



City of Philadelphia Law Department

Political Activity Guide

Introduction

If you are a City official or employee, you may not campaign for candidates in elections or work for a political party. The Philadelphia Home Rule Charter contains a provision that prohibits City officials and employees from engaging in various kinds of political activity. This provision is Section 10-107 of the Charter. The text of this provision is printed at the end of this Guide. We prepared this Guide to help City officers and employees understand the Charter provision and to know what they may and may not do in terms of political activity.

Charter Section 10-107 does not apply to non-political ballot questions, and does not restrict your right to vote or to privately express your political opinions. This Guide is a summary of previous legal advice on the Charter provision and on the interpretation provided by Civil Service Regulation 29. The text of the lists of permitted and prohibited activities contained in Regulation 29 is also printed at the end of this guide.

The text of Charter Section 10-107 and Regulation 29 do not answer all the questions that may arise, however. We have provided a Question and Answer format that addresses most of the frequent questions that City employees have. This "Q & A" begins on the next page.

It must be emphasized that the Guide is intended to assist officials and employees who have questions about the political activity rules. *The Guide does not constitute a formal opinion of this office and, due to the format, is unable to cover every nuance of interpretation. In order to get our advice on a specific situation, officials and employees still will need to consult with the Law Department directly.* However, it is hoped that the Guide will assist City officials and employees in realizing when legal advice is needed and recognizing problematic areas.

Question: What are the consequences of breaking the rules on prohibited political activity?

Answer: You may be fined up to \$300, put in jail for up to 90 days, and receive any permissible discipline by your employer, including suspension and up to termination.

Question: What is prohibited political activity?

Answer: This entire Guide answers this question, but the short answer is that you are prohibited from being involved in raising money for political parties or candidates, and you are prohibited from campaigning for parties or candidates.

Question: Are there any exceptions to this prohibition?

Answer: There are no exceptions to the rules prohibiting any person (City employee or not) from using a political endorsement to obtain a civil service appointment or from promising to use official authority to influence civil service appointment decisions. These rules are stated in the first two numbered paragraphs, (1) and (2), of Section 10-107, which is printed on pages 8-9 of this Guide.

Otherwise, the other rules apply generally to City officers and employees, but certain people are exempt from some of the rules, as explained in other answers below. See paragraphs (3), (4), (5), and (6) of the Charter provision on pages 8-9.

Question: May City employees contribute money to political campaigns?

Answer: In general, yes, employees may make political contributions. The exception, as spelled out in Paragraph (3) of Charter Section 10-107, is that officers or members of the Police Department may not make political contributions.

Question: What are some examples of prohibited campaign activity?

Answer: You may not circulate petitions to get signatures of voters to permit a candidate to get on the ballot. You may not organize a political meeting. You may not distribute posters supporting a candidate. You may not write a letter to the editor of a newspaper supporting a candidate. You may not speak at a campaign rally for a party or candidate. You may not send, or forward, e-mails supporting a political candidate or political party, using the City's e-mail system, to a number of users of the system.

Question: May City employees participate in raising money for a political campaign?

Answer: No. Either soliciting or receiving money is prohibited.

Question: Does the prohibition against soliciting money refer only to direct, personal requests for contributions?

Answer: No. Clearly, if a person sits at the head platform of an event that has been advertised as a fund-raiser for a political campaign and that person then makes a speech that explicitly asks the attendees to contribute money to the campaign, that is soliciting money for the campaign. At the other extreme, merely attending such an event would not be a solicitation. Similarly, where an invitation to such a fund-raiser is sent out under the letterhead of a campaign finance committee, any person listed as a member of the committee would be soliciting money. On the other hand, where the event is not clearly identified as a fund-raiser (but contributions may be accepted) and the letterhead identifies the person as some other kind of supporter (such as a prior contributor but not a member of any kind of organizing committee), or where the organization sending the letter is generally not political in purpose and lists its board on its letterhead, that would be a closer question that should be referred, along with other relevant facts, to the City Solicitor, preferably in advance of the letter being sent out.

Question: May I serve as a ward leader or committeeman while serving as a City employee?

Answer: No. Such service for a political party is clearly partisan political activity.

Question: My spouse, who is not a City employee, is supporting a political candidate and wants to host a campaign fund-raiser in our home. Is this permitted, and may I attend?

Answer: You may attend a campaign fund-raiser if you are not involved in planning or managing it, and you make no appeal for funds at the event. You are not responsible for the political activities of your spouse. Accordingly, if your spouse plans and hosts an event in your home, you may attend. However, it must be very clear that it is the non-City employee spouse who is hosting this event. A sham transaction of arranging for one's spouse to appear to be the host in order to avoid the political activity restrictions is prohibited.

