Clean Air Council may serve on the  
Air Pollution Control Board***

Dear Commissioner Bettigole:

You have requested a public advisory opinion as to whether Karl Koerner, an employee of the Clean Air Council, may serve on the Air Pollution Control Board. As discussed in more detail below, City and State ethics rules would not preclude this appointment. Once appointed, however, Mr. Koerner will be required to disqualify himself from any official action that would have a significant and substantial impact on the Clean Air Council. Mr. Koerner will also be prohibited from disclosing any confidential City information that would have a financial benefit for the Clean Air Council or any other person. Voting on a regulation on which the Clean Air Council has provided testimony would not result in a significant and substantial impact on the organization.

#### **I. Jurisdiction**

The Board of Ethics administers, enforces, and interprets all Philadelphia Home Rule Charter and Code provisions pertaining to ethical matters, including the City's Ethics Code (Philadelphia Code Chapter 20-600) and certain provisions of the Home Rule Charter. 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.

Home Rule Charter Section 4-1100 also gives the Board “concurrent authority” with the Law Department to advise City officials on the application of State law. Our advice on State law, however, does not provide protection from possible enforcement by the State Ethics Commission. For guidance on the State Ethics Act that would provide such protection, you should contact either the State Ethics Commission or the City’s Law Department.

## **II. Background**

The Air Pollution Control Board advises the Department of Public Health on air quality issues, and promotes regulations that protect air quality standards, control air contaminants, and establish air quality objectives. The Clean Air Council is an environmental health advocacy organization that seeks to protect people’s health from the harmful impacts of pollution. Mr. Koerner is the Engineering & Technical Coordinator for the Clean Air Council. If Mr. Koerner were to join the Air Pollution Control Board, he would have the opportunity to vote on regulations about which his employer had offered testimony.

Employees of the Clean Air Council regularly attend meetings of the Air Pollution Control Board and offer testimony on proposed regulations. The Clean Air Council holds a contract with the Department of Public Health to promote the Department’s “Feet First” program, which aims to encourage Philadelphians to walk more. The Air Pollution Control Board does not have any role in the award or administration of that contract.

## **III. Relevant Law and Discussion**

### **a. City Conflict of Interest Rule**

Philadelphia Code Section 20-607 prohibits a City officer or employee from taking action in an official capacity when either (a) they (or a close family member) have a personal financial interest in that action; or (b) a for-profit business of which they are a member or a fellow member of such business has a financial interest in that action. If such a conflict of interest arises, Code Section 20-608 requires them to submit a letter disclosing the conflict and disqualifying themselves from any official action related to it.

As explained in Board Opinion 2022-001, a City officer or employee has a conflict of interest under City Law if they can take official action that would, or could reasonably be anticipated to, affect a nonprofit employer’s ability to pay the City officer or employee, the financial value of the compensation or benefits provided, or the willingness to hire or retain the City official. This threshold can also be met – without the need to delve into the nonprofit’s finances or decision making – if the official action would have a significant and substantial impact on the employer.

As such, if Mr. Koerner ever has the opportunity in his role as member of the Air Pollution Control Board to take official action that would affect his compensation or employment with the Clean Air Council or if the official action would have a significant and substantial impact on the Clean Air Council, he would have a conflict of interest and would need to file a disclosure and disqualification letter as described in Code Section 20-608. That said, I do not believe that voting on a regulation on which the Clean Air Council has provided testimony would result in a significant and substantial impact on the organization. As such, Mr. Koerner need not disqualify himself from voting on regulation on which the Clean Air Council has offered testimony unless his employer has connected his vote to his compensation or continued employment.<sup>1</sup> To avoid such a situation, Mr. Koerner should not discuss his work for the Air Pollution Control Board with his colleagues at the Clean Air Council.

**b. State Conflict of Interest Rule**

Section 1103(a) of the State Ethics Act prohibits a public official such as a member of the Clean Air Council from taking official action that would have a private pecuniary benefit for: (1) themselves; (2) their immediate family; or (3) a business, whether for-profit or nonprofit, with which they or a member of their immediate family is associated. Mr. Koerner is “associated” with the Clean Air Council. As such, he would have to recuse himself from any official action that would have a private pecuniary benefit for the Clean Air Council. While voting on a regulation on which the Clean Air Council has offered testimony might have some intangible benefit for the organization, it would not provide a “private pecuniary benefit” so far as the State Ethics Act is concerned. As noted above, I cannot provide legally protective advice on the application of the State Ethics Act. I have, however, shared this fact pattern with counsel for the State Ethics Commission and they agree with this analysis.

**c. Confidential Information**

Philadelphia Code Section 20-609 provides that no City officer, whether paid or unpaid, full-time or part-time, “shall directly or indirectly disclose or make available confidential information concerning the property, government or affairs of the City without proper legal authorization, for the purpose of advancing the financial interest of himself or others.” As such Mr. Koerner would be prohibited from sharing with the Clean Air Council any confidential City information he learns through his position on the Air Pollution Control Board. The State Ethics Act would also prohibit Mr. Koerner from using any such confidential information for the private pecuniary benefit of the Clean Air Council.

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<sup>1</sup> Philadelphia Code Section 20-602(5) requires that a City officer disqualify themselves from a matter if a member of a for-profit organization of which the City officer is also a member represents someone on that matter. Because the Clean Air Council is a not-for-profit organization, this requirement will not apply to Mr. Koerner.

### III. Conclusion

As explained in more detail above, once appointed, Mr. Koerner will be required to disqualify himself from any official action that would have a significant and substantial impact on the Clean Air Council. Mr. Koerner will also be prohibited from disclosing any confidential City information that would have a financial benefit for the Clean Air Council or any other person.

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. Please let me know if you have any questions.

BY THE PHILADELPHIA BOARD OF ETHICS

*/s/ Michael Cooke*

Michael J. Cooke  
General Counsel

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