Question: May I attend a political fund-raising dinner, if someone else pays for my ticket?

Answer: Mere attendance is not a prohibited political activity, as noted in the lists cited below. Allowing another to pay your admission fee, however, would constitute receipt of a gift, the value of which would be the amount of the required contribution. Depending on the circumstance, receipt of such a gift could be prohibited for members of the Administrative and Executive Branch under Mayor's Executive Order 002-04. In addition, the Ethics Code prohibits certain gifts to all City officials and employees. As with other questions, the facts should be referred to the City Solicitor.

Question: Does the above answer change if the employee attends a fund-raiser as a guest of the host and therefore no contribution is paid?

Answer: No.

Question: Where an elected official is running for re-election, does Section 10-107 prohibit any employee of that official from making any public comments that may be seen as suggesting that the official is deserving of the support of the voters?

Answer: City employees who work for elected officials are not forbidden from absolutely all public discussion of their work during the official's reelection campaign. However, City employees may not actively campaign for the officials who appointed them. Employees of City Council are an exception, and they may campaign. Employees who contemplate appearing at a public event on behalf of an official who is running for office, or his or her Department, should seek the advice of the City Solicitor before the event.

Question: What about activities for non-partisan organizations?

Answer: Participation in activities that are not designed to help a particular candidate or political party to be successful are not prohibited. For example, most ballot questions (like bond issues or amendments to the Charter or Pennsylvania Constitution) are non-partisan and you may support those publicly. You may also work on "get out the vote" drives, but only if such drives are structured so as to get voters in general to vote, not just those who would support one party or candidate.

Question: Does Section 10-107 prohibit political activities on behalf of candidates in other cities or states?

Answer: Yes. The provision does not make any distinction for political activities

on behalf of candidates or regarding elections taking place in any other jurisdiction. Those activities are prohibited to City employees.

Question: May I volunteer at a political convention?

Answer: We were asked in 2000 whether City employees could serve as volunteers at the Republican National Convention that year. We advised that truly non-partisan volunteer work at a political convention is permissible, and that City employees may attend, but not be a delegate to, a political convention. However, such volunteer service must involve activities that are themselves nonpolitical. For example, volunteers were permitted to distribute maps of the City and tourism pamphlets, direct conventioners to locations within the First Union Center, serve as ushers, assist with registration and ticket-taking, serve as security and crowd control, serve as drivers, and set up chairs and decorations (but not posters with political slogans or names or pictures of candidates) in the Center. Volunteers were required to perform any such volunteer service on their own time, not on City time. In addition, volunteers were advised to scrupulously avoid any activity that is geared toward the success of a particular candidate or political party in general.

Examples of activities that volunteers should avoid included: wearing campaign buttons or articles of clothing specifically supporting a particular party or candidate; selling any item or participating in any way in the receipt of any money which is for the benefit of the RNC, DNC, or any partisan political group; organizing or participating in any “demonstration” or parade in favor of any candidate at the convention; distributing any partisan political material that supports a particular candidate or party, even if only given to delegates at the convention; serve as a spokesperson or media representative for the party or the convention; or participating in any way in the planning of the events of the convention.

Question: Does the Political Activity provision apply to employees and officers on leave of absence?

Answer: Yes. It has also occasionally been asked whether an employee may resign in order to engage in political activity and then be re-hired. Although an employee who has resigned is no longer a City employee and thus not subject to the fund-raising or campaigning provisions (Sections 10-107(3) and (4)), it should be noted that an employee who resigns has no guarantee of re-employment. If there is a specific agreement, executed for the purpose of evading Section 10-107, the Agreement would be against public policy. That is, an employee may not resign merely for a short period of time in order to work on a political campaign with the agreement that after completion of his political activity, he would be re-hired.

Question: Does The Political Activity provision apply to members of City boards and commissions?

Answer: Generally, Section 10-107 does not apply to unpaid members of City boards and commissions nor to those members whose compensation for such service is \$40 per meeting or less. Some boards for which the compensation is above that figure may be excluded in some cases. Individual questions should be addressed to the City Solicitor for interpretation.

Question: Does Section 10-107 apply to elected officials?

Answer: Yes, except for one subsection. There are two principal substantive subsections of Section 10-107. Subsection (3) relates to political contributions and fundraising, and applies to all City officers and employees, including elected officials and officers and employees of other governmental agencies who are paid out of the City Treasury. Subsection (4) relates to taking part in political parties, clubs, and campaigns in activities other than fund-raising, and applies only to “appointed” officers and employees of the City, thus not elected officials.

Question: Are there any exceptions to the above answers?

Answer: Yes. The City and County of Philadelphia used to be two different entities. Because of the complicated way in which the City and County were merged in 1951, several former county offices became City offices and subject to the Charter, but not all. The City Commissioners, Clerk of Quarter Sessions, District Attorney, and Sheriff are all subject to the Charter. Prothonotary and Register of Wills are not subject to the Home Rule Charter at all.

Question: How does The Political Activity provision apply to employees of elected officials?

Answer: Generally, employees of the City who are appointed by elected officials are subject to all the provisions of Section 10-107 in the same way as other appointed employees. Therefore, employees of the City Commissioners, Clerk of Quarter Sessions, District Attorney, and Sheriff are prohibited from engaging in political activity. Employees of the Prothonotary and Register of Wills, however, are not subject to Section 10-107.

Question: May City Council employees engage in political activities?

Answer: Yes. Under a 1952 Opinion of the City Solicitor, employees of City Council may engage in political campaign activities. They are still prohibited from fund-

raising, however.

Question: Does The Political Activity provision apply to attorneys in the District Attorney's Office?

Answer: Yes. See Com. ex rel. Specter v. Moak, 452 Pa. 482 (1973).

Question: Does The Political Activity provision apply to employees of authorities?

Answer: Except for provisions that apply to any person (see the 3rd question on page 2), the provision does not apply to employees of authorities. The provisions that apply to officers and employees refer to officers and employees of the City. Authorities are State entities, and therefore their employees are not employees of the City and are not subject to restrictions on City officers and employees.

Question: Does The Political Activity provision apply to the School District and the Courts?

Answer: No. The School District is not directly governed by the Charter, and has its own policies; the Courts are not subject to the Charter, but have adopted their own rules.

Question: When does a City official or employee become a "candidate" for purposes of when he or she must resign his or her current City position?

Answer: The courts have ruled that a person becomes a candidate when he or she files nomination papers or publicly announces candidacy for office. Merely indicating willingness and availability to run do not make one a candidate.

CONCLUSION

Most questions involving political activities by either civil service or exempt employees and officers of the City may be answered by careful reference to the list of permissible and prohibited activities cited in this memorandum. Officers or employees with questions not clearly answered by reference to this memorandum should seek the advice of the City Solicitor before acting.

TEXT OF CONTROLLING PROVISIONS

1. Section 10-107. Section 10-107 of the Charter reads in its entirety as follows:

Section 10-107. Political Activities.

(1) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the civil service.

(2) No person shall, for the purpose of influencing the vote or political action of any person, or for any consideration, use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the civil service, or an increase in pay or other advantage in employment in any such position.

(3) No officer or employee of the City and no officer or employee of any governmental agency whose compensation is paid from the City Treasury shall, from any person, and no officer or member of a committee of any political party or club shall, from any civil service employee, directly or indirectly demand, solicit, collect or receive, or be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever. No officer or member of the Philadelphia Police or of the Fire Department shall pay or give any money or valuable thing or make any subscription or contribution, whether voluntary or involuntary, for any political purpose whatever.¹

(4) No appointed officer or employee of the City shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(5) No officer or employee of the City, except elected officers running for re-

¹ The City was permanently enjoined from enforcing the last sentence of this subsection as to uniformed members of the Fire Department, by a decision of the federal court on October 6, 2003. Philadelphia Fire Fighters' Union Local 22, AFL-CIO v. City, 286 F. Supp. 2d 476 (E.D. Pa. 2003).

election, shall be a candidate for nomination or election to any public office unless he shall have first resigned from his then office or employment.

(6) Any officer or employee of the City who violates any of the foregoing provisions of this section shall, in addition to any penalties provided for hereafter, be ineligible for one year for any office or position under the City.

2. Regulation 29. The Law Department has several times opined that Civil Service Regulation 29, although not directly applicable, is instructive as to how Charter §10-107 would be interpreted for exempt employees. Thus, the lists of permissible and prohibited activities delineated in Regulation 29 apply not only to civil service employees, but also represent the Law Department's interpretation of the application of Charter Section 10-107 to exempt employees. For convenience, the lists are reprinted here (revised somewhat to eliminate references that apply only to civil service employees):

PERMISSIBLE ACTIVITIES. The following are activities permissible under Section 10-107 of the City Charter. An officer or employee of the City may voluntarily do the following:

- You may cast your vote at any election.*
- You may express privately your opinions on any political candidate.*
- You may be a member of a political party, club or organization*
- You may be a member or officer or participate in the activities of non-partisan civic organizations.*
- You may sign any petition.*
- You may initiate or circulate petitions provided that such petitions are not identified with a political party, or body, or partisan political club and do not call for the nomination or election of particular candidates to public or party office.*

Permissible Activities continued:

- Unless you are a uniformed or investigatory officer or employee of the Police Department, you may make voluntary contributions for political purposes.*
- You may participate in the public debate of questions which may be*

submitted to referendum vote or of other issues of public interest, provided such activity is not in support of any political party or body or partisan political club, and is not identified with any particular political party, body or candidate.

- *You may attend as a spectator any political meeting or convention.*
- *You may attend dinners or social functions of a political character.*
- *You may address any meeting, dinner or social function on local, state or national issues that are not particularly identified with any particular political party, body or candidate and do not call for the nomination or election of any candidate to public or party office.*
- *You may distribute printed matter, badges or buttons in support of any political issue provided that such issue is not identified with any particular political party, body or candidate and does not call for the nomination or election of any particular candidate to public or party office.*
- *You may participate in any non-partisan campaign for the registration of voters.*

PROHIBITED POLITICAL ACTIVITIES. *The following are political activities prohibited by Subsections (3), (4) and (5) of Section 10-107 of the City Charter. An officer or employee of the City shall not do the following:*

- *You may not be an officer or member of a committee of a political party or body.*
- *You may not be an officer or member of a committee of a partisan political club or organization.*

Prohibited Activities continued

- *You may not address, make motions, prepare or assist in preparing resolutions, maintain records or take any other active part in a meeting or convention of a political party or partisan political club.*
- *You may not initiate or circulate public petitions, or canvass for the*

signatures of others, if such petitions are identified with or call for the nomination or election of any particular candidate to public or party office.

- *You may not distribute printed matter, badges or buttons in support of any candidate for public or party office or political party or body.*
- *You may not wear on your person or display badges, emblems, signs, posters and the like which are in favor of or against a political party, body or candidate.*
- *You may not participate in or help organize a political parade.*
- *You may not solicit money from any person for the support of any issue, for the support of any political party or body, or for the support of any political purpose that is identified with or calls for the nomination or election of any particular candidate to public or party office.*
- *You may not arrange, or help to arrange a public meeting, rally, dinner, or social function of a political character.*
- *You may not sell or distribute tickets for sale for political meetings or dinners.*
- *You may not serve at party headquarters or otherwise engage in campaign activities on behalf of a party or candidate in any political campaign or election.*
- *You may not write for publication or publish any letter or article, signed or unsigned, in favor of or against any political party, body or candidate for public office.*

Prohibited Activities continued

- *You may not engage in transportation of voters to the polls on election day on behalf of any candidate or party.*
- *You may not act as the accredited watcher of any political party, body or candidate, or engage in any political activity at the polls except the casting of your own vote.*

- *You may not, if you are a uniformed or investigatory member of the Police Department, make any contribution of money or any valuable thing, whether voluntary or involuntary, for any political purpose whatever.*
- *You may not be eligible to continue your City employment if you shall become a candidate for nomination or for election to any public office. Any City employee who shall become a candidate for a nomination or election to any public office shall be considered to have resigned his or her City employment.*
- *You may not give any consideration to the political affiliation of any person in making appointments under the provisions of these regulations.*
- *You may not directly or indirectly use or promise or threaten to use the authority or influence of your position in order to coerce or influence the vote of any person.*
- *You may not directly or indirectly use or promise to use the authority or influence of your position in order to dismiss, promote or demote, or in any manner change the official rank or compensation of any employee or promise or threaten to do so for withholding or refusing to make any contribution of money or service or other valuable thing in support of or in opposition to any political party, body or candidate for public office or issue.*
- *You may not directly or indirectly use or promise to use the authority or influence of your position in order to coerce or influence an employee to pay or promise to pay any assessment, subscription or contribution in support of or in opposition to any political party, body or candidate for public office or issue.*

Prohibited Activities continued

- *You may not address any rally, dinner or social function of a political character on any subject that is identified with or calls for the nomination or election of any candidate to public or party office.*
- *You may not participate in a campaign of a political party for registration of voters in that party.*

- *You may not perform any of those activities referred to as “Permissible Activities” above during your scheduled hours of employment for the City of Philadelphia. Those activities referred to as “Prohibited Political Activities” above are not permitted before, during and after hours work for the City.*
- *You may not by collusion or indirection through another person attempt to accomplish any activity prohibited by the above list.*